COUNCIL UPDATE

December 3, 2021

MEETINGS & REMINDERS

Monday, December 6	6:30 p.m.	Council Committee of the Whole City Hall – Executive Conference Room
	7:30 p.m.	City Council Meeting City Hall – Council Chambers
Tuesday, December 7	7:00 p.m.	Architectural Board of Review City Hall – Council Chambers
Wednesday, December 8	6:30 p.m.	Racial Justice Task Force Public Safety Subcommittee Online
	7:00 p.m.	Planning Commission Online

LEGISLATION

Democracy Day. An Ordinance amending Section 183.01, "Public Hearing," of Chapter 183, Political Influence by Corporate Entities, of the Cleveland Heights Codified Ordinances to the date of the public hearing that is to be held annually;

Liability Insurance. A Resolution authorizing the City Manager to enter into an agreement with Arthur J. Gallagher & Company for continuation of its protected liability self-insurance program for the City;

City Administrator Salary. An Ordinance amending Ordinance No. 20-2021, "Wage and Salary Ordinance," providing for salary schedules, position classifications, and other compensation and benefits for officers and employees of the City, to add a salary schedule, position classification, and other compensation and benefits for a City Administrator.

Mayoral Code Amendments. An Ordinance amending various sections of the Codified Ordinances of the City of Cleveland Heights in furtherance of the transition from Manager-Council to Mayor-Council form of government.; providing for the meaning and interpretation of the term City Manager appearing in all documents to mean to Mayor;

Aerial Ladder Fire Truck. An Ordinance authorizing the execution of a Property Schedule to a Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc., as lessor, and the City, as lessee, for the purpose of acquiring an aerial ladder fire truck including related equipment and appurtenances,

Appropriations. An Ordinance to amend certain subparagraphs of Ordinance No. 127-2020 (F) and subsequent amending ordinances, relating to appropriations and other expenditures of the City of Cleveland Heights, Ohio for the fiscal year ending December 31, 2021;

Proposed 2022 Budget. An Ordinance to make appropriations for the current expenses and other expenditures of the City of Cleveland Heights, Ohio, for the period of January 1, 2022 through December 31, 2022;

Sewers. A Resolution authorizing the City Manager to enter into an agreement with the County of Cuyahoga to perform certain services to help maintain the City's sanitary and storm sewers;

F&C Development, Inc. A Resolution authorizing the City Manager to enter into a Development Agreement with F&C Development, Inc. concerning the "Cedar-Lee Meadowbrook" development;

CITY MANAGER'S REPORT

- The Council vacancy application (in anticipation of the January vacancy) is online with a deadline of December 17th. It is also on today's neighborhood news. The homepage prominently features the request for applications with a link to the application.

- At the December 6th Council meeting there will be two recognitions – Tommy Fello for his 50th Anniversary on Coventry and Jimmie Hicks for his 20 years as our police chaplain and 15 years of Start Right Church. Both will be in attendance.

- The website has been updated on the Planning Department page to indicate the process going forward with the Cedar Lee Development and to show the site plan that will be before the Planning Commission. (The site plan in the agreement is from the RFP/RFQ and staff has added the evolved site plan that will be before Planning Commission.)

- Regarding bulk pickup issues – the reason Public Works went to the first week each month for bulk pickup is because of the demands on the limited staff available. Housing will continue to issue tickets, especially to landlords.

CLEVELAND HEIGHTS

ECONOMIC DEVELOPMENT REPORT – December 1, 2021:

CEDAR-LEE-MEADOWBROOK:

- The legislation to authorize executing the proposed Development Agreement with the City's Development Partner Flaherty & Collins has had two readings to date;

NEIGHBORHOOD REDEVELOPMENT PROGRAM (NRP) INFILL HOUSING CONSTRUCTION:

- The Development Agreement with **Start Right CDC** for the construction of infill single family owner-occupied housing in the **Caledonia Neighborhood** was approved on 10/4/2021. The project is now proceeding to implementation. The first home recently received approval from the Board of Zoning Appeals for various variances, and has been approved by ABR. Once Phase I & II are completed, the City anticipates the project will yield up to 23 new infill houses constructed by Start Right on vacant City-owned properties in the Caledonia Neighborhood by 2026.

TAYLOR TUDOR PLAZA:

- The RFQ/RFP for the rehabilitation/redevelopment of Buildings #1, #2, & #3 was issued on 8/27/2021. The recently modified anticipated schedule for the project is:
  - COMPLETED: Building Tours – Interested Developers
  - December 2: Pre-Submittal virtual call for Developers;
  - December 10: RFQ/RFP responses due
  - December 20: Potential Development Partner recommendation

  https://www.clevelandheights.com/1443/Taylor-Tudor-Plaza-Redevelopment
  For additional information on this project.

TOP OF THE HILL:

- Construction on the project continues, with the completion date anticipated to be July of 2022 with a ribbon cutting soon thereafter;

MEMORANDUM

To: **Susanna Niermann O'Neil, City Manager**

From: **Eric Zamft, Planning Director**

Date: **December 1, 2021**

Subject: **Bi-Weekly Planning Department Update**

NEED FOR VOLUNTEERS TO FILL CITY BOARD/COMMISSION VACANCIES

There are a number of vacancies on the City's boards and commissions. Residents are encouraged to volunteer for these very important civic bodies. See https://www.clevelandheights.com/1169/Boards-and-Commissions-Application for more information.

HIGHLIGHTS OF PLANNING INITIATIVES

MEET THE PLANNING DIRECTOR

The Planning Director held "meet and greets" in the Cedar-Lee District the week of November 15, 2021. Various members of the community attended the events to meet the Planning Director, learn about the City's planning and zoning boards and commissions, and discuss general planning matters and the Cedar-Lee-Meadowbrook project specifically. Special thanks to the hosts – including the Library, CLE Urban Winery, Wine Spot, and Zagara's. The meet and greet originally scheduled to be held on the Meadowbrook site on November 19, 2021 was postponed due to snow. The Planning Director intends to hold similar "meet and greets" in other parts of the City in upcoming months.



CEDAR-LEE-MEADOWBROOK REDEVELOPMENT

As the Development Agreement is currently being discussed at Council, the site planning and design phase of the project continues. Staff continues to meet internally to discuss public and staff comments to be integrated in the plan, as well with development partner's design team to ensure that integration. Parking and traffic studies are on-going and a second workshop will

be held on December 14, 2021 at 6 PM at the Community Center. Depending on Council's discussions regarding the Development Agreement, the development team is anticipated to present preliminarily on the site plan at the December 8, 2021 Planning Commission meeting and present preliminarily on architecture at the December 21, 2021 Architectural Board of Review meeting. In addition, the development team presented at the December 1, 2021 Transportation & Environmental Sustainability Advisory Committee.

Staff will continue to update the webpage and provide more information in upcoming bi-weekly Planning Department reports (https://www.clevelandheights.com/clm). ***The public is encouraged to comment on all aspects of the proposal utilizing the project webpage comment form or emailing directly to planning@clvhts.com.***

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME ADMINISTRATION

Staff and the CAC chair presented the joint CAC/staff recommendations for Year 48 CDBG funding to Council at the Committee of the Whole on November 1, 2021. The presentation enabled a 30-day public comment period to open. Information can be found here: https://www.clevelandheights.com/cdbg. At the December 20, 2021 meeting, City Staff will be requesting that Council approve the Year 48 Annual Action Plan and give authority to the administration to submit the plan and all other required documents to HUD once FY 2022 funding is announced.

The Cuyahoga County HOME Consortium recommended approving a forgivable HOME loan of up to $450,000 ($350,000 County/$100,000 Cleveland Heights) to assist in the development of 20 new senior, affordable housing for the project known as Margaret Wagner III, 2773 Euclid Heights Blvd. This project was also successful in receiving $1.3 million in HUD 202 funding. Cuyahoga County Department of Development will manage Cleveland Heights ARPA HOME funds that are restricted to being used to address housing for the homeless. Planning staff has and will continue to work to establish the Cuyahoga County Homeless Coalition system of care.

TRANSPORTATION

The City has been hard at work on transportation issues:

- *Cuyahoga County Shared Micro-Mobility Initiative* – Staff continues to work with the County and the scooter vendors on the implementation of the County-wide micro-mobility network, which includes e-scooters.
- *Complete and Green Streets Checklist* – Planning staff is working closely with the Department of Public Works and Transportation and Environmental Sustainability Advisory Committee on finalizing a Complete and Green Streets Checklist.

PLACEMAKING & PARK PLANNING; SUSTAINABILITY

Planning is helping to guide a number of placemaking activities, working collaboratively with the Manager's Office and other departments. As part of all of these efforts, staff is looking for additional opportunities for passive and actives spaces, community gardens, and additional tree plantings. As part of these efforts, staff is coordinating with Economic Development, Housing, Parks & Recreation, Public Properties, and Law on vacant lots. Staff is coordinating with other departments and FutureHeights on the planning for the Cedar-Lee Mini Park. Staff is working with the City Manager, Parks & Recreation, and Public Properties on ideas for potential dog park locations.

Planning staff is on the review committee for the Northeast Ohio Regional Sewer District's Horseshoe Lake Park Planning RFP. The Doan Brook Watershed Partnership (DBWP) 2021 Annual Meeting was held on November 16, 2021. The keynote address recounted the history of dam building in America and explored the modern-day complexities of dam removal and dam upkeep. For more information follow this link: https://doanbrookpartnership.org/annual-meeting/

REDEVELOPMENT OPPORTUNITIES

Staff assists property owners and prospective property owners in evaluating redevelopment opportunities. This includes the Park Synagogue site and Severance Town Center. Staff anticipates meeting soon with the developers of the Park Synagogue site to discuss the status of the project. As a reminder, a website has been set up by the developer of the Park Synagogue site to solicit input: https://sustainableca.com/park/. Similarly, the Library has a website dedicated to the Noble Road Library expansion: https://heightslibrary.org/noble-branch-renovation-project/

ZONING

Staff continues to work with the Planning Commission, the Law Department, Council and others to identify, discuss, and, ultimately, propose additional changes to the Zoning Code, including rain gardens/rain barrels, additional parking revisions, and accessory dwelling units (ADUs). If the public has any ideas regarding further zoning changes, please email those to planning@clvhts.com.

COORDINATION WITH ECONOMIC DEVELOPMENT DEPARTMENT INITIATIVES

- *Neighborhood Redevelopment Program (NRP), Phase 1* – Start Right CDC received all necessary design review approvals (Board of Zoning Appeals and Architectural Board of Review) for its proposed model home to be constructed on 961 Nelaview Road (see below).
- *Cedar-Lee-Meadowbrook Redevelopment* – See above.
- *Unitarian Church Redevelopment* – Planning staff has been participating in discussions regarding the potential redevelopment of the Unitarian Church site and adjacent properties. Should Council move forward with a development partner, staff would help guide the development partner through the zoning and design review process.
- *Other Economic Development Initiatives* – Planning staff provides input and support on other initiatives, including additional NRP phases, the Taylor-Tudor Plaza properties, the Storefront program, solid waste needs for businesses, other redevelopment opportunities, developing additional funding mechanisms within the City, Top of the Hill landscaping plan, etc.

BOARDS AND COMMISSIONS

The Department of Planning assists the activities of the Architectural Board of Review (ABR), Board of Control, Board of Zoning Appeals (BZA), Landmark Commission, and Planning Commission, and provides staff assistance to the Citizens Advisory Committee (CAC), Racial Justice Task Force, Transportation & Environmental Sustainability Advisory Committee (T&ESAC), and City Council (when needed). Below are tables of both active and recently approved applications managed by the Department.

ARCHITECTURAL BOARD OF REVIEW (ABR) – 1st and 3rd Tuesday

At the November 16, 2021 ABR meeting, the following applications were discussed and approved:

Address	Case #	Project Description
961 Nelaview Road	ABR 2021-156	Request to construct a single-family home
3209 Oak Road	ABR 2021-261	Request to alter the front entry
2537 Lee Road*	ABR 2021-268	Request to install cellular equipment
2600 South Park Boulevard	ABR 2021-269	Request to install new signage both in Shaker Heights and Cleveland Heights
2899 Monticello Boulevard	ABR 2021-270	Request to construct a two-car, detached garage

3559 Blanche Avenue	ABR 2021-271	Request to construct a two-car, detached garage
3326 Clarendon Road	ABR 2021-272	Request to install new windows
1488 Parkhill	ABR 2021-274	Request to install new roofing on a detached garage
1782 Coventry Road	ABR 2021-275	Request to install new signage and paint the brick façade (*note that only the signage was approved*)
2473 Derbyshire Road	ABR 2021-276	Request to construct a two-car, detached garage
2925 Scarborough Road	ABR 2021-278	Request to enclose a doorway
3294 Hyde Park Avenue	ABR 2021-280	Request to construct a rear addition
883 Eloise Road	ABR 2021-282	Request to construct a two-car, detached garage
3516 Northcliffe Road	ABR 2021-283	Request to construct a two-car, detached garage
3586 Bendemeer Road	ABR 2021-284	Request to construct a rear addition

*Joint review by ABR and Landmark Commission, see below under "Landmark Commission".

The following applications were withdrawn:

Address	Case #	Project Description
883 Clarence Road	ABR 2021-273	Request to construct a two-car, detached garage
2509 Wellington Road	ABR 2021-277	Request to alter the rear entry

The following applications appeared before the ABR for preliminary review and no action:

Address	Case #	Project Description
1815 North Park Boulevard	ABR 2021-279	Request to construct an addition and two-car, detached garage; convert the existing garage to living space; alter the entrance; and create an outdoor living space
2558 Guilford Road	ABR 2021-281	Request to construct a breezeway and garage addition

The next ABR meeting will be held on December 7, 2021. The agenda from the meeting can be found at: https://www.clevelandheights.com/DocumentCenter/View/10090. The results of the meeting will be provided in the next bi-weekly Planning Department report.

BOARD OF CONTROL (As needed for the S-1 District)

There was no recent activity involving the Board of Control.

BOARD OF ZONING APPEALS (BZA) – 3rd Wednesday

At the November 17, 2021 BZA meeting, the following applications were discussed and approved:

Address	Case #	Project Description
3516 Meadowbrook Boulevard	Cal. No. 3532	Request for variances to permit garage floor area to be greater than permitted
3370 Meadowbrook Boulevard	Cal. No. 3533	Request for variances to 1) permit a new front porch to extend into the required front yard setback; and 2) permit the garage to cover more than 20% of the rear yard
1794, 1788 & 1784 South Taylor Road	Cal. No. 3534	Request for variances to 1) permit parking in the front yard and corner side yard; 2) provide fewer parking spaces than required; 3) permit the parking lot perimeter landscape areas to be less than the minimum width; and 4) permit 11 contiguous parking spaces with no landscape island

The next BZA meeting will be held on December 15, 2021. The agenda will be posted prior to the meeting. The results of the meeting will be provided in a future Planning Department report.

LANDMARK COMMISSION – 1st Tuesday of Odd Numbered Months

At the joint Landmark Commission and ABR meeting on November 16, 2021, the following application was discussed and approved:

Address	Case #	Project Description
2537 Lee Road	ABR 2021-268	Request to install cellular equipment

The next regularly scheduled Landmark Commission meeting is anticipated to be held on January 4, 2022. A link to the agenda will be provided prior to the meeting date.

PLANNING COMMISSION – 2nd Wednesday

At the November 10, 2021 Planning Commission meeting, the following applications were discussed and approved:

Address	Case #	Project Description
3713 Bendemeer Road	Project No. 21-12	Request for reduction of required enclosed private parking spaces
3489 Shannon Road	Project No. 21-13	Request for reduction of required enclosed private parking spaces

2463 North Taylor Road	Project No. 21-14	Request for approval of 106-child daycare, school-age before- and after-school care, and full-day programs
3334 Berkeley Road	Project No. 21-15	Request for reduction of required enclosed private parking spaces

In addition, the Planning Department gave a short training to the Planning Commissioners on the full-extent of their roles and responsibilities as detailed in the Zoning Code.

The next Planning Commission meeting will be held on December 8, 2021. The agenda from the meeting can be found at: https://www.clevelandheights.com/DocumentCenter/View/10098. The results of the meeting will be provided in the next bi-weekly Planning Department report.

TRANSPORTATION & ENVIRONMENTAL SUSTAINABILITY ADVISORY COMMITTEE (T&ES) – 4th Wednesday

At the December 1, 2021 T&ESAC meeting the will have occurred, among other items:

- Presentation by City Architecture and preliminary discussion on Cedar-Lee-Meadowbrook Redevelopment
- Resident request for striping (and clarity) on Forest Hills Boulevard between Mayfield and Monticello Roads
- Resident concerns over excessive noise from mobile sources (e.g., automobiles, motorcycles) especially during warmer weather in the Forest Hills neighborhood
- Referral from Council regarding sharrows on Monticello Boulevard; Mayfield Road by Lakeview Cemetery; other locations
- Discussion of a Tree Ordinance
- Update on the New Weekday Daytime Bus Route (#35)
- Discussion of potential Bylaws
- Multiple topics related to Environmental Sustainability

The next T&ESAC meeting is anticipated to be on January 26, 2022. A link to the meeting agenda will be posted prior to the meeting date and the results of the meeting will be reported in a future Planning Department report.

CITIZENS ADVISORY COMMITTEE (CAC) – 3rd Tuesday

At the November 16, 2021 CAC meeting a public hearing was held to provide an opportunity for the public and the CAC to provide input on the Year 48 Annual Action Plan.

The next CAC meeting will be held on January 18, 2022. A link to the meeting agenda will be posted prior to the meeting date and the results of the meeting will be reported in a future Planning Department report.

RACIAL JUSTICE TASK FORCE

The Racial Justice Task Force and its three subcommittees have continued to refine their work plans. The Public Safety Subcommittee will be meeting on December 8, 2021; the Housing & Economic Opportunity Subcommittee will be meeting on December 15, 2021; the Health & Education Subcommittee will be meeting on December 22, 2021. The full Racial Justice Task Force meeting will take place on December 22, 2021. The full task force and its subcommittees are developing their first 6-month update to Council that will be completed in January. Meeting agendas and links to the meetings can be found on the City Calendar.

CLEVELAND HEIGHTS

To: Susanna Niermann-O'Neil, City Manager

From: Annette M. Mecklenburg, Chief of Police

Date: December 1, 2021

Subject: Police Department Update

Crime Update

On Wednesday, November 24, 2021, around 8:20 pm officers responded to a report of an Aggravated Burglary in the 800 block of Montford Road. Preliminary investigation indicates that several suspects entered the residence armed with handguns and ordered the occupants to lay on the floor. The suspects took cash and property and fled the residence. During the incident one of the residents suffered minor injuries and several gunshots were fired outside the residence. No one was struck by the gunfire and no one else was injured. It is believed that this residence was targeted b the suspects. Detectives are investigating.

On Tuesday, November 30, 2021, around 2:07 pm an Aggravated Burglary was reported in the 1500 block Maple Road. Preliminary investigation indicates that two of the residents were just returning home from shopping when two suspects entered the residence armed with handguns. The suspects took the residents cell phones and jewelry and then fled from the residence. No one was injured in the incident. Officers processed the scene for evidence. Detectives are investigating.

Update – Suspect Tracy Turner, 54 year old male from Cleveland, has been arrested by law enforcement officers from a nearby agency. Mr. Turner was wanted in connection to at least three Breaking and Enterings/Auto Thefts in our City, including two vehicles stolen from Toyota Motorcars in October. Detectives are following up.

Community Events

No Shave November – This year members of the CHPD are proudly participating once again in No Shave November. For a donation of $50.00 Officers will be permitted to grow a beard during the month, so long as it is kept neatly trimmed and professional. This year we will be joining several other area Police Departments in donating to "A Special Wish Foundation, Inc. Cleveland Chapter." 100% of the donations go directly to children battling life-threatening illnesses. These children are receiving treatment at Cleveland Clinic Children's Hospital, Akron Children's Hospital and UH Rainbow Babies & Children's Hospital. Additional information will be made available through social media outlets for those wishing to join us in raising funds for such a wonderful cause.

<u>Update</u> – During the entire month of November the Police Department has collected over $3,800 in donations.

Due to the success of this fundraising effort, we have extended the No Shave through the month of December. To participate, Officers are required to make a donation to our Shop with a Cop fund this year. For the next two weeks, Officers will be permitted to make a donation to maintain their beards for the entire month. The money collected will be used to take kids from our community Christmas shopping at a local store. Officers are very excited about being given the opportunity to spread some Holiday cheer to kids right here in our City. We will provide updates on our progress throughout the month.

<u>Bomb Squad</u>

We are happy to report that our Bomb Squad continues to expand as part of the Eastside Departments Group Enforcement (EDGE). In addition to our two certified bomb techs, Beachwood Officer Luis Reyna just successfully completed Hazardous Devices School and is also now a certified bomb technician. Also an Officer from University Heights PD was just appointed to the team and he will be attending the school next year.

Date: December 1, 2021

To: Susanna Niermann-O'Neil, City Manager

From: Collette Clinkscale, Director of Public Works

Subject: Public Works Update

Sanitary Sewer Evaluation Survey

Requirements		Due
Phase 1 SSES	CCTV - 393,658 LF	Complete
Phase 2 SSES	CCTV - 224,792 LF	Complete
Phase 1 SSES	1,980 Manhole Inspections	Complete
Phase 2 SSES	1,125 Manhole Inspections	Complete
CMOM	132,000 LF/yr Pipe Cleaned	31-Dec-21
Model	Calibrated Model	Complete

Completed Through November 5, 2021

	Completed Thru November 5, 2021 (LF)	Overall Remaining (LF)	Overall Remaining (%)
CCTV Phase 1	395,097	-	-
CCTV Phase 2	224,792	-	-
MHs Phase 1	1,978	-	-
MHs Phase 2	1,115	-	-
Cleaning Total	733,082	-	-
Cleaning (2018) only	173,355	-	-
Cleaning (2019) only	304,188	-	-
Cleaning (2020) only	140,713	-	-
Cleaning (2021) only	131,446	554	.004%

Work Completed by Entity

	City	Contractor	County
CCTV (Phase 1)	19% 75,464 LF	54% 215,287 LF	27% 104,346 LF
CCTV (Phase 2)	19% 41,959 LF	45% 101,854 LF	36% 80,979 LF
Cleaning (2021) only	33% 43,347	45% 58,813 LF	22% 29,286 LF
Cleaning Total	30% 224,597	45% 332,964 LF	25% 192,141 LF

Model Update

Tasks	% Complete
1. Flow and rainfall Analysis	100%
2. Model Expansion in GIS	100%
3. Model Expansion in Infoworks ICM	100%
4. Delamere - Model Setup	100%
5. Delamere - DWF and WWF calibration	100%
6. Delamere - Capacity evaluation	100%
7. Delamere - Alternative development	100%
8. DWF and WWF Calibration for all flow meters	100%

Sewer Division

The Sewer Maintenance Division has been working on cleaning and televising sanitary sewer main to meet the CD deadline for 2021. The sewer division has taken over road hole repairs from street maintenance while they concentrate on leaf collection. Two (2) sewer division employees have been assigned to the Street Maintenance Division to work the leaf collection detail and assist in this effort.

Robert “Bob” Blatnica retired on 11/26/2021 with 23 years seniority. Bob served as a Zamboni Driver maintaining the ice rink in the Parks and Recreation Division and most recently as an Equipment Operator, for the 2nd time around, in the Sewer Division responsible for driving and operating the Vac truck. He was instrumental in assisting the City with meeting CD deadlines for sewer cleaning. We wish Bob well in his future endeavors. He will be missed.



Refuse & Recycling Division

Monday, December 6th is bulk collection week. Bulk collection week is the first “full” week of the month (Monday-Friday (Saturday in the event of a holiday) Each resident can place up to four bulk items out for collection on their regularly scheduled collection day. Additional bulk items and non-bulk day pick-ups can be scheduled for a fee of $10/item by using the following link below.

www.clevelandheights.com/bulkbrushrequest

Upcoming Holiday Schedule: Trash and Recycling Collection will be collected according to the normal collection schedule. **There will be no delays due to the Christmas and New Year Holidays.**

Street Maintenance Division

A 3rd and final Fall loose leaf collection has been added to the schedule starting on December 6th. Residents are reminded that kraft bag collection ceased and we are requesting that all leaves are raked to the treelawn. Crews will collect any yard waste bags out there during this final round, however, it does create a logistical issue for the disposition of the yard waste bags and slows crews down.

The City’s online leaf map has been updated to reflect the additional collection. Residents can find a daily updated schedule and progress map on the Cleveland Heights webpage.

www.clevelandheights.com/Leaf-Collection-Map

Forestry Division

Tree planting season is wrapping up. Some Forestry crew members have been assigned to the leaf collection detail in the Street Maintenance Division to assist with this effort.

#21-02 – 2021 Street Resurfacing & ADA Curb Ramp Replacement Program

The contractor still has a few remaining items to complete. They have had some issues with COVID-19. They had seventeen employees out at one time with COVID-19 and/or possible exposure to the virus.

#21-06 – 2101 Superior Road Rehabilitation

The contractor is in the process of restoring the trench above the new water main and in the intersection of Superior and South Taylor. Cleveland Water (CWD) is performing the chlorination testing on the new water main. After being given the all clear by CWD, the contractor will start to tie in the new services to individual homes. Superior Road, east of South Taylor, remains closed to through traffic. Detour signs are posted



CLEVELAND HEIGHTS

Committee of the Whole

December 6, 2021
6:30 p.m.
Agenda

1. Legislation overview/Caucus

2. Executive Session
    a. *To consider the terms of sale or lease of City-owned real property*

CLEVELAND HEIGHTS

AGENDA (tentative) - CLEVELAND HEIGHTS CITY COUNCIL MEETING

Monday, December 6, 2021
Regular Meeting
7:30 p.m.

Cleveland Heights City Hall
Council Chambers
40 Severance Circle
Cleveland Heights, Ohio

1) Meeting called to order by Council President

2) Roll Call of Council Members

3) Excuse absent members

4) Approval of the minutes of the Council meetings held on November 1, November 8, and November 15, 2021

5) Personal communications from citizens

6) Report of the City Manager

7) Report of the Clerk of Council

8) Committee Reports

a.) ADMINISTRATIVE SERVICES COMMITTEE

ORDINANCE NO. 155-2021 (AS), *First Reading*. An Ordinance amending Section 183.01, "Public Hearing," of Chapter 183, Political Influence by Corporate Entities, of the Cleveland Heights Codified Ordinances to the date of the public hearing that is to be held annually;

Introduced by Council Member _____

Vote _____ _____ _____
For Against No. Reading

RESOLUTION NO. 156-2021 (AS), *First Reading*. A Resolution authorizing the City Manager to enter into an agreement with Arthur J. Gallagher & Company for continuation of its protected liability self-insurance program for the City; and declaring an emergency.

Introduced by Council Member _____

Vote _____ _____ _____
For Against No. Reading

ORDINANCE NO. 145-2021 (AS), *Second Reading*. An Ordinance amending Ordinance No. 20-2021, "Wage and Salary Ordinance," providing for salary schedules, position classifications, and other compensation and benefits for officers and employees of the City, to add a salary schedule, position classification, and other compensation and benefits for a City Administrator and Assistant Clerk of Council.

Introduced by Council Member _____

Vote _____ _____ _____
For Against No. Reading

ORDINANCE NO. 153-2021 (AS), *Second Reading*. An Ordinance amending various sections of the Codified Ordinances of the City of Cleveland Heights in furtherance of the transition from the Council-Manager to the Mayor-Council form of government; and declaring an emergency.

Introduced by Council Member _____

Vote _____ _____ _____
For Against No. Reading

b.) COMMUNITY RELATIONS AND RECREATION COMMITTEE

c.) FINANCE COMMITTEE

ORDINANCE NO. 157-2021 (F), *First Reading*. An Ordinance authorizing the execution of a Property Schedule to a Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc., as lessor, and the City, as lessee, for the purpose of acquiring an aerial ladder fire

truck including related equipment and appurtenances, and declaring an emergency.

Introduced by Council Member _____

Vote _____ _____ _____
For Against No. Reading

ORDINANCE NO. 158-2021 (F), *First Reading*. An Ordinance to amend certain subparagraphs of Ordinance No. 127-2020 (F) and subsequent amending ordinances, relating to appropriations and other expenditures of the City of Cleveland Heights, Ohio for the fiscal year ending December 31, 2021; and declaring an emergency.

Introduced by Council Member _____

Vote _____ _____ _____
For Against No. Reading

ORDINANCE NO. 139-2021 (F), *Third Reading*. An Ordinance to make appropriations for the current expenses and other expenditures of the City of Cleveland Heights, Ohio, for the period of January 1, 2022 through December 31, 2022; and declaring an emergency.

Introduced by Council Member _____

Vote _____ _____ _____
For Against No. Reading

d.) MUNICIPAL SERVICES COMMITTEE

RESOLUTION NO. 159-2021 (MS), *First Reading*. A Resolution authorizing the City Manager to enter into an agreement with the County of Cuyahoga to perform certain services to help maintain the City's sanitary and storm sewers; and declaring an emergency.

Introduced by Council Member _____

Vote _____ _____ _____
For Against No. Reading

e.) PLANNING AND DEVELOPMENT COMMITTEE

RESOLUTION NO. 154-2021 (PD), *Third Reading*. A Resolution authorizing the City Manager to enter into a Development Agreement with F&C Development, Inc. concerning the "Cedar-Lee Meadowbrook" development; and declaring an emergency.

Introduced by Council Member _____

Vote _____ _____ _____
For Against No. Reading

f.) PUBLIC SAFETY AND HEALTH COMMITTEE

9) Council President's Report

10) Adjournment

NEXT MEETING OF COUNCIL: MONDAY, DECEMBER 20, 2021

Proposed: 11/01/2021

ORDINANCE NO. 139-2021 (F), *Third Reading*

By Council Member Hart

An Ordinance to make appropriations for the current expenses and other expenditures of the City of Cleveland Heights, Ohio, for the period of January 1, 2022 through December 31, 2022; and declaring an emergency.

BE IT ORDAINED by the Council of the City of Cleveland Heights that:

SECTION 1. To provide for the current expenses and other expenditures of the City of Cleveland Heights, Ohio, during the fiscal year ending December 31, 2022 the following sums in Exhibit 1 be and they are hereby appropriated.

SECTION 2. There shall be, and there are hereby, monies transferred from various funds in amounts not to exceed those stated below:

FROM	**AMOUNT**	**TO**
101-GENERAL FUND	$500,000	402-FINANCED CAPITAL PROJECTS FUND
101-GENERAL FUND	400,000	234-EARNED BENEFITS FUND
101-GENERAL FUND	150,000	102-BUDGET STABILIZATION FUND
101-GENERAL FUND	700,000	301-DEBT SERVICE FUND
101-GENERAL FUND	1,200,000	232-POLICE PENSION FUND
101-GENERAL FUND	300,000	603-PARKING FUND
101-GENERAL FUND	1,500,000	233-FIRE PENSION FUND
216-RECREATION FACILITY IMPROVEMENT FUND	23,295	301-DEBT SERVICE FUND
231-TREE FUND	17,455	301-DEBT SERVICE FUND
603-PARKING FUND	65,562	234-EARNED BENEFITS FUND
TOTAL TRANSFERS FROM FUNDS	$4,856,312	

SECTION 3. In order to avoid a deficit balance in any fund, the City's Chief Executive (until January 1, 2022, the City Manager; beginning and after January 1, 2022, the Mayor) is hereby authorized to temporarily advance from any unrestricted fund to any other fund, an amount sufficient to cover said deficit balance.

SECTION 4. All expenditures of the City of Cleveland Heights within the fiscal year ending December 31, 2022, shall be made within the appropriations herein provided. "Appropriation" as used herein means the total amount appropriated for the individual fund. Notwithstanding the financial detail herein presented within an individual fund, the City's Chief Executive (until January 1, 2022, the City Manager; beginning and after January 1, 2022, the

Mayor) is authorized to transfer budgeted amounts within each fund, so long as the total amount appropriated for each individual fund is not exceeded.

SECTION 5. Notice of the passage of this ordinance shall be given by publishing the title and abstract of contents, prepared by the Director of Law, once in one paper of general circulation in the city of Cleveland Heights.

SECTION 6. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of public peace, health, and safety of the inhabitants of the City of Cleveland Heights, such emergency being that in order to preserve the faith and credit of the City, it shall take effect at once; wherefore, Council declares that emergency exists and that this emergency Ordinance which shall take effect and be in force from and after the date of its passage.

JASON STEIN
President of the Council

AMY HIMMELEIN
Clerk of Council

PASSED:

Exhibit 1

Fund	Department	Object Personal Services	O.T.P.S.	Capital	Other Financing Uses	Grand Total	
101 - General	1101 - City Council	77,883.60	5,644.00			83,527.60	
	2101 - Mayor's Office	686,067.04	13,729.00			699,796.04	
	2106 - Civil Service Commission	2,280.60	32,410.00			34,690.60	
	2107 - Landmark Commission		10,920.00			10,920.00	
	2108 - General Operations	6,540,005.00	1,453,016.00			7,993,021.00	
	2201 - Management Info Serv	289,756.21	224,914.00	1,400.00		516,070.21	
	2501 - Community Relations	59,103.50	9,000.00	1,000.00		69,103.50	
	2502 - Public Relations	181,362.19	91,900.00			273,262.19	
	3101 - Finance	512,505.06	116,170.00	15,000.00		643,675.06	
	3103 - County Auditors Deduction		266,989.00			266,989.00	A
	310Z - Oper Trsf/Temp Advance				2,050,000.00	2,050,000.00	
	3201 - Income Tax		1,216,500.00			1,216,500.00	B
	4101 - Law	698,398.56	417,862.00			1,116,260.56	
	5101 - Planning	512,533.98	23,100.00			535,633.98	
	5102 - Planning Commission	8,138.34	2,730.00			10,868.34	
	5103 - Board Of Zoning Appeals	5,813.10	2,083.00			7,896.10	
	5104 - SID (Spec Impr District)		402,260.00			402,260.00	
	5106 - Architect Bd of Review	11,626.20	350.00			11,976.20	
	6201 - Service Admin	303,373.00	6,196.00	311.00		309,880.00	
	6202 - Capital Projects Admin		16,100.00			16,100.00	
	6205 - Sewer Maintenance		15.00			15.00	
	6207 - Vehicle Maintenance	852,887.00	1,108,429.00	21,891.00		1,983,207.00	
	6208 - Street Maintenance	1,313,587.00	311,557.00	4,200.00		1,629,344.00	
	6211 - Traffic Signs & Signals	61,208.00	135,015.00			196,223.00	
	7201 - Police Admin	9,381,544.63	580,117.00	700.00	1,200,000.00	11,162,361.63	
	7202 - Police Academy	4,565.25	63,875.00			68,440.25	
	7301 - Fire Admin	7,011,065.00	202,874.00		1,500,000.00	8,713,939.00	C
	7302 - Joint Dispatch Office		1,300,000.00			1,300,000.00	
	7303 - Fire Prevention	99,534.06	3,525.00	800.00		103,859.06	
	7401 - Building Services		604,690.00			604,690.00	
	7402 - Housing Inspections	669,732.88	91,560.00			761,292.88	
	8101 - Community Services Admin		4,620.00			4,620.00	
	8201 - Public Prop/Park Maint	1,101,519.00	1,005,227.00			2,106,746.00	
	8401 - Parks & Recreation Admin	332,596.38	31,240.00			363,836.38	
	8403 - Swimming Pools	242,540.00	165,386.00			407,926.00	D
	8405 - Ice Programs	231,682.53	12,742.00			244,424.53	
	8406 - General Recreation Prog	117,196.85	22,250.00			139,446.85	
	8409 - Sports Programs	126,995.00	65,370.00			192,365.00	
	8411 - Community Center Admin	625,793.00	294,421.00			920,214.00	E
	8501 - Office On Aging Admin	135,214.72	19,011.00			154,225.72	

ORDINANCE 139-2021 (F), *Third Reading*

Fund	Department	Personal Services	O.T.P.S.	Capital	Other Financing Uses	Grand Total	
101 - General	8601 - Public Health Admin		356,067.00			356,067.00	F
	8701 - Animal Protection	80,636.07	23,754.00			104,390.07	
	9101 - Municipal Court	1,047,890.01	161,524.00			1,209,414.01	
101 - General Total		33,325,033.76	10,875,142.00	45,302.00	4,750,000.00	48,995,477.76	
201 - Street Constr, Maint	6201 - Service Admin	79,484.00				79,484.00	
	6208 - Street Maintenance	104,636.00				104,636.00	
	6213 - Monticello Blvd		37,802.00			37,802.00	
	6215 - Road Repaving-State/Cnty		20,480.00			20,480.00	
	6220 - Taylor Road		63,799.00			63,799.00	
	6236 - Annual Street Surface			2,020,000.00		2,020,000.00	
	6312 - Meadowbrook Blvd Rehab		118,922.00			118,922.00	
201 - Street Constr, Maint Total		184,120.00	241,003.00	2,020,000.00		2,445,123.00	
202 - Foundation Grants/Donatns	7402 - Housing Inspections			50,000.00		50,000.00	
202 - Foundation Grants/Donatns Total				50,000.00		50,000.00	
206 - Law Enforcement	7205 - Law Enforcement		123,000.00			123,000.00	
206 - Law Enforcement Total			123,000.00			123,000.00	
207 - Drug Law Enforcement	7206 - Drug Law Enforcement	65,942.50	77,000.00			142,942.50	
207 - Drug Law Enforcement Total		65,942.50	77,000.00			142,942.50	
208 - CDBG Resource	5201 - CDBG Financial Admin	13,581.35				13,581.35	
	5203 - CDBG Admin Contracts		258,467.00			258,467.00	
	5211 - CDBG Comm'l Area Improve			104,858.00		104,858.00	
	5220 - CDBG Office On Aging	35,461.74				35,461.74	
	5222 - Economic Development	123,613.36	1,215,509.00	1,200.00		1,340,322.36	
	5224 - CDBG Admin	145,529.00	25,800.00	4,500.00		175,829.00	
	5301 - CDBG Home Repair Resource		167,588.00			167,588.00	
	5303 - CDBG Housing Pres Office	401,951.00	177,155.00	2,000.00		581,106.00	
	5304 - CDBG Code Enforcement	68,683.00				68,683.00	
	5309 - GIS	35,864.97		6,500.00		42,364.97	
208 - CDBG Resource Total		824,684.42	1,844,519.00	119,058.00		2,788,261.42	
211 - Home Program	5503 - HOME Admin		400,000.00			400,000.00	
	5505 - HOME Program Income		150,000.00			150,000.00	
211 - Home Program Total			550,000.00			550,000.00	
212 - FEMA Grant	7301 - Fire Admin			-		-	G
212 - FEMA Grant Total				-		-	
213 - Police Facility Impr Fund	7201 - Police Admin		16,000.00	15,000.00		31,000.00	
213 - Police Facility Impr Fund Total			16,000.00	15,000.00		31,000.00	
214 - Local Programming	2108 - General Operations		82,344.00	14,086.00		96,430.00	
	2601 - Cable TV Admin	136,158.00	187,400.00	90,000.00		413,558.00	
214 - Local Programming Total		136,158.00	269,744.00	104,086.00		509,988.00	
215 - Cain Park Operating	8901 - Cain Park Admin/Start-Up	173,175.00	388,730.00			561,905.00	
	8905 - Arts Festival/Art Gallery		25,620.00			25,620.00	
	8906 - Theater		42,550.00			42,550.00	

ORDINANCE 139-2021 (F), *Third Reading*

ORDINANCE 139-2021 (F), *Third Reading*

Fund	Department	Personal Services	O.T.P.S.	Capital	Other Financing Uses	Grand Total	
215 - Cain Park Operating Total		173,175.00	456,900.00			630,075.00	
216 - Rec Fac Imp Fund	3101 - Finance				23,295.00	23,295.00	
	8301 - Park Maintenance Admin		167,000.00	304,000.00		471,000.00	
216 - Rec Fac Imp Fund Total			167,000.00	304,000.00	23,295.00	494,295.00	
226 - Lead Safe Cuyahoga	5303 - CDBG Housing Pres Office		600,000.00			600,000.00	
226 - Lead Safe Cuyahoga Total			600,000.00			600,000.00	
228 - CDBG-COVID	5220 - CDBG Office On Aging		55,000.00			55,000.00	
	5222 - Economic Development		290,000.00			290,000.00	
	5224 - CDBG Admin		81,318.00			81,318.00	
228 - CDBG-COVID Total			426,318.00			426,318.00	
230 - Street Lighting	3101 - Finance		52,500.00			52,500.00	
	6211 - Traffic Signs & Signals		680,715.00			680,715.00	
230 - Street Lighting Total			733,215.00			733,215.00	
231 - Tree	3101 - Finance		36,500.00			36,500.00	
	310Z - Oper Trsf/Temp Advance				17,455.00	17,455.00	
	8801 - Forestry	811,479.00	319,325.00	93,971.00		1,224,775.00	
231 - Tree Total		811,479.00	355,825.00	93,971.00	17,455.00	1,278,730.00	
232 - Police Pension	7201 - Police Admin	1,482,592.14				1,482,592.14	
232 - Police Pension Total		1,482,592.14				1,482,592.14	
233 - Fire Pension	7301 - Fire Admin	1,730,062.33				1,730,062.33	
233 - Fire Pension Total		1,730,062.33				1,730,062.33	
234 - Earned Benefits	2108 - General Operations	400,000.00				400,000.00	
234 - Earned Benefits Total		400,000.00				400,000.00	
241 - Local Fiscal Recovery	2108 - General Operations		20,433,591.00			20,433,591.00	H
	6205 - Sewer Maintenance			18,000,000.00		18,000,000.00	H
	7301 - Fire Admin	205,874.07				205,874.07	
241 - Local Fiscal Recovery Total		205,874.07	20,433,591.00	18,000,000.00		38,639,465.07	
301 - G.O. Bond Retirement	3101 - Finance		3,290,035.00			3,290,035.00	
301 - G.O. Bond Retirement Total			3,290,035.00			3,290,035.00	
402 - Financed Capital Projects	3101 - Finance			500,000.00		500,000.00	
402 - Financed Capital Projects Total				500,000.00		500,000.00	
411 - Economic Development	5101 - Planning		299,500.00			299,500.00	
411 - Economic Development Total			299,500.00			299,500.00	
412 - City Hall Maint & Repair	2102 - City Hall Maint/Repair		15,000.00			15,000.00	
412 - City Hall Maint & Repair Total			15,000.00			15,000.00	
416 - Refuse Capital Fund	6203 - Refuse Coll/Transfer Sta			5,000.00		5,000.00	
416 - Refuse Capital Fund Total				5,000.00		5,000.00	
601 - Water Administration	6301 - Water Admin		600.00			600.00	
	6302 - Water Distribution		10,000.00	1,444,509.00		1,454,509.00	
	6314 - Runnymede/Quilliams Wtr		20,207.00			20,207.00	
	6326 - Cedar Wtr/Swr Loan Iss #2		47,044.00			47,044.00	
601 - Water Administration Total			77,851.00	1,444,509.00		1,522,360.00	

ORDINANCE 139-2021 (F), *Third Reading*

Fund	Department	Personal Services	O.T.P.S.	Capital	Other Financing Uses	Grand Total
602 - Sewerage Disposal	6205 - Sewer Maintenance	1,476,859.00	771,050.00	4,953,822.00		7,201,731.00
	6301 - Water Admin		25,800.00			25,800.00
	6312 - Meadowbrook Blvd Rehab		8,522.00			8,522.00
	6326 - Cedar Wtr/Swr Loan Iss #2		4,267.00			4,267.00
	6327 - Demington Sewer		38,240.00			38,240.00
602 - Sewerage Disposal Total		1,476,859.00	847,879.00	4,953,822.00		7,278,560.00
603 - Parking Fund	310Z - Oper Trsf/Temp Advance				65,562.00	65,562.00
	6210 - Parking Department	151,691.00	1,132,792.00	5,000.00		1,289,483.00
603 - Parking Fund Total		151,691.00	1,132,792.00	5,000.00	65,562.00	1,355,045.00
605 - Refuse Fund	6203 - Refuse Coll/Transfer Sta	2,567,797.00	1,303,500.00	15,000.00		3,886,297.00
605 - Refuse Fund Total		2,567,797.00	1,303,500.00	15,000.00		3,886,297.00
606 - ALS Ambulance Services	7304 - ALS Ambulance Services	504,173.00	252,662.00	651,268.00		1,408,103.00
606 - ALS Ambulance Services Total		504,173.00	252,662.00	651,268.00		1,408,103.00
701 - Hospitalization Self-Ins	3101 - Finance	7,290,839.00				7,290,839.00
701 - Hospitalization Self-Ins Total		7,290,839.00				7,290,839.00
804 - Off/Aging Donations	8501 - Office On Aging Admin		7,430.00			7,430.00
	8502 - OOA-Sr Computer Center		5,000.00	3,000.00		8,000.00
804 - Off/Aging Donations Total			12,430.00	3,000.00		15,430.00
808 - Youth Recreation Donation	8101 - Community Services Admin		5,000.00			5,000.00
808 - Youth Recreation Donation Total			5,000.00			5,000.00
809 - Police Memorial Trust	7201 - Police Admin		10,000.00			10,000.00
809 - Police Memorial Trust Total			10,000.00			10,000.00
811 - Juvenile Diversion Prog	7209 - Juvenile Diversion Prog		10,000.00			10,000.00
811 - Juvenile Diversion Prog Total			10,000.00			10,000.00
857 - Sales Tax	3101 - Finance		400.00			400.00
857 - Sales Tax Total			400.00			400.00
858 - Miscellaneous Agency	3105 - Unclaimed Money		20,000.00			20,000.00
	7201 - Police Admin		75,000.00			75,000.00
	7402 - Housing Inspections		500,000.00			500,000.00
858 - Miscellaneous Agency Total			595,000.00			595,000.00
Grand Total		**51,330,480.22**	**45,021,306.00**	**28,329,016.00**	**4,856,312.00**	**129,537,114.22**

A - Increase of $57,989 for election fee expense and property tax collection fees, both of which are from Cuyahoga County.
B - Based on 2021 income tax collections the revenue estimate has been increased and as a result the fees to be paid to RITA are increased by $275,500.
C - Overtime increased $147,002.91 because needs are expected to be higher than previously budgeted.
D - Budget was increased $17,001.39 for a full swim season at Cumberland Pool.
E - Budget increased $28,000 for staff recently hired in 2021.
F - Increase of $87,976 due to the County Board of Health contract increase.
G - Budget decreased $73,953 because grant was received and will be spent in 2021.
H - Per ordinance 140-2021, moved $18 million in ARPA funds to the sewer department.

Proposed: 11/15/2021

ORDINANCE NO. 145-2021 (AS), *Second Reading*

By Council Member Seren

An Ordinance amending Ordinance No. 20-2021, "Wage and Salary Ordinance," providing for salary schedules, position classifications, and other compensation and benefits for officers and employees of the City, to add a salary schedule, position classification, and other compensation and benefits for a City Administrator and Assistant Clerk of Council.

WHEREAS, Article 5, Section 4 of the Cleveland Heights Charter requires this Council to "fix by ordinance the salary, rate, or amount of compensation of all officers and employees of the City;" and

WHEREAS, Cleveland Heights Codified Ordinance Section 139.21 generally requires this Council to "establish employees' wages, hours of work, sick leave benefits, paid hospitalization benefits, vacations, legal holidays, and all other forms of fringe benefits and other conditions of employment by ordinance;" and

WHEREAS, on November 5, 2019, amendments to the Charter of the City of Cleveland Heights to change the form of government to a Mayor-Council system of government with a directly-elected Mayor were approved by the electors of the City of Cleveland Heights; and

WHEREAS, the November 2019 Charter amendments provide for the appointment of a professional City Administrator, selected by the Mayor, subject to Council confirmation, to serve at the pleasure of the Mayor, to be effective January 1, 2022; and

WHEREAS, the City's Wage and Salary Ordinance, adopted on March 15, 2021 by Ordinance No. 20-2021, establishes salary schedules, position classifications, and other compensation and benefits for officers and employees of the City; and

WHEREAS, this Council believes that it should at this time establish the compensation for the position of City Administrator, to be effective January 1, 2022, consistent with the effective date of the amended Charter Section IV-4.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Ordinance No. 20-2021, "Wage and Salary Ordinance," shall be, and is hereby, amended to replace the words "Assistant City Manager/ Vice" with the words "City Administrator" everywhere they appear.

SECTION 2. Ordinance No. 20-2021, shall be, and is hereby, further amended to add the position of Assistant Clerk of Council to Salary Grade 18.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance shall take effect and be in force at the earliest time permitted by law.

JASON S. STEIN
President of the Council

AMY HIMMELEIN
Clerk of Council

PASSED:

Proposed: 11/22/2021

ORDINANCE NO. 153-2021 (AS), *Second Reading*

By Council Member Seren

An Ordinance amending various sections of the Codified Ordinances of the City of Cleveland Heights in furtherance of the transition from the Council-Manager to the Mayor-Council form of government; and declaring an emergency

WHEREAS, on June 17, 2019, pursuant to Articles VIII and XIII of the Charter of the City of Cleveland Heights and the Constitution of the State of Ohio, this Council received an initiative petition from electors in the City of Cleveland Heights proposing amendments to the Charter of the City of Cleveland Heights to change the form of government in Cleveland Heights to a Mayor-Council form of government; and

WHEREAS, pursuant to Article XIII of the City Charter and the Ohio Constitution, this Council, by way of Ordinance No. 71-2019, submitted the proposed charter amendments to the electors, at the November 5, 2019 general election; and

WHEREAS, on November 5, 2019, the amendments to the Charter of the City of Cleveland Heights to change the form of government to a Mayor-Council system of government, collectively known as "Issue 26," were approved by the electors of the City of Cleveland Heights; and

WHEREAS, the Issue 26 amendments provided principally for a directly-elected Mayor, who shall take office on January 1, 2022; and

WHEREAS, the Issue 26 amendments repealed Article IV of the Charter of the City Heights, 'City Manager,' as it existed from its initial adoption, and replaced it with a new Article IV, 'Mayor,'; and

WHEREAS, based upon the change in the form of government from a Council-Manager to a Mayor-Council system, as provided by the charter amendments contained in Issue 26, the Codified Ordinances of the City of Cleveland Heights must be amended to reflect the authority, powers, and duties of the position of the Mayor and the elimination of the City Manager position.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The amendments to the Codified Ordinances of the City of Cleveland Heights set forth in Exhibit A attached hereto and incorporated herein by reference, with the language of the new provisions underlined and the provisions to be deleted struck out or otherwise noted, shall be and are hereby adopted.

SECTION 2. References to the "City Manager" in each and every non-codified ordinance, resolution, policy, procedure, permit, application, or any other document of the City of Cleveland Heights, shall be interpreted to mean Mayor, effective January 1, 2022. Nothing

contained herein shall be interpreted as precluding the Mayor from administratively revising or rescinding any such documents to the extent such authority is granted to that Office.

SECTION 3. Notice of passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need for the amendments to becomes effective on January 1, 2022, to reflect the authority, powers, and duties of the position of the Mayor and the elimination of the City Manager position in accordance with the Charter amendments contained in Issue 26. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

JASON S. STEIN
President of Council

AMY HIMMELEIN
Clerk of Council

PASSED:

EXHIBIT A

CODIFIED ORDINANCES OF CLEVELAND HEIGHTS

PART ONE - ADMINISTRATIVE CODE

(EDITOR'S NOTE: This Administrative Code was adopted by Ordinance 1-1981, passed January 19, 1981, which Ordinance is the history of all sections not otherwise indicated.)

TITLE ONE - General Provisions
- Chap. 101. Codified Ordinances.
- Chap. 103. Official Standards.
- Chap. 105. Public Records.
- Chap. 107. Public Meetings.
- Chap. 109. City Personal Information Systems.
- Chap. 110. City Property Disposition.

TITLE THREE - Legislative
- Chap. 111. Council.

TITLE FIVE - Administrative
- Chap. 121. ~~City Manager~~Mayor.
- Chap. 123. Department of Finance.
- Chap. 125. Department of Law.
- Chap. 127. Department of Planning and Development.
- Chap. 129. Department of Public Works.
- Chap. 131. Department of Public Safety.
- Chap. 135. Department of Parks and Recreation.
- Chap. 135~~5~~6. Department of Community Services.
- Chap. 137. Civil Service.
- Chap. 139. Employees Generally.
- Chap. 141. Recreation Advisory Board.
- Chap. 143. Landmark Commission.
- Chap. 144. Administrative Services Commission.
- Chap. 145. Commission on Aging.
- Chap. 147. Advisory Commission for Retired Senior Volunteer Program.
- Chap. 148. Youth Advisory Commission.
- Chap. 149. Community Improvement Awards Committee.
- Chap. 150. Transportation Advisory Committee.

TITLE SEVEN - Judicial

CHAPTER 105
Public Records

105.01 Records defined. 105.02 Availability of public records.

CROSS REFERENCES
See sectional histories for similar State law
Ohio Privacy Act - see Ohio R.C. Ch. 1347
City personal information systems - see ADM. Ch. 109
~~City Manager r~~Rules and regulations of Mayor or designee - see ADM. 109.02, 121.05

105.01 RECORDS DEFINED.
Any document, device or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office or public body of the City which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the City, is a "record" within the meaning of this chapter.
(ORC 149.40)

105.02 AVAILABILITY OF PUBLIC RECORDS.
(a) As used in this section, "public record" means any record required to be kept by the City, except records pertaining to physical or psychiatric examinations, adoption, probation, parole proceedings or other criminal proceedings, and records the release of which is prohibited by State or Federal law.

(b) All public records shall be open at all reasonable times for inspection. Upon request, the ~~City Manager~~Mayor or ~~his~~ designee shall make public records available at cost within a reasonable time.
(ORC 149.42; Ord. Passed .)

CHAPTER 109
City Personal Information Systems

109.01 Definitions.
109.02 Rules and regulations.
109.03 Coordinator of Personal Information Systems.
109.04 System heads.

CROSS REFERENCES
Ohio Privacy Act - see Ohio R.C. Ch. 1347
Public records - see ADM. Ch. 105

109.01 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

(a) "Maintains" includes depositing information with a data processing center for storage, processing or dissemination.
(ORC 1347.01(C))

(b) "Personal information" means any information that describes anything about a person, or indicates actions done by or to a person, or indicates that a person possesses certain personal characteristics, and that contains a name, identifying number, symbol or other identifier assigned to a person.
(ORC 1347.01(D))

(c) "System" means a collection or a group of records.
(ORC 1347.01(E))

109.02 RULES AND REGULATIONS.

The ~~City Manager~~Mayor or designee shall adopt all necessary rules and regulations for the implementation within the City of the Ohio Privacy Act and any amendments thereto. These rules and regulations shall be in writing and kept on file in the ~~City Manager's~~Mayor's office. (A.O.; Ord. Passed .)

109.03 COORDINATOR OF PERSONAL INFORMATION SYSTEMS.

The ~~City Manager~~Mayor or designee shall appoint a Coordinator of Personal Information Systems. The Coordinator shall be responsible for administering the City's compliance with the Ohio Privacy Act in accordance with State law and the rules and regulations adopted ~~by the City Manager~~ pursuant to this chapter. The Coordinator shall inform each City employee having any responsibility in the operation or maintenance of a personal information system, or the use of personal information maintained in such system, of the provisions of the Ohio Privacy Act and of all the rules and regulations adopted ~~by the City Manager.~~
pursuant to this chapter.
(A.O.; Ord. Passed .)

109.04 SYSTEM HEADS.

(a) The Coordinator of Personal Information Systems shall designate a system head for each personal information system maintained by the City. Designated system heads shall be those individuals directly responsible for the personal information systems involved.

(b) Under the supervision of the Coordinator of Personal Information Systems, the system heads shall maintain the personal information system for which they are responsible in accordance with State law and with the rules and regulations adopted by the ~~City Manager~~Mayor. (A.O.; Ord. Passed .)

CROSS REFERENCES

State law provisions - see Ohio R.C. Ch. 721
Care, control and use of City property - see ADM. 121.05(a)
Division of Public Properties - see ADM. 135.04
Contracts - see ADM. Ch. 171

All references to Mayor in Chapter 110, with the exception of Section 110.06, shall mean Mayor or designee. (Ord. Passed .)

110.01 REALTY DISPOSITION PROCEDURE.

In the disposition of real property owned by the City and no longer needed for a public purpose, the following procedure shall be followed:

(a) The ~~City Manager~~Mayor shall obtain authority from Council to advertise for sale in a newspaper of general circulation within the City once a week for not less than two (2) consecutive weeks, the address and legal description of the real property proposed to be sold. Such notice shall list thereon the City's appraised value of the real estate where practicable and shall invite proposal bids from all parties interested in purchasing the described property. The notice shall direct bidders to submit their proposals to the City within a given time period. Such bid notice shall also contain space for the bid price offered for such property, the bidder's proposed use of such property and any other specific criteria and/or information to be considered in evaluating the award of sale.

(b) Upon receipt of the bid proposals, the ~~City Manager~~Mayor shall determine in his judgment which is the highest and best bid proposal. The factors to be considered in evaluating the bid proposals shall include price, proposed use of the property and all other relevant considerations including those criteria and information described in the notice of bid. The ~~City Manager~~Mayor shall have broad discretion in evaluating bids submitted under the terms of this section. The ~~City Manager~~Mayor may determine, in his discretion, to reject all bid proposals submitted and to re-advertise for bids pursuant to the terms of this section.

(c) Upon the ~~City Manager's~~Mayor's determination that a bid proposal is acceptable, the ~~City Manager~~Mayor shall recommend to Council that a contract be authorized for sale of the described real estate upon such terms and conditions as he deems proper.

(d) Should Council determine that the recommended bid proposal is acceptable, an ordinance shall be adopted directing the sale of such property.

(Ord. 130-1980. Passed 11-17-80; Ord. Passed .)

110.02 PERSONAL PROPERTY SALE AND DISPOSAL PROCEDURES.

(a) Personal property owned by the City that is determined by the ~~City Manager~~Mayor to have an estimated value of twenty-five thousand dollars ($25,000) or less and to be no longer needed for municipal purposes may be sold or disposed of, without City Council approval, by any of the following methods:

(1) By sale by sealed bid to the highest and best bidder, following notice by publication in a newspaper of general circulation in the City and posting on the City website at least ten business days prior to the opening of bids.

(2) By live public auction. Notice of live public action will be by publication in a newspaper of general circulation in the City and by posting on the City website at least ten business days prior to auction.

(3) By internet auction. Notice of internet auction will be by posting on the City website at least ten business days prior to commencement of bidding.

(4) By sale to another government jurisdiction.

(5) By trade-in for credit at the time of the purchase of replacement property, provided that trade-in value is established separately from the purchase price of the replacement property, and can be verified to represent fair market value for the traded property.

(6) By sale for scrap value or by discarding, if the property can be shown to have minimal or no residual market value in its current form.

(7) By destruction upon the determination by the ~~City Manager~~Mayor that the property must be destroyed for public safety reasons.

(8) By donation to an appropriate charitable organization.

(b) Any City-owned personal property that has been determined by the ~~City Manager~~Mayor to no longer be needed for municipal purposes and to have an estimated value of greater than twenty-five thousand dollars ($25,000) may be sold or disposed of by any of the above methods with the prior approval of City Council.

(c) The Director of Finance shall record the sale or donation of any property disposed of pursuant to this Section.

(d) Any property donated to a charity or sold to another government jurisdiction shall be done so by written agreement, as approved by the Director of Law, that includes the proper release language and the acceptance of the property in an "as is" condition.

(Ord. 158-2013. Passed 9-3-13; Ord. Passed .)

110.03 SALE IF NO BID RECEIVED.

If no bid is obtained where required for the sale of real or personal property to be sold, and the procedures provided hereinabove have been followed, the ~~City Manager~~Mayor may sell such property at public or private sale for the best price obtainable, subject to the approval of such sale by Council.

(Ord. 130-1980. Passed 11-17-80; Ord. Passed .)

110.04 DIFFERENT PROCEDURE AUTHORIZED.

Notwithstanding the provisions of this chapter, Council may, by ordinance enacted hereafter, adopt a different procedure for the sale of any particular parcel or piece of real or personal property.

(Ord. 130-1980. Passed 11-17-80.)

110.05 OUTDOOR DINING ON PUBLIC PROPERTY.

The ~~City Manager~~Mayor is hereby authorized to administratively approve requests for outdoor dining on sidewalks or other public right of way provided the following conditions are met:

(a) Such outdoor dining may only be conducted in conjunction with, and under the same management and exclusive control of, a restaurant located in a building contiguous to the public right of way upon which outdoor dining is proposed to be conducted.

(b) The outdoor dining shall not interfere with the flow of pedestrian traffic. At least five (5) feet of unobstructed sidewalk must be maintained, although more may be required in areas of high use.

(c) Outdoor dining shall be limited to no more than six tables and twenty-four chairs.

(d) No alcohol may be sold or consumed on the outdoor dining premises without the specific legislative authorization of this Council and the approval of the Ohio Department of Liquor Control.

(e) All agreements for outdoor dining shall be approved in writing by the ~~City Manager~~Mayor, Director of Law, and Director of Planning and Development, and shall contain the following terms as well as others deemed necessary by the ~~City Manager~~Mayor and Director of Law:

(1) The agreement shall set forth the hours of operation and the term of the agreement, which may be automatically renewable each season unless terminated by either party. A detailed description of the location of furniture and other improvements/objects shall be included.

(2) The agreement shall require the restaurant owner or other responsible party to keep the outdoor dining area clean and sanitary and to remove all tables and chairs each evening for storage.

(3) The agreement shall require the responsible party to indemnify and hold the City harmless from any liability or damages caused by the outdoor dining and to provide an insurance policy in an amount approved by the Director of Law with the City being named as an additional insured.

(4) The agreement shall provide that it may be terminated by the ~~City Manager~~Mayor at any time without notice if he deems that the use is creating a nuisance or interfering with the use of the public right of way, or that the property is needed for municipal purposes.

(f) This section applies only to outdoor dining on public property, with outdoor dining on private property being governed by the provisions of the Zoning Code.

(Ord. 69-2004. Passed 4-19-04; Ord. Passed .)

110.06 DISPOSITION OF UNIMPROVED RESIDENTIAL LOTS.

For purposes of this section, Mayor shall mean solely the Mayor.

The ~~City Manager~~Mayor is hereby authorized to transfer title to any unimproved residential lot owned by the City upon the following terms and conditions if the ~~City Manager~~Mayor has determined that said lot is not needed for municipal purposes:

(a) Written notice of the availability of the lot shall be given to the owners of all adjoining single-family and two-family properties. With regard to properties in which Neighborhood Stabilization Program ("NSP") funds were used to acquire or pay holding costs, only adjoining property owners who fall within NSP income guidelines will be given the opportunity to acquire the property as per NSP program requirements.

(b) If only one adjoining owner is interested in purchasing the Lot, the ~~City Manager~~Mayor may sell the lot to that property owner for the sum of one hundred dollars ($100.00) plus closing costs. If two or more adjoining property owners are interested in purchasing the Lot, the ~~City Manager~~Mayor may:

(1) Allow the parties the opportunity to bid on the Lot and sell the lot to the highest bidder, with bidding starting at the sum of one hundred dollars ($100.00); or

(2) Divide the Lot and sell to all interested parties for the price of one hundred dollars ($100.00) total plus closing costs provided the parties are willing to pay the costs of a lot resubdivision including survey costs.

(c) Within thirty (30) days after the entry of an agreement for the sale of any Lot, the ~~City Manager~~Mayor shall report the sale to this Council.

(d) Nothing herein shall require the ~~City Manager~~Mayor to offer any particular unimproved City-owned Lot to adjoining property owners, or be construed to prohibit the sale or holding of a Lot for development purposes or the use of said Lots for community gardening or other public purposes.

(e) The ~~City Manager~~Mayor and Director of Law may adopt rules, not inconsistent with this Section, for the implementation of this Section.

(Ord. 6-2012. Passed 1-17-12; Ord. Passed .)

111.01 REGULAR MEETINGS.

Regular meetings of Council shall be held in the City Hall on the first and third Mondays of each month, at 7:30 p.m., except when any such Monday is on a legal holiday, Council shall meet in regular session on the following day without taking further action.

Council, by motion duly adopted, may authorize a change in the regular meeting schedule set forth above. Council, by motion duly adopted, may authorize a meeting of Council at some other public building located within the City of Cleveland Heights. Any such changes may be noticed under either Section 107.02(a) or Section 107.02(b).
(Ord. 37-2016. Passed 5-16-16.)

111.02 SPECIAL MEETINGS.

A special meeting of Council may be called by the President of Council or by any two (2) members thereof, or by the ~~City Manager~~Mayor, upon at least twenty-four (24) hours personal telephone notice or by written notice served personally upon each member or left at his usual place of residence. Such notice shall state the subjects to be considered at the special meeting and no other subject shall be considered at that meeting, unless all members are in attendance and give unanimous consent to the consideration of other matters at such special meeting.

Special meetings may also be called by a majority vote by a resolution passed at any regular meeting, and an absentee at such regular meeting shall be notified thereof as hereinbefore provided. (A.O.; Ord. Passed .)

111.03 EMERGENCY MEETINGS.

In the event of an emergency requiring immediate official action, an emergency meeting of Council may be called by the President of Council or by any two (2) members thereof, or by the ~~City Manager~~Mayor, upon at least four (4) hours personal telephone notice or by written notice served personally upon each member or left at his usual place of residence. Such notice shall state the subjects to be considered at the emergency meetings, and no other subject shall be considered at that meeting. (A.O.; Ord. Passed .)

111.04 QUORUM.

Four (4) members shall constitute a quorum of Council to do business and a less number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.
(Ord. 2400. Passed 1-3-22.)

111.05 ADJOURNMENT.

By resolution concurred in by a majority of all members of Council present, any meeting may be adjourned to a later date prior to the date of the next regular Council meeting. The adjourned meeting shall be considered a special meeting, and public notice thereof shall be given pursuant to Section 107.02(b). Any absentee member of Council shall be notified personally, by telephone or by written notice, served personally or at his regular place of residence, at least twenty-four (24) hours prior to the date and hour of the adjourned meeting.

111.12 BUSINESS OF COUNCIL.

The business of all regular meetings of Council shall include the following:

Roll call.

Reading and disposal of journal.

Reports and communications from the Mayor, City ~~Manager~~Administrator, and ~~d~~Department ~~h~~Heads.

Communications from residents.

Reports of committees.

Approval of Consent Agenda.

Consideration of ordinances, resolutions, and motions not part of the Consent Agenda.

Miscellaneous business.

(Ord. 24-2020. Passed 3-16-20; Ord. Passed .)

111.13 ACTION OF COUNCIL.

Council shall act by ordinance or resolution duly adopted at a regular, special or emergency meeting. Each ordinance, resolution and motion shall require the concurrence of at least four (4) members of Council for its passage or adoption. The vote upon its passage or adoption shall be taken by voice vote, and the vote of each member shall be individually entered on the journal, except that the presiding officer may require a roll call vote at his or her discretion. Further, a roll call vote shall be required whenever the vote is not unanimous, or for any motion to adjourn into executive session, or upon the request of any member of Council or the Clerk of Council, or when otherwise required by the Codified Ordinances or general law. In the event of a roll call vote, the vote taken by the "ayes" and "nays" shall be entered upon the journal.

(Ord. 50-2020. Passed 6-1-20.)

111.131 CONSENT AGENDA.

The agenda at any regular meeting of Council may include a Consent Agenda. The Consent Agenda may consist of ordinances and resolutions, acceptance of property and dedications, easement agreements, and such other items as Council determines. The Consent Agenda shall not include those items which impose a tax or propose a levy or question for popular consideration on the ballot or which would be prohibited by the City Charter or Ordinances. Any member of Council, for any reason, may request that an item on the Consent Agenda be removed, and if such request is made, the item shall be removed and placed on the regular agenda without discussion on that request. Action on any item on the consent portion of the agenda shall not eliminate the need for a greater majority vote if one is called for by the Charter or these Codified Ordinances. Action upon the Consent Agenda will require two motions: the first to suspend the rules under Chapter 111 of the Codified Ordinances of the City of Cleveland Heights, and a second for approval or adoption of the items within the Consent Agenda. A vote upon adoption of the Consent Agenda operates as to all items on the Consent Agenda at the time the motion to approve or adopt is made. (Ord. 24-2020. Passed 3-16-20.)

111.14 ENACTING CLAUSE OF ORDINANCES OR RESOLUTIONS.

The enacting clause of all ordinances and resolutions passed by Council shall be "Be it ordained (resolved) by the Council of the City of Cleveland Heights, Ohio". The enacting clause of all ordinances submitted to popular election by the initiative shall be "Be it ordained by the People of the City of Cleveland Heights, Ohio". (Ord. 2400. Passed 1-3-22.)

111.15 SUBJECT AND TITLE OF ORDINANCES AND RESOLUTIONS.

Each proposed ordinance or resolution shall be introduced in written or printed form and shall not contain more than one (1) subject which shall be clearly stated in the title. However, related subjects may be grouped in one (1) ordinance or resolution and the legislation relating to the installation of public improvements in different streets may be consolidated so that the various ordinances and resolutions in connection therewith may contain provisions for all of the streets. General appropriation ordinances may contain the various subjects and accounts for which money is to be appropriated. (Ord. 2400. Passed 1-3-22.)

111.16 PREPARATION OF ORDINANCES AND RESOLUTIONS.

The Director of Law, upon the request of any member, shall draft the form of any proposed legislation desired by such member, and any legislation not prepared by the Director of Law shall be referred to him for approval as to form and have his approval endorsed thereon before adoption. Each resolution or ordinance when introduced shall have the name of the member introducing the same endorsed thereon and have a number assigned to it by the Clerk of Council and shall thereafter be referred to by number.
(Ord. 40-1950. Passed 6-5-50.)

111.17 REFERENCE OF PROPOSED ORDINANCES AND RESOLUTIONS TO COMMITTEE.

Each resolution or ordinance upon introduction shall be referred to the appropriate committee or committees by the presiding officer and, except in an emergency, no resolution or ordinance shall be acted upon by Council until it has been so referred and reported upon by such committee or committees.
(Ord. 40-1950. Passed 6-5-50.)

111.18 AMENDMENTS.

No resolution or ordinance shall be changed or altered by a committee, but any committee may recommend in writing either amendments or a substitute resolution or ordinance and any member of Council may, at any time, introduce in writing an amendment to or substitute for a pending piece of legislation which shall be subject to the same approval as to form by the Director of Law as legislation originally introduced.
(Ord. 40-1950. Passed 6-5-50.)

111.19 REQUIRED NUMBER OF COPIES OF PROPOSED LEGISLATION.

Legislation when introduced and any amendment or substitute therefor shall be submitted

in at least three (3) copies, one (1) of which shall be filed with the presiding officer, one (1) with the Clerk of Council and one (1) with the Director of Law and it shall be the duty of the Clerk of Council to furnish sufficient copies for the consideration of Council and its committees. Upon adoption, all legislation of the character referred to in Section 111.20 or relating to the administration of any administrative department shall forthwith be reproduced in printed form or by other process of duplication. One (1) copy thereof shall be furnished to each member of Council, to the Director of Law, to the Director of Finance and to the ~~City Manager~~Mayor, and it shall be the duty of the ~~City Manager~~Mayor to furnish copies to the proper subordinates in any of his departments. The Clerk of Council shall also have in his office such quantity of additional copies as seems to him necessary for the information of the public.
(Ord. 40-1950. Passed 6-5-50; Ord. Passed .)

111.20 READING OF ORDINANCES AND SUSPENSION OF RULES.

No ordinance of a general or permanent nature, or granting a franchise, or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale or transfer of property shall be passed until it has been read at two (2) regular meetings, or the requirements for such reading have been dispensed with by a vote of at least five (5) members of Council. This provision, however, shall not apply to an emergency measure. Where there is a series of ordinances and resolutions required to provide for any public improvement including the raising of money therefor, the above rule shall apply only to the first ordinance or resolution in the series, and all subsequent ordinances and resolutions required in such series, may be passed on their first reading by the concurrence of four (4) members of Council.
(Ord. 2400. Passed 1-3-22.)

111.28 RESIGNATIONS.

The resignation of a member of Council shall not take effect until the resignation has been accepted by vote by a majority of Council members exclusive of the person tendering the resignation.
(Ord. 2400. Passed 1-3-22.)

111.29 CODIFICATION OF ORDINANCES.

Notwithstanding any of the provisions of this chapter, Council may at any time revise, rearrange and codify the general ordinances of the City by the following procedure:

(a) An ordinance may be adopted pursuant to the procedure of this chapter determining in general terms to amend, revise, rearrange, renumber and codify the general ordinances of the City. The determining ordinance shall set forth in a skeleton form a general plan of the recodification with appropriate titles, chapters and other subdivisions. Such determining ordinance need not be published.

(b) At any time after the adoption of the determining ordinance provided for in the foregoing subsection, Council may proceed as follows:

(1) It may by one (1) codifying ordinance adopt in toto all general ordinances of the City so amended, revised, rearranged, renumbered and codified according to the general plan; or

(2) It may by a series of separate codifying ordinances and from time to time adopt one (1) or more chapters of the general plan. A chapter shall contain those of the general ordinances which Council may determine to properly belong in such classifications and which have been amended, revised, rearranged, renumbered and codified according to the general plan.

(c) Any codifying ordinance offered pursuant to subsection (b) hereof shall be submitted in typewritten form and shall contain in full all the ordinances proposed to be codified by the codifying ordinance. Such codification ordinance need not be read in Council except as hereinafter provided. Such codifying ordinance shall be referred by the Mayor to a committee consisting of Council as a whole, ~~City Manager~~Mayor and Director of Law. It shall be the duty of the committee to study the codifying ordinance and make such changes therein as the committee believes proper and to report to Council. If, and when, such committee reports its final draft of the proposed codifying ordinance with the recommendation that it be adopted, the codifying ordinance as so reported may be passed by a vote of three-fourths (3/4) of all members elected to Council. The proposed ordinance as recommended by the committee need not be read in Council except by title, provided, however, that any member of Council may request the reading of all or any part thereof in which case all or the part requested shall be read.

(d) Such codifying ordinance need not be limited in its scope strictly to amending, revising, rearranging, renumbering and codifying the present general ordinances of the City, but may contain new matter or provisions covering subjects not now embodied in existing ordinances.

(e) Any codifying ordinance shall specify whether or not the particular chapters so codified shall be published or printed and, if the same is to be published, may provide that the same may be published in sections and shall recite when such codifying ordinance shall take effect and be in force and shall provide for the repeal of all existing ordinances so codified.

(Ord. 42-1939. Passed 11-6-39; Ord. Passed .)

111.30 AUTHORIZED EXPENSE EXPENDITURES.

The ~~City Manager~~Mayor or designee may approve the expenditure of funds for meals, lodging and miscellaneous expense of Councilmen when they work through the meal hour in town at meetings on City business or when out of town on City business.

(A.O.; Ord. Passed .)

TITLE FIVE - Administrative

Chap. 121. ~~City Manager~~Mayor.
Chap. 123. Department of Finance.
Chap. 125. Department of Law.
Chap. 127. Department of Planning and Development.
Chap. 129. Department of Public Works.
Chap. 131. Department of Public Safety.
Chap. 135. Department of Parks and Recreation.
Chap. 13~~5~~6. Department of Community Services.
Chap. 137. Civil Service.
Chap. 139. Employees Generally.
Chap. 141. Recreation Advisory Board.
Chap. 143. Landmark Commission.
Chap. 144. Administrative Services Commission.
Chap. 145. Commission on Aging.
Chap. 147. Advisory Commission for Retired Senior Volunteer Program.
Chap. 148. Youth Advisory Commission.
Chap. 149. Community Improvement Awards Committee.
Chap. 150. Transportation Advisory Committee.

CHAPTER 121
~~City Manager~~Mayor

121.01 Powers and duties.
121.02 Filling positions.
121.03 Vice-Manager. (Repealed)
121.04 Assistants to the ~~City Manager~~Mayor.
121.05 Rules and regulations.

121.06 Negotiations with employee groups; final approval by Council.
121.07 Commissioner of Community and Public Relations.
(Repealed)
121.08 Gift acceptance.

CROSS REFERENCES

~~Appointment~~Term - see CHTR. Art. IV, Sec. 1
~~Residency requirement~~Qualifications - see CHTR. Art. IV, Sec. 2
~~P~~Executive powers ~~and duties~~ - see CHTR. Art. IV, Sec. 3
~~Vice-Manager - see CHTR. Art. IV, Sec. 4~~
~~Acting City Manager - see CHTR. Art. IV, Sec. 5~~
~~Manager~~Mayor as head of departments - see CHTR. Art. V, Sec. 3
Privacy Act rules and regulations - see ADM. 109.02
Bond for ~~City Manager~~Mayor - see ADM. 139.02(a)
Benefits - see ADM. 139.19

121.01 POWERS AND DUTIES.

(a) Except as specifically provided by the Charter or by legislative act of Council, the duties and functions of departments, divisions or individual employees shall be as prescribed by the ~~City Manager~~Mayor.

(b) The ~~City Manager~~Mayor shall serve as both the chief administrative and chief executive officer of the City. The ~~City Manager~~Mayor shall be the appointing authority for the City, as well as the Director of Public Safety. He shall perform such duties as are required by the Charter or by legislation enacted by Council. (A.O.; Ord. Passed .)

121.02 FILLING POSITIONS.

Nothing contained in the Codified Ordinances shall be construed as requiring the ~~City Manager~~Mayor to fill any position herein provided. The ~~City Manager~~Mayor shall have full authority to leave positions vacant or to combine the duties of two (2) positions under a single employee whenever he deems it to be in the best interest of the City, so long as such action is not inconsistent with provisions of the Charter. (A.O.; Ord. Passed .)

121.03 VICE-MANAGER.

~~The Vice-Manager shall perform all duties and serve all functions performed by the City Manager during the temporary absence or disability of the City Manager. Unless expressly prohibited by another section of the Codified Ordinances, the Vice-Manager shall be entitled to vote on any board or commission where the City Manager has a vote, during the temporary absence or disability of the City Manager.~~ (REPEALED)

(EDITOR'S NOTE: Former Section 121.03 was repealed by Ordinance , passed .)

121.04 ASSISTANTS TO THE ~~CITY MANAGER~~MAYOR.

The ~~City Manager~~Mayor shall have the authority to appoint such assistants as he deems necessary for the proper and orderly performance of his functions and duties. (A.O.; Ord. Passed .)

121.05 RULES AND REGULATIONS.

(a) The ~~City Manager~~Mayor is hereby authorized and directed to establish rules and regulations governing the conduct and performance of all City employees, and the care, control and use of all City property, provided such rules and regulations are not inconsistent with the Charter and City ordinances.

(b) Such rules and regulations shall be in written form and on file in the office of the ~~City Manager~~Mayor, and may be amended at the discretion of the ~~City Manager~~Mayor. (A.O.; Ord. Passed .)

121.06 NEGOTIATIONS WITH EMPLOYEE GROUPS; FINAL APPROVAL

BY COUNCIL.

The ~~City Manager~~Mayor or designee is authorized to meet and confer with employee groups on behalf of the City for the purposes of negotiating and entering into agreements with the various employee groups and establishing general work rules and conditions of employment not otherwise covered by either the Charter or the Codified Ordinances. While salary and benefits are to be considered a part of the negotiations authorized by this section, specific authorization and final approval of all compensation rates and benefits shall be submitted to Council for consideration and approved by ordinances. (A.O.; Ord. Passed .)

121.07 COMMISSIONER OF COMMUNITY AND PUBLIC RELATIONS.

~~There shall be established a staff position to be titled "Commissioner of Community and Public Relations" within the office of the City Manager. The Commissioner shall be responsible for the direction of programs relating to the Division of Real Estate Programs, the Division of Community Relations, the Division of Public Relations and other such duties as are assigned by the City Manager.~~

~~(a) Division of Real Estate Programs. The Division of Real Estate Programs shall be administered by the Coordinator of Real Estate Programs.~~

~~This Division, along with other City offices and divisions, shall be charged with the duty of implementing such real estate programs as Council may prescribe and which are designed to promote and preserve Cleveland Heights as an integrated, full-service, well-maintained community. The Division shall also be charged with such other duties as may be assigned by order of the City Manager.~~

~~(b) Division of Community Relations; Division of Public Relations. The Division of Community Relations shall be administered by the Coordinator of Community Relations. The Division of Public Relations shall be administered by the Public Relations Coordinator.~~

~~The Divisions of Community Relations and Public Relations shall be charged with the duty of promoting public relations within the City as follows:~~

~~(1) Encourage and promote communication among the residents, institutions and the City government of Cleveland Heights;~~

~~(2) Develop programs designed to encourage community participation;~~

~~(3) Assist community members in utilizing the services provided by the City; and~~

~~(4) Perform such other duties as may be assigned by City ordinance or order of the City Manager.~~

~~These Divisions, along with the Division of Real Estate Programs, shall be charged with the duty of implementing such real estate programs as are established by Council and which are designed to promote and preserve Cleveland Heights as an integrated, full-service, well-maintained community.~~ (REPEALED)

(EDITOR'S NOTE: Former Section 121.07 was repealed by Ordinance , passed .)

121.08 GIFT ACCEPTANCE.

(a) Provided there is no requested expenditure of City funds other than in-kind contribution of services as a condition of any gift to the City for any lawful public purpose, the ~~City Manager~~Mayor is authorized to accept any gift for such purpose in an amount not to exceed ten thousand dollars ($10,000). The ~~City Manager~~Mayor is authorized and directed to establish and maintain such restricted accounts as may be necessary to separate such gift funds from other City funds.

(b) The ~~City Manager~~Mayor shall periodically report to Council on any gifts made to the City for such purposes.

(Ord. 120-1981. Passed 12-7-81; Ord. Passed .)

necessary to show the full effect of such transactions for each fiscal year upon the finances of the City and in relation to each department of the City government. The Department of Finance shall be charged with such further duties as Council may by ordinance or resolution from time to time impose.
(Ord. 2406. Passed 1-3-22.)

123.03 DIRECTOR AS HEAD; UNAVAILABILITY.

(a) The Director of Finance shall be in charge of the Department of Finance.

(b) The ~~City Manager~~Mayor may designate a qualified employee to exercise the powers and perform the duties of the Director of Finance as Acting Director of Finance in the event of a vacancy in the office of Director of Finance or in the event of the temporary absence or disability of the Director of Finance.

(c) In the event of a vacancy in the office of the Director of Finance or in the event of the temporary absence or disability of the Director of Finance and in the event the ~~City Manager~~Mayor has not designated an Acting Director of Finance pursuant to subsection (b) hereof, the Assistant Director of Finance shall serve as the Acting Director of Finance and shall exercise the powers and perform the duties of the Director of Finance until the ~~City Manager~~Mayor designates an Acting Director of Finance pursuant to subsection (b) hereof.
(Res. 6-1983. Passed 1-17-83; Ord. Passed .)

123.04 POWERS AND DUTIES OF DIRECTOR.

Subject to the provisions of Section 123.041 hereinbelow, the Director of Finance shall sign all checks for the payment of money which must be previously approved and signed by the ~~City Manager~~Mayor. The Director of Finance shall be the fiscal officer of the City. He shall be responsible for the proper conduct of all duties and work of the department. He shall be ex-officio Clerk of Council. As Clerk of Council he shall attend all Council meetings, keep a journal of all councilmatic proceedings and be the custodian of all ordinances and resolutions, communications and documents pertaining to matters coming before Council.
(Ord. 20-2008. Passed 3-3-08; Ord. Passed .)

123.041 AUTHORIZATION TO USE FACSIMILE SIGNATURES.

(a) The Council of the City of Cleveland Heights authorizes the ~~City Manager~~Mayor and the Director of Finance to prepare and utilize facsimile signatures, in lieu of their manual signatures, and to affix such facsimile signatures to checks issued by the City for the payment of money for services rendered. The ~~City Manager~~Mayor and the Director of Finance may affix their facsimile signatures to checks being used by the City so long as they continue to act as employees of the City.

(b) The City Council directs that the financial institutions with which the City of Cleveland Heights does business are authorized and requested to accept, honor, cash, pay or

transfer without limit as to the amount or without further inquiry, checks bearing the authorized signatures as provided by the immediately preceding subsection.

(c) The Director Finance is directed to provide written notice of the adoption of any facsimile signature(s) to the City's depositories from which funds are to be withdrawn, which notice shall include a description of the device to be used, a specimen of such facsimile signatures, and a copy of this policy.

(d) A "facsimile signature" is defined as the reproduction of any authorized signature by a photographic, photostatic or a computerized device. The term "facsimile signature" does not include the use of a rubber stamp signature.

(e) The actual facsimile signatures should be maintained under the care, custody and control of the City's Finance Department and, as a further precaution, all checks being used must be numbered and accounted for by the ongoing reconcilement and security procedures of the Finance Department.
(Ord. 20-2008. Passed 3-3-08; Ord. Passed .)

123.05 NUMBER OF DEPARTMENT ASSISTANTS.

The Director of Finance shall have in his Department such number of assistants and employees as are necessary for the proper conduct of the work in this Department.

123.06 DELIVERY OF CITY PROPERTY TO SUCCESSOR.

At the expiration of his term of office or upon his resignation or removal, the Director of Finance shall deliver to his successor all moneys, books, papers and other property in his possession as Director. In case of death or incapacity of the Director, his legal representative shall in like manner pay over and deliver such money and property in the Director's possession or under his control to the person entitled thereto.
(Ord. 2406. Passed 1-3-22.)

123.07 BAD CHECK CHARGE.

No person shall issue a bad check to the City in payment of an obligation to the City which is returned by the payor's bank marked, "insufficient funds", "payment stopped", "account closed", or which in any other way is not a good check. In addition to any other penalty provided by law or other sections of the Codified Ordinances of Cleveland Heights or statutes of the State of Ohio, the person issuing such a bad check shall be subject to a charge of twenty-five dollars ($25.00) for each bad check issued in favor of and submitted to the City.
(Ord. 27-2001. Passed 2-20-01.)

123.08 PERSONS AUTHORIZED TO APPROVE INVOICES.

(a) The persons authorized to approve invoices for payment of obligations received by the City are as follows:

(1) ~~City Manager~~Mayor, or in ~~his~~the absence~~,~~ of the ~~Vice Manager~~Mayor, City Administrator;

(2) Assistants to the ~~City Manager~~Mayor or ~~Assistant City Manager~~other employees specifically designated by the Mayor;

(3) Directors of departments;

(4) Assistant Directors of departments, in the absence of the Director;

(5) Commissioners of Building, Water, Parks and Recreation, or assistant commissioners in the absence of the named commissioners; and

(6) Chief of Police, Chief of Fire, and Clerk of Court.

(b) This section shall be retroactive to grant such permission effective September 15, 1986.

(Ord. 103-1986. Passed 10-20-86; Ord. Passed .)

(b) The ~~City Manager~~Mayor may designate an Assistant Director of Law to serve as the Acting Director of Law when the Director is unavailable to perform the duties of the office. (A.O.; Ord. Passed .)

125.04 DIRECTOR'S DUTY REGARDING SUITS.

(a) When required to do so by resolution of Council, the Director of Law shall prosecute or defend, or cause to be prosecuted or defended, for and in behalf of the City all complaints, suits and controversies in which the City is a party or has an interest, and such other suits, matters and controversies as he shall by ordinance or resolution be directed to prosecute and defend.

(b) The Director of Law is further specifically authorized to initiate, prosecute or defend, or cause to be initiated, prosecuted or defended, for and in behalf of the City, all complaints, suits, proceedings or controversies in which the City is a party or has an interest, whenever, in the judgment of the Director of Law, the best interests of the City require any such action to be taken and no specific authority or direction from Council shall be required prior to the taking of any such action.
(Ord. 1-1968. Passed 1-2-68.)

(c) The Director of Law shall further defend Council members and City employees named in suits brought against them so long as the actions of such members and employees relate to their respective duties for the City.

125.05 POWER TO SETTLE CASES AND CLAIMS.

The Director of Law shall have the power and authority to adjust, settle, compromise, or submit to arbitration any actions, causes of action, accounts, debts, claims, demands, disputes and matters in favor of or against the City, or in which the City is concerned as debtor or creditor, now existing or which may hereafter arise.
(Ord. 5-1940. Passed 1-2-40.)

125.06 DIRECTOR TO BE PROSECUTING ATTORNEY.

The Director of Law shall be the Prosecuting Attorney upon the behalf of the City and shall prosecute, or cause to be prosecuted, upon the behalf of the City all cases of a criminal nature which may be brought before the Municipal Court of the City or any other appropriate court, and shall perform or cause to be performed such other legal duties with respect to such cases as are applicable to the preparation and prosecution thereof.
(Ord. 59-1960. Passed 7-18-60.)

125.07 DIRECTOR TO GIVE OPINIONS.

Any Council member or the ~~City Manager~~Mayor may require the opinion of the Director of Law upon any question of law involving their respective powers and duties.
(A.O.; Ord. Passed .)

CHAPTER 127
Department of Planning and Development

127.01 Director; powers and duties. 127.03 Duties and responsibilities.
127.02 City Planner.

CROSS REFERENCES
Department established - see CHTR. Art. V, Sec. 1
Appointment of Director - see CHTR. Art. V, Sec. 2
Employee regulations and benefits - see ADM. Ch. 139
Zoning - see PART ELEVEN (Zoning Code)

127.01 DIRECTOR; POWERS AND DUTIES.

(a) A Director of Planning shall be appointed by the ~~City Manager~~Mayor, subject to the approval of a majority of the members of Council.

(b) The Director shall have administrative powers over and within the Department of Planning and Development, including complete supervision and control over the Department and the employees thereof and shall be responsible for the proper conduct of all duties and work of the Department.
(Ord. 100-1959. Passed 12-21-59; Ord. Passed .)

(c) The Director shall serve as ex officio Secretary to the Planning Commission.
(Ord. 68-1972. Passed 12-7-72.)

(d) The Director shall serve as an ex officio member of the Landmarks Commission.

(e) If the Director is temporarily unavailable to perform the duties of the office, the ~~City Manager~~Mayor may designate a qualified employee to assume the duties of the Director during the Director's absence. (A.O.; Ord. Passed .)

127.02 CITY PLANNER.

127.03 DUTIES AND RESPONSIBILITIES.

The Department of Planning and Development shall be charged with the duty of:

(a) Establishing goals, objectives and procedures for community development;

(b) Conducting research on growth and development of the City with a goal to coordinating development activities affecting City growth;

(c) Preparing plans and programs for public development and reviewing plans for private development;

(d) Increasing public understanding and acceptance of planning;

(e) Providing technical service to the Planning Commission, the Board of Zoning Appeals, the Architectural Board of Review, the Building Code Board of Review, the Landmark Commission, and any other board, commission, committee and administrative department of the City which requires professional planning assistance;

(f) Administering all intergovernmental grants-in-aid for matters relating to urban planning, community development and housing, public improvements and other activities deemed appropriate by ordinance and administrative directive; and

(g) Performing such other duties as the ~~City Manager may direct.~~ Mayor or designee may direct.

(A.O.; Ord. Passed .)

CHAPTER 129
Department of Public Works

129.01 Organization.
129.02 Director.
129.03 Division of Service.
129.04 Division of Water.

CROSS REFERENCES

Employee regulations and benefits - see ADM. Ch. 139
Contracts - see ADM. Ch. 171
Flushing clogged building sewers - see S.U. & P.S. 911.03
Solid waste collection - see S.U. & P.S. Ch. 935

129.01 ORGANIZATION.

The Department of Public Works shall be organized into the following divisions: Division of Service and Division of Water. In addition to such divisions, there may be additional divisions as established by ordinance or executive order of the ~~City Manager~~Mayor. (A.O.; Ord. Passed .)

129.02 DIRECTOR.

The Director of Public Works shall be the administrative head thereof and shall make all necessary rules and regulations for the government and administration of this Department and the several divisions thereof.

129.03 DIVISION OF SERVICE.

The Division of Service shall be charged with the duty of:

(a) Cleaning, repairing, maintaining and lighting of all streets, highways and sidewalks throughout the City;

(b) Cleaning, repairing, maintaining and inspecting of all sewers, drains, ditches, culverts and watercourses throughout the City;

(c) Collection and disposal of garbage, refuse, waste paper, ashes and rubbish;

(d) Operation of the City garage; and

(e) Maintaining and installing of traffic signs and signals.

129.04 DIVISION OF WATER.

The Division of Water shall be charged with the duty of:

(a) Managing and conducting the water works system of the City, including the procuring and distributing of water;

(b) Billing for water service and responsibility for collecting such bills;

(c) Maintaining, inspecting, installing and repairing of service lines, meters, etc.; and

(d) Such other work connected with the Division as the ~~City Manager~~Mayor or designee may from time to time designate.

(A.O.; Ord. Passed .)

131.22 Authority of Council and ~~City Manager~~Mayor.
131.23 Authorized expense expenditures.
131.24 Conflict; determination of controlling provisions.

CROSS REFERENCES

Department established - see CHTR. Art. V, Sec. 1
Appointment of Director - see CHTR. Art. V, Sec. 2
Forwarding fingerprints and other data to State Criminal Bureau - see Ohio R.C. 109.58 et seq.
Fire Department schooling, buildings and equipment - see Ohio R.C. 715.05, 737.23 et seq.
Police and Firemen's Disability and Pension Fund - see Ohio R.C. Ch. 742
Civil service provisions - see ADM. 137.05 et seq.
Employees generally - see ADM. Ch. 139

131.01 ORGANIZATION.

The Department of Public Safety as created and established by the City Charter shall be organized into the following divisions: Division of Police; Division of Fire; and Division of Building and Inspectional Services.

131.02 DIRECTOR AS HEAD; RULES AND REGULATIONS; ADDITIONAL PERSONNEL.

(a) The ~~City Manager~~Mayor shall be the Director of the Department of Public Safety and administrative head thereof, and shall make such rules and regulations for the government of the department and the divisions thereof as he deems proper, so long as such rules are not inconsistent with the provisions of the City Charter, or the Codified Ordinances, and the rules and regulations duly promulgated and adopted by the Civil Service Commission.

(b) The Department of Public Safety shall have the complete management, care, custody and control of all police, fire, and building and inspectional services, equipment and accessories used in connection therewith, and shall be charged with the duty of keeping appropriate records under the direction of the ~~City Manager~~Mayor, and with such other and further duties as may be required by City ordinance, State law or direction of the ~~City Manager~~Mayor.

(c) In case of riot, conflagration or other emergency, the ~~City Manager~~Mayor may employ such additional policemen, firemen or other employees for temporary service as he deems necessary.
(A.O.; Ord. Passed .)

131.03 POLICE DIVISION COMPOSITION AND DUTIES.

(a) The Division of Police shall consist of a Police Chief and such other officers of various grades and patrolmen of various classes as the ~~City Manager~~Mayor deems necessary to properly police the City.

(b) The Division shall be charged with the duty of enforcing within the limits of the City all police, sanitary and other regulations which are prescribed by City ordinance or by the general laws of Ohio.

(c) The Police Chief shall have control of the stationing and transfer of all regular and reserve officers and of all employees of the Division of Police, subject to applicable provisions of the Charter, Codified Ordinances, rules and regulations of the Civil Service Commission and the duly promulgated rules and regulations of the Department of Public Safety and the divisions thereof. The Police Chief shall schedule all vacation and holiday leave for officers and members of the Division.

(d) Subject to the provisions of the Charter, the Codified Ordinances and all rules and regulations promulgated pursuant thereto, the members of the Division shall have all powers provided by the laws of Ohio and the City for the protection of lives and property and shall exercise same in such manner as may be provided by the rules of the Department of Public Safety and the orders of the Director of Public Safety, Police Chief and other officers of the Division. (Ord. 74-1981. Passed 8-3-81; Ord. Passed .)

131.04 FIRE DIVISION COMPOSITION AND DUTIES.

(a) The Division of Fire shall consist of a Fire Chief and such other officers of various grades and firemen of various classes and volunteer firemen as the ~~City Manager~~Mayor deems necessary to properly protect the City. The Fire Chief shall have control of the stationing and transfer of all regular and volunteer officers, firemen and employees of the Division of Fire subject to applicable provisions of the Charter, Codified Ordinances, rules and regulations of the Civil Service Commission, and the duly promulgated rules and regulations of the Department of Public Safety and the divisions thereof. The Fire Chief shall schedule all vacation and holiday leave for officers, firefighters and members of the Division.

(b) The Bureau of Fire Prevention shall be located in the Department of Public Safety within the Division of Fire and shall be operated under the supervision of the Fire Chief. The Director of Public Safety shall appoint a Fire Warden and Inspectors as deemed necessary. The members of the Fire Prevention Bureau need not be members of the classified service.

(c) Subject to the provisions of the Charter, the Codified Ordinances and the rules and regulations promulgated pursuant thereto, the members of the Division shall have all the powers provided by the laws of the City and Ohio for the protection of lives and property in case of fire or prevention of fire, and shall exercise the same in such manner as may be provided by the rules of the Department of Public Safety and the orders of the Director of Public Safety, Fire Chief and other officers of the Division.

(d) Members of the Division shall provide emergency medical service treatment and transport as may be provided pursuant to rules of the Department of Public Safety and the orders of the Director of Public Safety, Fire Chief and other officers of the Division.
(Ord. 74-1981. Passed 8-3-81; Ord. Passed .)

131.05 DIVISION OF BUILDING AND INSPECTIONAL SERVICES; COMPOSITION AND DUTIES.

(a) The Division of Building and Inspectional Services shall be headed by the Commissioner of Building and/or such other supervisory personnel as the ~~City Manager~~Mayor determines is necessary. The Division shall include such other qualified personnel as necessary to properly perform the duties and functions of the Division.

(b) Such administrative personnel shall be responsible for the proper performance of those duties charged to the Division and shall have the authority to supervise and control the Division and its employees.

(c) The Division shall be charged with the enforcement of the Building Code, Housing Code, Business Maintenance Code, Zoning Code and other ordinances or laws of the City and Ohio including the rules and regulations of the Ohio Board of

Building Standards which are relevant thereto. The Division shall be charged with the duty of issuing all licenses, permits and certificates of occupancy or certificates of compliance as provided by the Codified Ordinances and any other relevant City or State provisions. The Division shall be charged with the duty of inspection of property as required by ordinance of the City or law of Ohio.

(d) The applicable provisions of Chapter 139 shall govern appointments, promotions and discipline of employees of this Division.
(A.O.; Ord. Passed .)

131.06 TRANSFER; SICK LEAVE CREDIT.

(a) Employees who transfer from any public agency in Ohio to the City of Cleveland Heights may, at the discretion of the ~~City Manager~~Mayor or designee, receive credit for unused sick leave accrued during such prior public employment in an amount to be approved by the ~~City Manager~~Mayor or designee at the time of hiring. Such credits shall not exceed the maximum amount authorized by City ordinances for the position filled.

(b) Employees who transfer from one (1) department or division of the City to another department or division of the City shall receive credit for the unused sick leave such employee accumulated prior to the transfer, but in no event shall such unused sick leave exceed the maximum amount authorized by City ordinances for the position being filled.
(A.O.; Ord. Passed .)

131.07 TRANSFER; SERVICE LENGTH AND VACATION CREDIT.

(a) Employees who transfer from any public agency in Ohio to the City of Cleveland Heights, may, at the discretion of the ~~City Manager~~Mayor or designee, receive credit for the length of their consecutive service in the former public agency for the purposes of determining accrual of vacation during their new employment with the City of Cleveland Heights. Accrual of vacation for such transferred employee shall be determined according to the schedule set forth in the current applicable City ordinance. An employee who wishes to obtain credit for his prior public service shall obtain a certified copy of his employment record from his former employer.

(b) An employee who transfers from one (1) department or division of the City to another department or division of the City shall receive credit for the length of their consecutive service in the former department or division. Accrual of vacation leave for such transferred employee shall be determined according to the schedule set forth in the current applicable ordinance for the position being filled.
(A.O.; Ord. Passed .)

131.08 MATERNITY LEAVE.

(a) Expectant mothers who are sworn full-time permanent members of police and fire service, and/or employees of the Division of Building or Inspectional Services, shall be granted

up to ninety (90) days maternity leave. A maximum of sixty (60) work days of such maternity leave shall be considered paid sick leave subject to the individual's accrued sick leave at the time such maternity leave begins.

(b) If an employee wishes to extend her maternity leave beyond ninety (90) days, she should submit a written request to the ~~City Manager~~Mayor or designee fourteen (14) days before the expiration of the first ninety (90) day period. Extended maternity leave is subject to the approval of the ~~City Manager~~Mayor or designee.

(c) An employee shall continue to receive full medical insurance coverage during her maternity leave. If an employee's leave is extended beyond ninety (90) days she must make arrangements with the ~~City Manager~~Mayor or designee at the time the extended leave is granted for continued medical coverage at the cost of the employee.

(d) An employee's seniority rights shall not be adversely affected by maternity leave. (Ord. 3-1977. Passed 2-22-77; Ord. Passed .)

131.09 PERMANENT PART-TIME EMPLOYEES.

The ~~City Manager~~Mayor shall have the authority to establish vacation, sick leave and other benefits for all permanent part-time members of the Police and Fire, and Building and Inspectional Services Divisions. A "permanent part-time employee" means an employee who is employed on a permanent year-round basis and excludes seasonal employees and student interns. (Ord. 3-1977. Passed 2-22-77; Ord. Passed .)

131.10 NEW ADMINISTRATIVE EMPLOYEES.

The ~~City Manager~~Mayor shall have the authority to establish vacation, sick leave and other benefits for all new employees in the Police, Fire and Building and Inspectional Services Divisions performing administrative functions. The employee's permanent employment file shall contain a record of the determination of benefits made by the ~~City Manager~~Mayor. (Ord. 3-1977. Passed 2-22-77; Ord. Passed .)

131.11 SPECIAL CIRCUMSTANCES.

The ~~City Manager~~Mayor may establish or change vacation, sick leave or other benefits of any employee who is a member of Police, Fire, and Building and Inspectional Services Divisions when such action is necessitated by special circumstances. The ~~City Manager~~Mayor shall advise Council of any action taken pursuant to this section. (Ord. 3-1977. Passed 2-22-77; Ord. Passed .)

131.12 UNIFORMS.

(a) Uniforms, as hereinafter set forth, shall be furnished for individual members of the Department of Public Safety, and the Director of Finance is hereby authorized and directed to pay 100 percent (100%) of the purchase price of any of such articles when the same have been purchased by or for a regular member of the Department of Public Safety upon the order of or with the written approval of the Chief of the respective division within such department and the ~~City Manager~~Mayor or designee:

(1) Fire Division

Fire fighting clothes to include rubber coat, boots with steel insoles, helmet and spanner belt.

Fatigue clothes to include jacket, shirts, trousers and accoutrements. Dress uniforms to include topcoat, blouse, shirts, cap and trousers.

(2) Police Division (Uniform personnel)

Outer jacket, blouse jacket, rain coat, shirts, trousers, uniform cap, helmet, rubber boots and accoutrements.

(3) The number of each of the articles set forth above which are furnished for each individual member of the Department shall be such as is established by rules and regulations promulgated by the ~~City Manager~~Mayor or designee.

(b) The articles provided for herein, when purchased, shall be and remain the property of the City. When the ~~City Manager~~Mayor or designee determines that any of such articles are no longer serviceable for personnel within the Department, he may dispose of any such articles in such manner as he may deem necessary.
(A.O.; Ord. Passed .)

131.13 PAYMENT OF SALARIES.

The salaries of all officers and employees shall be paid in bi-weekly installments or such other times at regular intervals as determined by the ~~City Manager~~Mayor. Salary checks may be issued to employees leaving on vacation on the date of leaving, for salary payments due them within their vacation period. (A.O.; Ord. Passed .)

131.14 LEAVE FOR RESERVE TRAINING DUTY.

The ~~City Manager~~Mayor or designee may grant leave of absence with pay for employees who are absent from their duties for the purpose of fulfilling military reserve training duty. Such leave with pay shall not exceed thirty (30) calendar days in any calendar year.
(A.O.; Ord. Passed .)

131.15 OTHER LEAVES OF ABSENCE.

Leave of absence other than sick, maternity or vacation leave, may be granted upon written request, with or without pay by the ~~City Manager~~Mayor, under such conditions and terms as the ~~City Manager~~Mayor shall determine.
(Ord. 3-1977. Passed 2-22-77; Ord. Passed .)

131.16 LEAVE FOR DRAFTEES.

(a) The ~~City Manager~~Mayor or designee is hereby authorized and directed to grant to any officer and employee in the service of the City, who has been or shall hereafter be drafted into the armed forces of the United States during the period of such service a leave of absence from his position or employment with the City and for a period of ninety (90) days after receipt by such employee of his discharge from the armed forces.

(b) During the term or period of such leave of absence such officer or employee shall cease to be an officer or employee of the City until he is formally reinstated as such officer or employee as hereinafter provided.

(c) Such officer or employee shall, upon application be reinstated to his former position or employment in the service of the City, provided he makes application therefor within a period of ninety (90) days from and after the receipt by him of an honorable discharge from the

armed forces, and provided that he is physically and mentally able to perform the duties of his position or employment from which leave of absence had been granted him as authorized by this section.

(d) The Civil Service Commission is hereby requested to cooperate for the protection of any employees who may thus be granted a leave of absence to the end that their civil service classification and status may not be lost by reason of the granting and acceptance of such leave of absence by any such employee.

(e) Any person employed or promoted by the City to fill a vacancy caused by the granting to an employee of a leave of absence as hereinabove provided shall be employed or promoted with the definite understanding that such employment or promotion shall be deemed temporary and subject to termination as and when the original employee who has been granted the leave of absence qualified for reinstatement.

(f) The ~~City Manager~~Mayor or designee shall report to Council any leave of absence he has granted pursuant to the authorization contained in this section.
(Ord. 48-1942. Passed 12-21-42; Ord. Passed .)

131.17 RENTAL OF TARPAULINS.

The Director of Public Safety is hereby authorized and directed to furnish any owner or occupant of premises which has been damaged by fire or other catastrophe in the City, temporary use of tarpaulins, belonging to the City and in the possession of the Fire Division, under such rules and regulations as the Director may prescribe. Such regulations shall, among other things, provide for a rental charge of five dollars ($5.00) per day per tarpaulin to be paid by the owner or occupant of such damaged building for the use of such tarpaulin until the return of the same to the City at one of its fire stations. However, any such rental charge shall not begin until the second day after the particular fire. The regulations shall further provide that any person obtaining such tarpaulin shall return the same to the City as soon as temporary repairs may reasonably be made and in as good condition as received subject to ordinary wear and tear. Failure to return such tarpaulin to the City upon demand or in the case such tarpaulin is delivered to the City in a damaged condition shall render any person who has used such tarpaulin liable to the City for its damages.

131.18 FEES FOR COPIES OF REPORTS AND PHOTOGRAPHS.

(EDITOR'S NOTE: Former Section 131.18 was repealed by Ordinance 107-2001, passed July 2, 2001.)

131.19 POLYGRAPH USE FEES.

(a) The fees for the use of the polygraph owned by the City and for the services of a trained operator employed by the City are hereby established as follows:

(1) Thirty-five dollars ($35.00) for each individual when such examination is made at the request of another municipality or other government authority and conducted at the Cleveland Heights City Hall.

(2) The Director of Public Safety shall have the authority to establish the fees or charges for examinations conducted other than at Cleveland Heights City Hall, such fees to be determined upon the distance to be traveled, the number of individuals examined, time taken and any other expenses incurred thereby.

(b) The Police Chief shall have the authority to grant or reject requests for polygraph examinations.

131.20 VOLUNTARY POLICE RESERVE UNIT.

There is hereby created within the Department of Public Safety a Police Reserve Unit, the members of which shall be appointed by the Director of Public Safety. Police reserve officers shall serve so long as the Director may direct, or until a resignation of such member is accepted by the Director, and subject further to the following provisions:

(a) Qualifications of Members. Members of the Police Reserve Unit shall be citizens of the United States, residents of Ohio, not under the age of twenty-one (21) years at the time of appointment, and shall also comply with such other requirements as may be provided by the rules and regulations authorized by subsection (c) hereof.

(b) Control of Unit. The Chief of Police shall be the commanding officer of the Police Reserve Unit and shall be responsible for the assignment, training, stationing and the direction of the work of such unit. The Police Reserve Unit shall have all police powers, but shall perform only such police duties as assigned by the Chief of Police and act only when in the prescribed uniform. The Chief of Police shall prescribe the time and place such uniform shall be worn. Police reserve officers shall obey the chain of command of the Police Division and shall take orders from all regular appointed members thereof.

(c) Rules and Regulations. The Chief of Police shall prescribe, in writing, the rules and regulations for the organization, administration, conduct and control of the Police Reserve Unit, not inconsistent with the provisions of this chapter.

(d) Service on Voluntary Basis. All services performed by the Police Reserve Unit shall be on a voluntary basis and within the City, unless otherwise directed by the Chief of Police. Members of the Police Reserve Unit shall receive no compensation for their services.

(e) Workers' Compensation Coverage. The ~~City Manager~~Mayor is hereby authorized to enter into a contract with the Industrial Commission of the State of Ohio, pursuant to Ohio R.C. 4123.03, for the purpose of providing coverage for members of the Police Reserve Unit under the Workers' Compensation Law of Ohio.

(Ord. 20-1971. Passed 4-19-71; Ord. Passed .)

131.21 COMMUNITY AID, BASIC PATROL AND FOOT PATROL OFFICERS.

There is hereby created within the Police Division the unclassified service positions of Community Aid Officer, Basic Patrol Officer and Foot Patrol Officer (Commercial District Security Officer), the members of which shall be appointed by the Director of Public Safety. Such officers shall serve so long as the Director may direct, or until a resignation of such member is accepted by the Director, and subject further to the following provisions:

(a) Qualifications of Members. Community Aid Officers, Basic Patrol Officers and Foot Patrol Officers (Commercial District Security Officers) shall be citizens of the United States, residents of Ohio, not under the age of twenty-one (21) years at the time of appointment and shall also comply with such other requirements as may be provided by the rules and regulations authorized by subsection (c) hereof.

(b) Control. The Chief of Police shall be in command of the Community Aid Officers, Basic Patrol Officers and Foot Patrol Officers (Commercial District Training Officers) and shall be responsible for their assignment, training, stationing and the direction of their work. The Community Aid Officers, Basic Patrol Officers, Foot Patrol Officers (Commercial District Security Officers) shall have all police powers. Such officers shall obey the chain of command of the Police Division and shall take orders from all regular appointed members thereof.

(c) Rules and Regulations. The Chief of Police shall prescribe, in writing, the rules and regulations for the organization, administration, conduct and control of the Community Aid Officers, Basic Patrol Officers and Foot Patrol Officers (Commercial District Security Officers) not inconsistent with general law and the directives of the ~~City Manager~~Mayor.

(A.O.; Ord. Passed .)

131.22 AUTHORITY OF COUNCIL AND ~~CITY MANAGER~~MAYOR.

(a) Except as expressly provided herein, Council shall establish employees' wages, hours of work, sick leave benefits, paid hospitalization benefits, vacations, legal holidays, and all other forms of fringe benefits and other conditions of employment by ordinances duly adopted from time to time for such purposes, but not made a part of these Codified Ordinances.

(b) Nothing herein contained nor set forth in any such ordinance shall alter the authority of the ~~City Manager~~Mayor to, from time to time, change the workdays, starting and finishing times of any employee or other such provision when the ~~City Manager~~Mayor determines, at his sole discretion, that such change is necessary to improve the public service. (A.O.; Ord. Passed .)

131.23 AUTHORIZED EXPENSE EXPENDITURES.

(a) The ~~City Manager~~Mayor may approve the expenditure of funds for meals, lodging, travel and miscellaneous expense for employees of the Department of Public Safety for authorized out-of-town trips involving training, education or other City business.

(b) The ~~City Manager~~Mayor may approve the expenditure of funds for meals and travel for employees and guests in town when such expenditures are necessary for and related to City business.

(c) The ~~City Manager~~Mayor or designee shall prescribe rules and regulations for authorizing and approving such expenditures.
(A.O.; Ord. Passed .)

131.24 CONFLICT; DETERMINATION OF CONTROLLING PROVISION.

If any provision of this chapter shall be in conflict with any provision contained in any labor agreement entered into by the City and a recognized employee labor organization relating to the compensation, hours, and terms and conditions of employment of City employees covered by such agreement, pursuant to Ohio R.C. Chapter 4117, and such conflict cannot be resolved by utilizing the rules of statutory construction, the provision of the agreement shall be deemed to be applicable and controlling unless the provision in the agreement is deemed to be contrary to law, in which case the provision of the chapter shall be deemed to be applicable and controlling. (Ord. 104-1985. Passed 9-3-85.)

CHAPTER 135
Department of Parks and Recreation

135.01 Organization.
135.02 Director.
135.03 Control and management of properties.
135.04 Division of Parks and Public Properties and Cain Park.
135.05 Divisions of Pools, Ice, Sports, Community Center and General Recreation.
135.06 Division of Office on Aging.

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CROSS REFERENCES
Employee regulations and benefits - see ADM. Ch. 139
Commission on Aging - see ADM. Ch. 145
Contracts - see ADM. Ch. 171
Trees - see S.U. & P.S. Ch. 917
Parks - see S.U. & P.S. Ch. 923

135.01 ORGANIZATION.
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The Department of Parks and Recreation shall be organized into the following divisions: Parks and Public Properties; Cain Park; Pools/Aquatics; Ice; Sports; Office on Aging; Community Center; and General Recreation.
(Ord. Passed .)

135.02 DIRECTOR.
The Director of the Department of Parks and Recreation shall be the administrative head of all divisions within this Department. The Director shall have such assistants as the Mayor

may deem necessary for the proper functioning of the Department.
(Ord. Passed .)

135.03 CONTROL AND MANAGEMENT OF PROPERTIES.

The Department of Parks and Recreation through its various divisions shall have the care, custody and control of all public property, including public buildings and appurtenances thereto. (Ord. 2408. Passed 1-3-22; Ord. Passed .)

135.04 DIVISION OF PARKS AND PUBLIC PROPERTIES AND CAIN PARK.

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The Division of Parks and Public Properties shall be charged with the duty of:

(a) Maintaining, managing and conducting the City parks and all amusements therein, including temporary playgrounds or centers, which the City may establish from time to time outside the City parks;

(b) Maintaining all buildings owned or operated by the City;

End Of Moved Text

(c) Maintaining and managing all vacant lands owned or under the control of the City;

(d) Maintaining and managing all parking lots owned by or under the control of the City;

(e) Maintaining, improving and landscaping around public buildings and on all public lands and grounds. (Ord. Passed .)

135.05 DIVISIONS OF POOLS, ICE, SPORTS, COMMUNITY CENTER AND GENERAL RECREATION.

The Department of Parks and Recreation shall be charged with the duties of:

(a) Providing recreational opportunities for City residents by the establishment of a high quality comprehensive recreation program. This program shall incorporate into it opportunities for leisure time activities for residents of all age groups;

(b) Coordination of maintenance and development of parks and recreation facilities and equipment; and

(c) Providing information that will enable establishment of fees and charges for use of recreation programs that are consistent with City policy; and

(d) The activities of the Department pursuant to this section are organized under the following Divisions: Pools/Aquatics, Ice, Sports, Community Center, and General Recreation.

(Ord. Passed .)

135.06 DIVISION OF OFFICE ON AGING.

The Division of the Office on Aging shall be charged with the duty of:

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(a) Providing an informational clearinghouse to older adults seeking assistance in locating age-related services;

(b) Assessing the physical and mental well-being of older adults in the community to ensure maximal use of existing public and voluntary sector services; and

(c) Establishing programs and activities for older adults where such programs and activities are non-existent and the need for such programs has been determined.

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(Ord. Passed .)

CHAPTER 136
Department of Community Services

~~135.01 Organization.~~
~~135.02 Director.~~
~~135.03 Control and management of properties.~~
~~135.04 Division of Public Properties.~~
~~135.05 Division of Parks and Recreation.~~
~~135.06 Division of Office on Aging.~~
~~135.07 Division of Public Health.~~
~~135.08 Division of Animal Control.~~

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~~The Department of Community Services shall be organized into the following divisions: Division of Parks and Recreation; Division of Public Properties; and the Division of the Office on Aging. In addition to such divisions, other divisions may be added as may be established by ordinance or executive order of the City Manager.~~

~~135.02~~136.01 Director.
136.02 Duties and responsibilities.

136.01 DIRECTOR.

The Director of ~~the Department of~~ Community Services shall be the administrative head ~~of all divisions within~~thereof and shall make all necessary rules and regulations for the government and administration of this Department. The Director shall have such assistants as the ~~City Manager~~Mayor may deem necessary for the proper functioning of the Department. (Ord. Passed .)

~~135.03~~136.02 ~~CONTROL~~ DUTIES AND ~~MANAGEMENT OF PROPERTIES~~RESPONSIBILITIES.

~~The Department of Community Services through its various divisions shall have the care, custody and control of all public property, including public buildings and appurtenances thereto, and all machinery, vehicles, tools and equipment belonging to the City, except moneys and credits and that property and equipment that is under the control of the Department of Public Safety.~~
~~(Ord. 2408. Passed 1-3-22.)~~

The Department of Community Services shall be charged with the duty of:

(a) Promoting, encouraging, and positioning the City throughout the region for the purposes of retaining and attracting residents and businesses, along with patronage of the businesses located within the City;

(b) Encouraging and promoting communication among the residents, institutions, and the City government of Cleveland Heights;

(c) Developing programs designed to encourage community participation;

(d) Communicating and marketing to residents the various activities, services and actions occurring in the City, and assisting residents in utilizing the services provided by the City; and

(e) Such other duties as the Mayor or designee may direct.

(Ord. Passed .)

135.04 DIVISION OF PUBLIC PROPERTIES.

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(c) Maintaining and managing all vacant lands owned or under the control of the City;

(d) Maintaining and managing all parking lots and parking meters owned by or under the control of the City;

(e) Maintaining, improving and planting of street trees, park trees and landscaping around public buildings and on all public lands and grounds.

135.05 DIVISION OF PARKS AND RECREATION.

The Division of Parks and Recreation shall be charged with the duties of:

(a) Providing recreational opportunities for City residents by the establishment of a high quality comprehensive recreation program. This program shall incorporate into it opportunities for leisure time activities for residents of all age groups;

(b) Coordination of maintenance and development of parks and recreation facilities and equipment; and

(c) Providing information that will enable establishment of fees and charges for use of recreation programs that are consistent with City policy.

135.06 DIVISION OF OFFICE ON AGING.

The Division of the Office on Aging shall be charged with the duty of:

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135.07 DIVISION OF PUBLIC HEALTH.

(a) The Division of Public Health shall be administered by the Commissioner of Public Health. The Commissioner shall have all the powers and authority relative to the enforcement of health and sanitary measures which is given by the general laws of Ohio to the chief health officer in cities, and such other power and authority as may be vested in him by City

ordinances or Ohio laws.

(b) This Division shall be charged with the duty of enforcing, throughout the City, all rules and regulations relating to health and sanitation which are provided by the general laws of Ohio or by City ordinances, and such other duties as the City Manager may impose from time to time.

135.08 DIVISION OF ANIMAL CONTROL.

(a) The Division of Animal Control shall be administered by the Animal Warden. The Division shall have such other employees as are necessary to perform the function assigned to such Division under applicable law.

(b) This Division shall be charged with the duty of enforcing, throughout the City, Ohio laws and City ordinances applicable to the control of animals.

CHAPTER 137
Civil Service

137.01 Civil Service Commission; composition and term.
137.02 Commission officers.
137.03 Salaries and expenses from General Fund.
137.04 Jurisdiction of Commission.
137.05 Classification of employees.
137.06 Positions in classified service.
137.07 Positions in unclassified service.
137.08 Effect of local and State law.
137.09 Ascertainment of merit and fitness.
137.10 ~~City Manager~~Mayor as appointing authority.
137.11 Appointments, promotions and probation.
137.12 Tenure.
137.13 Economic layoffs.
137.14 Suspension, demotion and removal.
137.15 Charge, hearing and penalty on disciplinary action.
137.16 Appeal and original hearing on charges brought by appointing authority.
137.17 Authority of Civil Service Commission.
137.18 Enforcement.
137.19 Reimbursement for services.
137.20 Fees to witnesses.
137.21 Conflict; determination of

controlling provision.

CROSS REFERENCES

Civil Service - see Ohio Const., Art. XV, Sec. 10
Civil Service Commission - see CHTR. Art. XII
Civil Service law - see Ohio R.C. Ch. 124
Application to police and fire personnel - see Ohio R.C. 737.051, 737.10, 737.11

137.01 CIVIL SERVICE COMMISSION; COMPOSITION AND TERM.

Civil Service shall be under the management and control of the Civil Service Commission as provided in this chapter. The Commission shall consist of three (3) residents of the City not holding other municipal office or employment, who are appointed by the ~~City Manager~~Mayor subject to confirmation by a majority of Council. Each Civil Service Commissioner shall serve for a term of six (6) years and until his successor has been appointed and qualified. Any vacancy occurring during the term of any member shall be filled for the unexpired term in the manner authorized for an original appointment.
(A.O.; Ord. Passed .)

137.02 COMMISSION OFFICERS.

The Civil Service Commission shall elect one (1) of its members as President. The ~~City Manager~~Mayor shall appoint a City employee to serve as Secretary of such Commission. (A.O.; Ord. Passed .)

137.03 SALARIES AND EXPENSES FROM GENERAL FUND.

Salaries of the Civil Service Commission members shall be fixed by Council and shall be paid together with the necessary expenses of the Commission out of the General Fund.

137.04 JURISDICTION OF COMMISSION.

As provided by the City Charter and the ordinances of Council, the Civil Service Commission shall have jurisdiction over employees in the classified service of the City ~~and other governmental agencies or districts having boundaries co-terminus with, or entirely within, the City. The Civil Service Commission shall have jurisdiction over employees in the classified service of other governmental agencies only when such jurisdiction is clearly mandated by the law of the State of Ohio.~~ (A.O.; Ord. Passed .)

137.05 CLASSIFICATION OF EMPLOYEES.

All City employees are hereby divided into the "unclassified service" and the "classified service".

137.06 POSITIONS IN CLASSIFIED SERVICE.

The classified service of the City shall consist of all regular members of the Police Division and the Fire Division except secretaries, clerks, dispatchers, Community Aid Officers, Commercial District Security (Foot Patrol) Officers, Basic Patrol Officers, members of reserve or auxiliary units, and other such similar positions. The classified service shall also include other classifications of employees as may be designated to the classified service by ordinance of Council.

137.07 POSITIONS IN UNCLASSIFIED SERVICE.

The unclassified service shall consist of all other employees of the City not included within the classified service.

137.08 EFFECT OF LOCAL AND STATE LAW.

The City Charter, City ordinances and the Rules of the Civil Service Commission adopted pursuant thereto shall govern civil service for employees in the classified service over which the Civil Service Commission has jurisdiction. Where the City Charter, City ordinances and the Rules of the Civil Service Commission are silent, the provisions of Ohio statutes shall govern.

137.09 ASCERTAINMENT OF MERIT AND FITNESS.

Except as herein provided, the Civil Service Commission shall determine the

137.10 ~~CITY MANAGER~~MAYOR AS APPOINTING AUTHORITY.

The ~~City Manager~~Mayor is the appointing authority for the City and the Director of Public Safety. ~~H~~The Mayor shall have authority to promulgate and adopt rules for the efficient operation of the Department of Public Safety, so long as such rules are not inconsistent with the City Charter, the Codified Ordinances, or the Rules of the Civil Service Commission.

With respect to other governmental agencies or districts, the appointing authority shall be such person or persons as shall be provided by law.
(A.O.; Ord. Passed .)

137.11 APPOINTMENTS, PROMOTIONS AND PROBATION.

All appointments and promotions by the ~~City Manager~~Mayor in the classified service of the City shall be for a probationary period of twelve (12) months, except that the probationary period for an original appointment to the classified position of police officer in the Division of Police shall be for a probationary period of twenty-four (24) months. No appointment or promotion therein shall be final until the employee has served and completed his probationary period in a satisfactory manner. An employee of the classified service of the City so appointed or promoted shall be subject to removal as a new employee or demoted as a promoted employee by the ~~City Manager~~Mayor at any time during the probationary period, without appeal to the Civil Service Commission, if the ~~City Manager~~Mayor determines that services and performance of the employee during such probationary period are unsatisfactory. Appointments or promotions in the classified service of the City shall become final at the end of the probationary period.
(Ord. 123-2018. Passed 11-19-18; Ord. Passed .)

137.12 TENURE.

The tenure of every officer or employee in the classified service of the City shall be during good behavior and efficient service; and no such employee shall be reduced in pay or position, suspended, discharged or otherwise disciplined by the appointing authority or the Civil Service Commission, except as provided in this chapter.

137.13 ECONOMIC LAYOFFS.

The provisions of this chapter shall not be applicable to layoffs, discharges, transfers, or other personnel changes where such changes are for reasons of municipal economy due to insufficient funds, as determined by the appointing authority, for the department or division in which such changes are made.

137.14 SUSPENSION, DEMOTION AND REMOVAL.

Any employee in the classified service may be disciplined and penalized by the loss of vacation days or furlough days, or be suspended, demoted or removed and terminated for incompetency, inefficiency, dishonesty, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty or violation of the Rules of the Civil Service Commission or the rules and regulations of the appointing authority, rules of the Department, orders of the Division or Department head and supervisors therein, or for acts of misfeasance, malfeasance or

nonfeasance in office.

137.15 CHARGE, HEARING AND PENALTY ON DISCIPLINARY ACTION.

The procedure for initiating and completing disciplinary action shall be as follows:

(a) The Director of Public Safety shall have the sole right to bring charges against the chief of a division of the Department of Public Safety. Charges may be placed against any other member of the classified service of the Department of Public Safety by the Director of Public Safety, the chief of a division of the Department of Public Safety, or other officer acting on behalf of a chief in the Department of Public Safety. Charges may be placed against any other member of the classified service of the City by the head of the department or division in which such employee is employed. Charges may be placed against all other members of the classified service over which the Civil Service Commission has jurisdiction by such person or persons as provided by law. Such charges shall be in writing and shall be specific as to the nature of the charge. A copy of the written charges shall be delivered and served in person upon the person so charged whenever such personal service can be made in Cuyahoga County; otherwise service shall be made in conformance with the general law of Ohio.

(b) The Civil Service Commission shall conduct the hearing on charges specified in subsection (a) hereof directed against the chief of a division of the Department of Public Safety and in all other cases where the appointing authority brings the charge. The ~~City Manager~~Mayor or designee shall conduct a hearing on charges specified in subsection (a) hereof against any other members of the classified service of the City. Hearings on charges shall be had within seven (7) days after the employee so charged has received notice of the charges. The hearing before the ~~City Manager~~Mayor or designee shall be informal, but shall follow the following described procedure:

(1) A reading of the charge and a plea by the employee to such charge;

(2) The party bringing the charges or his representative shall briefly state the charges and produce evidence to support those charges;

(3) The employee charged shall present his defense to the charge, including evidentiary support of his defense; and

(4) Rebuttal evidence may be presented by the party making the charge.

The appointing authority shall then determine the guilt or innocence of the party so charged. Nothing herein stated shall require the appointing authority to hold a hearing if the employee so charged enters a plea of guilty to the charge. Upon a finding of guilt, the ~~City Manager~~Mayor or designee shall assess the penalty, which may include termination of employment and removal from the service. In determining the penalty, the ~~City Manager~~Mayor or designee shall consider the performance and record of such employee while a member of the classified service.

(c) The appointing authority may suspend, without pay, any member of the classified service of the Division of Police or any other employee of the classified service of the City, except of the Division of Fire, for not to exceed five (5) working days. The appointing authority may suspend any member of the classified service of the Division of Fire, without pay, for not to exceed two (2) tours of duty. In such cases of suspension, there shall be no appeal to the Civil Service Commission.

(d) Hearings on charges against members of the classified service over which the Civil Service Commission has jurisdiction, except employees of the classified service of the City, shall be held before such person or persons and according to such procedures as may be provided by law.

(A.O.; Ord. Passed .)

137.16 APPEAL AND ORIGINAL HEARING ON CHARGES BROUGHT BY APPOINTING AUTHORITY.

Appeals from rulings of an appointing authority for such governmental agencies or districts other than the City or original hearings on charges brought by such appointing authority, shall be according to such procedures as may be provided by law.

The following procedure shall be followed on appeal from rulings of the appointing authority for the City:

(a) Procedure. If an employee so disciplined shall be dissatisfied with the finding of guilty of the appointing authority or with the penalty invoked, and if such penalty shall be more severe than that described in Section 137.15(c), such employee shall have seven (7) days in which to file with the Civil Service Commission an appeal from the ruling of the appointing authority. Such notice of appeal shall be in writing, directed to the Commission, and filed in the office of the ~~City Manager~~Mayor. The Commission shall, within thirty (30) days after receiving notice of appeal, conduct a hearing on such appeal. The Commission shall give both the appointing authority and the disciplined employee not less than seven (7) days' notice of the date and time of the hearing. The hearing on appeal shall be de novo before such Commission.

(b) Hearing of Appeal. On the hearing of any appeal, the Commission shall confine its considerations to the charges originally placed against the accused employee, and no substantial amendment of, nor addition to, such charges and specifications will be permitted or considered by the Commission. The order of procedure shall be as follows:

(1) The party making the charge shall briefly state the nature of the charge and outline the evidence to be presented in support thereof;

(2) The appealing employee shall briefly state his defense to the charge and the evidence he expects to introduce in support of such defense;

(3) The party making the charge shall present the evidence in support of the charge;

(4) The appealing employee shall present the evidence in support of his defense to the charge;

(5) The party making the charge shall present any rebuttal evidence;

(6) Arguments may be permitted by the Commission; and

(7) Either party to the proceedings may waive any right to make a statement or present evidence as outlined immediately hereinabove.

The admission and exclusion of evidence, and the determination and decision of the Commission shall be guided in general by the rules of evidence and burden of proof applied by the courts in civil cases. Either party may personally represent himself or be represented by counsel. The Commission shall, after due consideration, render its judgment affirming, disaffirming or modifying in part or in whole the order of the appointing authority which was the subject of appeal. In case judgment is one of disaffirmance or modification, the appealing employee shall be reinstated under such conditions as such Commission may make in connection therewith. In case the judgment of guilty of the charge is affirmed, the Commission shall consider the performance and record of the appealing employee while a member of the classified service in determining whether or not to affirm the penalty assessed by the appointing authority.

If the appellant fails to appear at the time and place fixed by the Commission to prosecute his appeal, the appeal may be dismissed by the Commission. If the party making the charge fails to appear at such time and place and offer evidence in support of his charges and specifications, the Commission may hear evidence offered by the appellant and render its decision on the merits. The acceptance by the appointing authority of the resignation of any such appellant before final action on the appeal by the Commission shall be considered as a withdrawal of the charges, and thereupon the appeal shall be dismissed without decision and the action of the employee thus resigning shall be entered as a resignation.

The proceedings in an original hearing by the Commission on charges brought by the appointing authority shall be considered by the Commission in the same manner as outlined in this subsection (b). Upon a finding of guilty, the Commission shall assess the penalty, which may include termination of employment and removal from the service. In determining the penalty, the Commission shall consider the performance and record of such employee while a member of the classified service.

(A.O.; Ord. Passed .)

137.17 AUTHORITY OF CIVIL SERVICE COMMISSION.

Subject to the limits contained in the City Charter and Codified Ordinances, full power and authority is hereby vested in the Civil Service Commission to adopt, enforce, interpret and, when necessary, to amend rules for the appointment, promotion, transfer, reinstatement, suspension and removal of any employee of the City in the classified service and any other employee of the classified service over which the Civil Service Commission has jurisdiction to the end that the merit system, so far as practicable, shall govern employment in such classified service.

CHAPTER 139
Employees Generally

139.01 Use and marking of City vehicles.
139.02 Official bonds.
139.03 Payment of employee moving expenses.
139.04 Payment of applicant interview expenses.
139.05 Appointments, promotions and probation.
139.06 Tenure and economic layoff.
139.07 Suspension, demotion or removal.
139.08 Disciplinary procedures; notice, hearing and final action.
139.09 Witness fees concerning employment.
139.10 Payment of salaries.
139.11 Transfer; sick leave credit.
139.12 Transfer; service length and vacation credit.
139.13 Maternity leave.
139.14 Leave for draftees.
139.15 Leave for reserve training duty.
139.16 Other leaves of absence.
139.17 Permanent part-time employees.
139.18 New administrative employees.
139.19 ~~City Manager~~Mayor benefits.
139.20 Special circumstances.
139.21 Authority of Council and ~~City Manager~~Mayor.
139.22 Authorized expense expenditures.
139.23 Conflict; determination of

controlling provision.
139.24 Domestic partnerships.
139.25 Cellular telephones.

CROSS REFERENCES

Workers' compensation - see Ohio Const., Art. II, Sec. 35;
Ohio R.C. Ch. 4123
Deductions for municipal income tax - see Ohio R.C. 9.42
Public Employees Retirement System - see Ohio R.C. Ch. 145
Department of Public Safety employees - see ADM. Ch. 131
Civil service - see ADM. Ch. 137

139.01 USE AND MARKING OF CITY VEHICLES.

(a) The purpose of this policy is to establish standard requirements and procedures for City of Cleveland Heights employees operating City-owned vehicles. Unless otherwise provided by Council, vehicles are for official City of Cleveland Heights business only.

(1) Only City employees may ride in City-owned vehicles. All non-City employees require the prior approval of the ~~City Manager~~Mayor or designee.

(2) All operators shall possess a valid driver's license and be eligible to be covered by the City's insurance. Employees are responsible for notifying the City if their license is suspended.

(3) The City vehicles are to be operated in a safe and efficient manner. Drivers must report any defect or damage to the vehicle as soon as one is identified. The driver is responsible for the appearance and interior and exterior cleanliness of the vehicle.

(4) All operators must wear seatbelts and obey traffic and parking laws. Drivers are personally responsible for any fines and penalties incurred as a result of violations of parking or traffic laws. The employee must immediately notify his/her supervisor and the ~~City Manager's~~Mayor's office of any such violation and provide proof of payment.

(5) City employees are strictly prohibited from operating a vehicle while under the influence of alcohol or illegal drugs, and are likewise prohibited from using prescription or over-the-counter medication which may impair their ability to safely operate a motor vehicle.

(6) In case of an accident, the employee driving the vehicle shall immediately notify his/her supervisor and the nearest police department to report the accident and complete a full accident report. Copies of the accident report must be forwarded to the employee's supervisor and the ~~City Manager's~~Mayor's office.

(7) The City of Cleveland Heights prohibits the transport of any cargo unrelated to the performance of City business.

(8) The City of Cleveland Heights provides liability damage insurance for its authorized drivers. The City is responsible for defense and indemnification of employees acting in the course and scope of their employment pursuant to the Codified Ordinances, labor agreements and Ohio Revised Code.

(9) Except as exempted by the ~~City Manager~~Mayor or designee, all City-owned vehicles shall be conspicuously lettered as property of the City of Cleveland Heights and such vehicles shall bear license plates which are issued by the State of Ohio for use on City-owned vehicles.

(10) All employees to whom City-owned vehicles have been assigned shall park such vehicles in the City garage or at such other location on City-owned property as may be designated by the ~~City Manager~~Mayor or designee at the termination of their assigned work. However, the ~~City Manager~~Mayor or designee may designate key employees to whom a City-owned vehicle has been assigned and may authorize them to drive such vehicle to the employees' places of residence after regular working hours if the duties of such employees require them to be available for emergency service.

(b) An employee of the City who has been authorized by the ~~City Manager~~Mayor or designee to travel out of Cuyahoga County on City business may, with the approval of the ~~City Manager~~Mayor or designee, operate a City-owned vehicle for that purpose in lieu of other means of transportation.

(c) An employee of the City who violates any of the provisions of this section may be subject to immediate discharge for cause, or such employee may be suspended for a period not to exceed six (6) months in the discretion of the ~~City Manager~~Mayor.

(Ord. 21-2008. Passed 3-3-08; Ord. Passed .)

139.02 OFFICIAL BONDS.

(a) All officers and employees of the City shall be covered by a public employees faithful performance blanket bond of five thousand dollars ($5,000) except the following positions requiring specific bonds:

Position	Bond Amount
~~City Manager~~Mayor	$ 200,000
Director of Finance	200,000
Assistant Director of Finance	200,000
Clerk of Court	50,000
Bailiff	10,000

(b) All bonds shall be in the custody of the Director of Finance except the bond of the Director and Assistant Director of Finance which shall be in the custody of the ~~City Manager~~Mayor.

(c) The premium for all bonds shall be paid out of City funds.
(A.O.; Ord. Passed .)

139.03 PAYMENT OF EMPLOYEE MOVING EXPENSES.

The ~~City Manager~~Mayor shall have the authority to pay the cost of moving household and family of new hirees when deemed in the best interests of the City. Such expenses shall be limited to the physical movement of household goods; storage of household goods when necessary, not to exceed three (3) months; cost of installing or turning on of utilities; one-time transportation charges from old address to new address of employee and family to include meals and overnight accommodations when applicable and other such proper expenses.
(A.O.; Ord. Passed .)

139.04 PAYMENT OF APPLICANT INTERVIEW EXPENSES.

The ~~City Manager~~Mayor shall have the authority to pay the cost of travel, lodging and meals for potential employees of the City when a pre-employment interview is requested by the City. Such authorization shall include payment of cost of travel, lodging and meals of the applicant and/or the applicant and spouse when deemed in the best interest of the City.
(A.O.; Ord. Passed .)

139.05 APPOINTMENTS, PROMOTIONS AND PROBATION.

All appointments and promotions in the unclassified service shall be for a probationary period of six (6) months, except for appointments to the position of Basic Patrol Officer, which shall be for a probationary period of twenty-four (24) months. No appointments or promotions in the unclassified service shall be final until the employee has served and completed his probationary period in a satisfactory manner. An employee of the unclassified service so appointed or promoted shall be subject to removal, if a new employee, or demotion, if a

promoted employee, at any time during the probationary period without a hearing as provided under Section 139.08, if it is determined that his services and performances during such probationary period are unsatisfactory. All appointments and promotions in the unclassified service shall become final at the end of the probationary period.
(Ord. 197-2001. Passed 11-19-01.)

139.06 TENURE AND ECONOMIC LAYOFFS.

(a) Except as provided in subsection (b) hereof, all permanent unclassified City employees, except supervisory personnel and secretaries assigned to directors of departments, shall be tenured during good behavior and efficient service, and no such employee shall be reduced in pay or position, suspended for more than five (5) working days, nor discharged by the appointing authority except as provided in this chapter.

(b) The provisions of this chapter regarding tenure and procedures upon disciplinary action shall not be applicable to personnel changes, including but not limited to layoffs, and discharges, where such changes are made for reason of municipal economy due to insufficient operating funds as determined by the ~~City Manager~~Mayor, for the department or division in which such personnel changes are made.
(A.O.; Ord. Passed .)

139.07 SUSPENSION, DEMOTION OR REMOVAL.

Any employee in the unclassified service may be disciplined and penalized by the appointing authority by the loss of vacation days or be suspended, demoted or removed and terminated for incompetency, inefficiency, dishonesty, immoral conduct, insubordination, discourteous treatment of the public, neglect of duties, or violation of the rules and regulations of the appointing authority, or for acts of misfeasance, malfeasance or nonfeasance.

139.08 DISCIPLINARY PROCEDURES; NOTICE, HEARING AND FINAL ACTION.

To avoid arbitrary and unfair decisions in serious disciplinary matters, the following procedures shall be followed in disciplinary cases involving reduction in pay or position, suspension for more than five (5) working days or discharge or termination of employment. These provisions shall apply to all employees in the unclassified service of the City, except supervisory personnel and secretaries assigned to directors of departments.

(a) Notice of Disciplinary Action. When a supervisor determines that there are sufficient grounds for imposing any of the disciplinary actions listed above upon an employee under his supervision, the supervisor shall prepare a notice of disciplinary action on forms provided by the Personnel Officer of the City. The notice shall include the recommended disciplinary action to be imposed and the grounds upon which such action is based.

(b) Service of Notice of Disciplinary Action. One (1) copy of the notice of disciplinary action shall be personally served upon the employee involved, or mailed certified mail, return receipt requested, to his last known address. The last known address shall be that address most recently supplied by the employee to the Personnel Office. A second copy of the notice shall be forwarded to the Personnel Officer of the City on the same day a copy is served upon the disciplined employee.

(c) Hearing. If the employee wishes to contest the disciplinary action recommended the employee shall submit a written request for a hearing to the City's Personnel Officer within one (1) week of receiving his notice of disciplinary action. Within a reasonable time after receipt of a written request for hearing, the City's Personnel Officer or his representative shall schedule an informal hearing to consider matters pertinent to the disciplinary action. The hearing shall be conducted according to the procedures formulated by the ~~City Manager~~Mayor. Within seven (7) days after the hearing the Personnel Officer shall render a decision either approving, disapproving or modifying the disciplinary action recommended. The Personnel Officer shall forward copies of his decision to the employee and supervisor involved and one (1) copy to the ~~City Manager~~Mayor. The ~~City Manager~~Mayor may approve, reverse or modify the decision.

(d) Uncontested Actions. If an employee fails to submit a timely written request for a hearing, as provided by subsection (c) hereof, the employee is deemed to have waived his right to contest the disciplinary action imposed under this chapter. In uncontested cases, the Personnel Officer shall review the notice of disciplinary action and take such measure as he deems appropriate upon approval thereof by the ~~City Manager~~Mayor. In cases of termination or discharge, the Personnel Officer shall review the matter and make a written recommendation to the ~~City Manager~~Mayor either approving or disapproving termination and discharge. The recommendation of the Personnel Officer shall be final, subject to approval of the ~~City Manager~~Mayor.

(e) Effective Date of Disciplinary Action. A suspension for more than five (5) days, or reduction in rank or compensation shall be effective from and after the date of service of the notice of disciplinary action upon the employee involved. If a superior recommends discharge or termination of employment, the employee involved shall be suspended from and after the date of service of the notice of disciplinary action, pending final determination of the matter as provided by this chapter. (A.O.; Ord. Passed .)

139.09 WITNESS FEES CONCERNING EMPLOYMENT.

Any witness fees received by an employee of the City subpoenaed to give testimony concerning any matter relating to the activities of such employment, shall be paid to the General Fund of the City.

139.10 PAYMENT OF SALARIES.

The salaries of all officers and employees shall be paid in bi-weekly installments or such other times at regular intervals as determined by the ~~City Manager~~Mayor. Salary checks may be issued to employees leaving on vacation on the date of leaving, for salary payments due them within their vacation period. (A.O.; Ord. Passed .)

139.11 TRANSFER; SICK LEAVE CREDIT.

(a) Employees who transfer from any public agency in Ohio to the City of Cleveland Heights may, at the discretion of the ~~City Manager~~Mayor or designee, receive credit for unused sick leave accrued during such prior public employment in an amount to be approved by the ~~City Manager~~Mayor or designee at the time of hiring. Such credits shall not exceed the maximum amount authorized by City ordinances for the position filled.

(b) Employees who transfer from one (1) department or division of the City to another department or division shall receive credit for the unused sick leave such employee accumulated prior to the transfer, but in no event shall such unused sick leave exceed the maximum amount authorized by City ordinances for the position being filled. (A.O.; Ord. Passed .)

139.12 TRANSFER; SERVICE LENGTH AND VACATION CREDIT.

(a) Employees who transfer from any public agency in Ohio to the City of Cleveland

Heights, at the discretion of the ~~City Manager~~Mayor or designee, may receive credit for the length of their consecutive service in the former public agency for the purposes of determining accrual of vacation during their new employment with the City of Cleveland Heights. Accrual of vacation for such transferred employee shall be determined according to the schedule set forth in the current applicable City ordinance. An employee who wishes to obtain credit for his prior public service shall obtain a certified copy of his employment record from his former employer.

(b) An employee who transfers from one (1) department or division of the City to another department or division of the City shall receive credit for the length of his successive service in the former department or division. Accrual of vacation leave for such transferred employee shall be determined according to the schedule set forth in the current applicable ordinance for the position being filled.
(A.O.; Ord. Passed .)

139.13 MATERNITY LEAVE.

(a) Expectant mothers who are full-time, permanent employees except sworn members of the police and fire service, shall be granted up to ninety (90) days maternity leave. A maximum of sixty (60) working days of such maternity leave shall be considered paid sick leave subject to the individual's accrued sick leave at the time such maternity leave begins. Additional unused accrued sick leave may be used during an employee's maternity leave upon approval of the ~~City Manager~~Mayor or designee.

(b) If an employee wishes to extend her maternity leave beyond ninety (90) days, she should submit a written request to the ~~City Manager~~Mayor or designee fourteen (14) days before the expiration of the first ninety (90) day period. Extended maternity leave is subject to the approval of the ~~City Manager~~Mayor or designee.

(c) An employee shall continue to receive full medical insurance coverage during her maternity leave. If an employee's maternity leave is extended beyond ninety (90) days she must make arrangements with the ~~City Manager~~Mayor or designee at the time the extended leave is granted for continued medical insurance coverage at the cost of the employee.

(d) An employee's seniority rights shall not be adversely affected by maternity leave. (Ord. 3-1977. Passed 2-22-77; Ord. Passed .)

139.14 LEAVE FOR DRAFTEES.

(a) The ~~City Manager~~Mayor or designee is hereby authorized and directed to grant to any officer and employee in the service of the City, who has been or shall hereafter be drafted into the armed forces of the United States during the period of such service a leave of absence from his position or employment with the City and for a period of ninety (90) days after receipt by such employee of his discharge from the armed forces.

(b) During the term or period of such leave of absence such officer or employee shall cease to be an officer or employee of the City until he is formally reinstated as such officer or employee as hereinafter provided.

(c) Such officer or employee shall, upon application be reinstated to his former position or employment in the service of the City, provided he makes application therefor within a period of ninety (90) days from and after the receipt by him of an honorable discharge from the

armed forces, and provided that he is physically and mentally able to perform the duties of his position or employment from which leave of absence had been granted him as authorized by this section.

(d) The Civil Service Commission is hereby requested to cooperate for the protection of any employees who may thus be granted a leave of absence to the end that their civil service classification and status may not be lost by reason of the granting and acceptance of such leave of absence by any such employee.

(e) Any person employed or promoted by the City to fill a vacancy caused by the granting to an employee of a leave of absence as hereinabove provided shall be employed or promoted with the definite understanding that such employment or promotion shall be deemed temporary and subject to termination as and when the original employee who has been granted the leave of absence qualified for reinstatement.

(f) The ~~City Manager~~Mayor or designee shall report to Council any leave of absence he has granted pursuant to the authorization contained in this section.
(Ord. 48-1942. Passed 12-21-42; Ord. Passed .)

139.15 LEAVE FOR RESERVE TRAINING DUTY.

The ~~City Manager~~Mayor or designee may grant leave of absence with pay for employees who are absent from their duties for the purpose of fulfilling military reserve training duty. Such leave with pay shall not exceed thirty (30) calendar days in any calendar year.
(A.O.; Ord. Passed .)

139.16 OTHER LEAVES OF ABSENCE.

Leave of absence other than sick, maternity or vacation leave, may be granted upon written request, with or without pay by the ~~City Manager~~Mayor, under such conditions and terms as the ~~City Manager~~Mayor shall determine.
(Ord. 3-1977. Passed 2-22-77; Ord. Passed .)

139.17 PERMANENT PART-TIME EMPLOYEES.

The ~~City Manager~~Mayor shall have the authority to establish vacation, sick leave and other benefits for all permanent part-time employees. A "permanent part-time employee" means an employee who is employed on a permanent, year-round basis, and excludes seasonal employees and student interns.
(Ord. 3-1977. Passed 2-22-77; Ord. Passed .)

139.18 NEW ADMINISTRATIVE EMPLOYEES.

The ~~City Manager~~Mayor shall have the authority to establish vacation and sick leave benefits for all new employees performing administrative functions. The employee's permanent employment file shall contain a record of the determination of benefits made by the ~~City Manager~~Mayor.
(Ord. 3-1977. Passed 2-22-77; Ord. Passed .)

139.19 ~~CITY MANAGER~~MAYOR BENEFITS.

Council shall establish vacation, sick leave and other benefits for the ~~City Manager~~Mayor at the time his or her ~~employment~~ term commences and such other times as Council deems necessary.
(Ord. 3-1977. Passed 2-22-77; Ord. Passed .)

139.20 SPECIAL CIRCUMSTANCES.

The ~~City Manager~~Mayor may establish or change vacation, sick leave and other benefits of an employee when such action is necessitated by special circumstances. The ~~City Manager~~Mayor shall advise Council of any action taken pursuant to this section. (A.O.; Ord. Passed .)

139.21 AUTHORITY OF COUNCIL AND ~~CITY MANAGER~~MAYOR.

(a) Except as expressly provided herein, Council shall establish employees' wages, hours of work, sick leave benefits, paid hospitalization benefits, vacations, legal holidays, and all other forms of fringe benefits and other conditions of employment by ordinances duly authorized from time to time for such purposes, but not made a part of these Codified Ordinances.

(b) Nothing herein contained nor set forth in any such ordinance shall alter the authority of the ~~City Manager~~Mayor to, from time to time, change the workdays, starting and finishing time of any employee or other such provisions when the ~~City Manager~~Mayor determines, in his sole discretion, that such change is necessary to improve the public service. (A.O.; Ord. Passed .)

139.22 AUTHORIZED EXPENSE EXPENDITURES.

(a) The ~~City~~Mayor ~~of Cleveland Heights~~or designee may ~~provide for~~approve the payment of the actual and necessary expenses, including travel expenses, of any employee of the City incurred in the course of performing services and duties for the City, whether in or outside of the City~~, under the direction of Council within the framework of the City Manager's Administrative Guidelines~~.

~~(b)~~

(b) Job-related expenses, including attendance at professional meetings, incurred by any City employee may be reimbursed by the Mayor or designee. The validity of payments for job-related expenses shall be determined by the ~~City Manager~~Mayor or designee. Preapproval for estimated out-of-town travel expenses by the ~~City Manager is required.~~

~~(c) The City may pay the expenses of employees when they attend professional meetings with prior approval in accordance with this policy and in accordance with the administrative guidelines of the City Manager. Job-related expenses incurred by any City employee shall be reimbursed in accordance with this policy and the City Manager's Administrative Guidelines.~~

~~(d) All City employees are expected to exercise the same care incurring travel expenses that a prudent person would exercise if traveling on personal business and expending personal funds. Unauthorized costs and additional expenses incurred for personal preference or convenience will not be reimbursed. Unauthorized expenses include, but are not limited to, alcohol, movies, supplemental insurance on rental cars, fines for traffic and parking violations and the entertainment/meals/lodging of spouses or guests.~~

~~(e) Accrual of personal frequent-flyer miles, hotel "bonus points", credit card "rewards", or any other reward and similar affinity programs (including credit points or rewards directed to nonprofit organizations) is strictly prohibited.~~
~~(Ord. 22-2008. Passed 3-3-08~~Mayor or designee is required.
(Ord. Passed .)

139.23 CONFLICT; DETERMINATION OF CONTROLLING PROVISION.

If any provision of this chapter shall be in conflict with any provision contained in any labor agreement entered into by the City and a recognized employee labor organization relating

to the compensation, hours, and terms and conditions of employment of City employees covered by such agreement, pursuant to Ohio R.C. Chapter 4117, and such conflict cannot be resolved by utilizing the rules of statutory construction, the provisions of the agreement shall be deemed to be applicable and controlling unless the provision in the agreement is deemed to be contrary to law, in which case the provision of the chapter shall be deemed to be applicable and controlling. (Ord. 104-1985. Passed 9-3-85.)

139.24 DOMESTIC PARTNERSHIPS.

(a) The ~~City Manager shall establish a~~ written procedures by which employees may register their same-sex domestic partners ~~with~~shall be located in the Office of Human Resources in order to secure the benefits of this section. The ~~City Manager shall promulgate in writing the~~ criteria ~~necessary~~ to establish a domestic partnership ~~which~~ shall include, without limitation, the sharing of a common residence for at least one year, financial interdependence, competence to contract, and an exclusive relationship. Registration shall be by affidavit with supporting documentation as requested by the ~~City Manager~~Mayor.

(b) For the purposes of the following benefits, employees and their domestic partners registered pursuant to subsection (a) shall be treated in the same manner as employees and their spouses: health insurance, dental insurance, FMLA leave, sick leave and bereavement leave.

(c) An employee's registered domestic partner and the partner's family shall be considered as "relatives" with respect to City policies prohibiting the employment of relatives in specified positions. (Ord. 49-2002. Passed 4-15-02; Ord. Passed .)

139.25 CELLULAR TELEPHONES.

The purpose of this section is to provide guidance with regard to the persons to whom cellular telephone privileges are granted and the City of Cleveland Heights' expectations with regard to the use of those phones.

(a) (1) The City reserves the right to monitor the use of all City owned cellular telephones.

(2) Employees are expected to keep their cellular telephone turned on during all times agreed upon with their Department Director to assure that they can be reached.

(3) Employees in possession of City cellular telephones are required to care for the telephone in a responsible manner, and to take appropriate precautions to prevent misuse, theft, damage and vandalism.

(b) (1) Department Directors, with the approval of the ~~City Manager's~~Mayor's Office, will determine which positions require a cellular telephone to be provided by the City.

(2) The Director/Supervisor shall be responsible for oversight of employee cellular telephone usage and shall monitor and review such usage as he/she deems appropriate.

(3) The Director/Supervisor is responsible for immediately notifying the City Police Department when a cellular telephone is reported lost or stolen and is also responsible for ensuring that a terminating employee returns the cellular telephone.

(c) (1) Cellular transmissions are not secure. Employees should use discretion in relaying confidential information.

(2) In the event that a City owned cellular telephone is lost or stolen, the employee is responsible for reporting the loss or theft to his/her Director or Supervisor as soon as possible.

(3) As with a regular telephone, limited personal incidental and occasional use of the cellular telephone may occur. These calls should be limited to a short duration. Frequent or lengthy calls for personal reasons are a violation of this policy. If it is determined by City Management that an employee has excessive personal calls on his/her City cellular telephone, he/she will be required to reimburse the City for these calls.

(4) Employees are not to access and/or download online features to their cellular telephone. These features can result in extra charges and expose the cellular telephone to viruses. An employee who violates this section will be required to reimburse the City for any damages or expenses.

(5) Employees are not allowed to purchase accessories for the phone and charge them to the City unless previously approved by their supervisor.

(6) Any communication which violates applicable laws and regulations is forbidden.

(7) City employees are required to return the cellular telephone when they leave employment.

(8) Misuse of a City's cellular telephone may result in disciplinary action up to and including termination of employment.

(Ord. 173-2008. Passed 11-17-08; Ord. Passed .)

143.01 ESTABLISHMENT; COMPOSITION, TERM AND VACANCY.

The Cleveland Heights Landmark Commission is hereby established and shall consist of seven (7) members appointed by Council for staggered terms of three (3) years each, with each member serving until the appointment of a successor. A vacancy occurring during the term of any member shall be filled for the unexpired term in the manner authorized for an original appointment. All vacancies shall be filled within sixty (60) days. An extension of this time limit may be granted by City Council. In case of temporary absence or disability of any member, a member may be appointed and confirmed in the manner provided above to serve during such temporary absence or disability. Such temporary member shall possess all of the qualifications of a regular member, shall have the same powers and perform the same duties, and shall abide by all of the rules of a regular member. The ~~City Manager~~Mayor and the Director of Planning shall serve as ex-officio non-voting members of the Commission.

(Ord. 11-2019. Passed 3-4-19; Ord. _____ Passed _____.)

(2) Additionally, in requests for a Certificate of Appropriateness, a public hearing shall be required and, at least ten (10) days prior to the meeting, written notice of the meeting shall be mailed or caused to be mailed by the Commission Secretary to interested parties requesting notifications and the applicant and to all owners of all properties any part of which abuts the parcel of land upon which the subject building or structure is situated.

The failure of any such person to receive such notice shall not affect the right and power of the Commission to hear such request or to take action in accordance with such public notice.

(c) Minutes. The Landmark Commission shall keep minutes of its proceedings and these records shall be of public record and kept in the Landmark Commission office. All written reports, cases, decisions and special project descriptions shall be kept on file and available for public inspection. (Ord. 11-2019. Passed 3-4-19.)

143.07 ORGANIZATION AND OFFICERS.

The members of the Landmark Commission annually shall choose one (1) of its number to serve as Chairperson for a period of one (1) year or until a successor has been chosen. The Chairperson shall preside over meetings. In the absence of the Chairperson, a temporary Chairperson shall be elected by those present. The ~~City Manager~~Mayor shall appoint a City employee to serve as secretary of the Commission. The secretary shall:

(a) Keep, or cause to be kept, a complete record of all meetings of the Commission and a detailed record of all Commission transactions;

(b) Publish and distribute copies of the minutes, reports, and decisions of the Landmark Commission to Commission members, affected property owners, and other interested parties requesting notifications;

(c) Give notice as provided herein or by law for all public hearings conducted by the Landmark Commission;

(d) Advise the City Council of vacancies on the Commission and expiring terms;

(e) Publish a written annual report which shall include Commission activities, cases, decisions, and special projects; and

(f) At regular meetings, present a staff report updating the Commission on relevant City activities.

In addition, the Secretary shall perform such other functions as the Commission may direct.

(Ord. 11-2019. Passed 3-4-19; Ord. Passed .)

143.075 CRITERIA FOR DESIGNATION.

In determining whether or not to recommend designation of such place, site building, structure, district, work of art or object as a Landmark or Historic District, the Commission shall consider the following criteria with respect to such property's historic significance and/or architectural significance:

(a) Its character, interest or value as part of the development, heritage or cultural characteristics of the City of Cleveland Heights, State of Ohio or the United States.

CHAPTER 144
Administrative Services Commission

EDITOR'S NOTE: Council, by Resolution 20-1985, passed February 19, 1985, adopted an affirmative action policy statement, as submitted by the Administrative Services Commission, whereby all City employees and staff shall be governed by equal employment opportunity and voluntary affirmative action. Goals and timetables and affirmative measures to remedy substantial disparity between racial, gender or ethnic groups employed shall be instituted and re-evaluated.

144.01 Establishment; composition, term and vacancy.
144.02 Purpose and duties.
144.03 No compensation.
144.04 Meetings.
144.05 Chairman and Secretary.

CROSS REFERENCES
Council relations with ~~City Manager~~Mayor or designee - see CHTR. Art. III, Sec. 6; ADM. 139.21
~~City Manager~~Mayor or designee as appointing authority - see ADM. 137.10
Contracts - see ADM. Ch. 171

144.01 ESTABLISHMENT; COMPOSITION, TERM AND VACANCY.

There is hereby established in the City an Administrative Services Commission which shall consist of seven (7) members appointed by the Council, none of whom shall be a City employee. The original appointments for the terms beginning November 1, 1982 are to consist of four (4) members appointed for a four (4) year term, and three (3) members appointed for a two (2) year term. Thereafter, all appointments to the Commission shall be for a four (4) year term. Vacancies shall be filled for the remainder of unexpired terms in the same manner as the original appointments. The ~~City Manager, or his~~ Mayor or ~~her~~ designee, and the Chairman of the Administrative Services Committee of Council, or in his or her absence a member of that Committee, shall attend meetings of the Commission.
(Ord. 114-1982. Passed 10-4-82; Ord. Passed .)

144.02 PURPOSE AND DUTIES.

As part of a continuing effort to maintain an efficient and effective government in Cleveland Heights, the purpose of the Administrative Services Commission shall be to assist the Council in monitoring and changing all necessary Council policies in order to ensure equal opportunity to all persons employed by or contracting with the City, or appointed to positions by Council, without regard to and whatever be their race, sex, sexual orientation, gender identity or expression, national origin, religion or disability. The Administrative Services Commission shall review Council policies on employment, appointments of citizens to commissions, boards and committees of the City, and procedures for purchasing goods and contracting for services. This Commission shall make recommendations to Council on policy matters, only, and shall be subject to the same Charter limitations as the Council as such limitations relate to the powers and duties of the ~~City Manager~~Mayor.
(Ord. 81-2009. Passed 8-17-09; Ord. Passed .)

144.03 NO COMPENSATION.

No compensation shall be paid to any member of the Administrative Services Commission for services performed on this Commission.
(Ord. 114-1982. Passed 10-4-82.)

144.04 MEETINGS.

Meetings of the Administrative Services Commission shall be held at the City Hall or at such other public places within the City as may be authorized by the Codified Ordinances.
(Ord. 114-1982. Passed 10-4-82.)

144.05 CHAIRMAN AND SECRETARY.

(a) The members of the Administrative Services Commission annually shall choose one (1) of its members to serve as its Chairman for a period of one (1) year, or until his or her successor is chosen.

(b) The ~~City Manager~~Mayor shall appoint a City employee to serve as Secretary of the Commission who shall keep or cause to be kept a record of all meetings of the Commission.
(Ord. 114-1982. Passed 10-4-82; Ord. Passed .)

CHAPTER 145
Commission on Aging

145.01 Composition, term and vacancy.
145.02 Purposes.

CROSS REFERENCES
Meals at cost for elderly - see Ohio R.C. 3313.81
Rest homes and nursing homes - see Ohio R.C. Ch. 3721
Medical assistance program - see Ohio R.C. 5101.51
Federal supplements to aid - see Ohio R.C. 5101.53
Division of Office on Aging - see ADM. 135.06

145.01 COMPOSITION, TERM AND VACANCY.

(a) The Commission on Aging shall consist of thirteen members. Permanent nonvoting members shall be the ~~City Manager~~Mayor or ~~his/her designated representative~~designee, and the Chairperson of the Council Recreation, Community & External Relations Committee or a designated member of that Committee. All other members of the Commission shall be voting members and shall be appointed by Council. Nine members shall be City residents, at least seven of whom shall be sixty years of age or older. The remaining two members need not be City residents; however, at least one of the nonresident members shall have an expertise in some aspect of gerontology. Except in the case of mid-term vacancies, or unless otherwise provided by ordinance or resolution, all appointments to the Commission shall be for two year terms. No voting member shall be appointed to serve for more than eight consecutive years.

(b) Upon passage of this section, Council shall appoint two new members to the Commission. Both members shall be City residents age sixty or older. One member shall be appointed for a term ending June 30, 1994, and the other shall be appointed for a term ending June 30, 1995. Subsequent appointments shall be for two year terms as provided in subsection (a) hereof.
(Ord. 20-2018. Passed 3-19-18; Ord. Passed .)

CHAPTER 147
Advisory Commission For Retired Senior Volunteer Program

147.01 Creation, members, appointment and term.
147.02 Purpose.

CROSS REFERENCES
Division of Office on Aging - see ADM. 135.06
Commission on Aging - see ADM. Ch. 145

147.01 CREATION, MEMBERS, APPOINTMENT AND TERM.

(a) There is hereby established a Retired Senior Volunteer Program Advisory Commission consisting of twenty-four (24) members. Permanent nonvoting members shall be the ~~City Manager~~Mayor or ~~his~~ designee, and the Chairman of the Council Committee having jurisdiction of the subject matter thereof, or a member of that Committee. An alternate member shall be entitled to attend meetings and act instead of the described permanent nonvoting member in his or her absence.

(b) A total of twelve (12) members shall serve as representatives of the four (4) participating communities of Cleveland Heights, University Heights, East Cleveland and Shaker Heights. Each community involved in the program shall appoint three (3) members to serve on this Commission. The first appointment hereafter shall be for a term of three (3) years, the second for a term of two (2) years, and the third for a term of one (1) year. Thereafter, all appointments shall be for a term of three (3) years.

(c) The remaining ten (10) members shall be appointed by Council from within the four (4) community project areas. Seven (7) of these ten (10) members shall be drawn from service agencies and shall serve a two (2) year term. This two (2) year term shall be rotated among those serving the health and human service agencies throughout the project area, which is deemed to be the geographic limits of the four (4) communities. Three (3) members shall represent the business community and shall be appointed for a two (2) year term.

(d) No member of the Commission other than the permanent nonvoting members described hereinabove shall serve more than two (2) consecutive terms.
(Ord. 119-1982. Passed 9-7-82; Ord. _____ Passed _____.)

148.05 CHAIRPERSON.

The members of the Youth Advisory Commission shall choose annually one of its members to serve as its Chairperson. The ~~City Manager~~Mayor shall appoint a City employee to serve as staff who shall keep or cause to be kept a record of all meetings of the Commission. (Ord. 1-2013. Passed 1-7-13; Ord. Passed .)

CHAPTER 149
Community Improvement Awards Committee

149.01 Establishment, composition,
purpose and duty.

CROSS REFERENCES
Division of Building and Inspectional Services - see ADM. 131.05

149.01 ESTABLISHMENT, COMPOSITION, PURPOSE AND DUTY.

(a) There is hereby established in the City a Community Improvement Awards Committee, consisting of nine (9) members: three (3) members to be appointed by Council; three (3) to be appointed by the ~~City Manager~~Mayor; and three (3) to be appointed by the Heights Community Congress.

Those appointed originally to this Committee shall serve until January 1, 1975, or until their successors are appointed. Terms thereafter shall begin on June 1 of each year.

(b) The sole purpose of this Committee shall be to provide for community improvement awards in such categories as buildings, landscape, restoration, remodeling, maintenance and construction of property, to provide a system for making such awards and to do any and all other things necessary to establish procedures and implementation thereof to fulfill this purpose.

(A.O.; Ord. Passed .)

(c) Any appointed member who misses a majority of Committee meetings in a calendar year shall be considered unable to serve. In the event a member is unable to complete his/her term, City Council shall appoint a replacement to complete that term after seeking qualified candidates.

(d) No compensation shall be paid to any member of the Transportation Advisory Committee for services performed on this Committee.
(Ord. 175-2013. Passed 10-21-13.)

150.03 MEETINGS; CHAIRPERSON; BYLAWS.

Regular meetings of the Transportation Advisory Committee shall be held and notice given in accordance with Open Meeting requirements. The Committee shall meet at least once a quarter and shall submit an annual report to City Council. The Transportation Advisory Committee shall elect its own Chairperson annually and may establish its own bylaws after review and approval by the City Director of Law.
(Ord. 175-2013. Passed 10-21-13.)

150.04 STAFF.

The ~~City Manager~~Mayor shall appoint a City employee to serve as staff for the Committee who shall keep or cause to be kept a record of all meetings of the Committee; be responsible for notifying members of meetings and complying with public notice requirements; and assist the Committee in preparing its annual report to the City Council, as necessary.
(Ord. 175-2013. Passed 10-21-13; Ord. Passed .)

155.09 APPEAL PROCEDURE.

Any appeal from a ruling of the Director of Finance made under any provisions of this chapter shall be made to a Board of Appeals which is hereby created consisting of the Mayor, ~~City Manager~~President of Council and the Director of Law or designee. Any such appeal shall be in writing and shall state briefly the portion of the ruling complained of and the reason for such appeal and shall be filed in the office of the ~~City Manager~~Mayor not later than ten (10) days after the date that such ruling was made. The Board of Appeals shall have full power and authority to hear any such appeal or to subpoena witnesses and documents and, by a majority vote, to annul, modify or affirm any ruling appealed from, in conformity with the intent and purpose of this chapter.
(Ord. 59-2014. Passed 4-23-14; Ord. Passed .)

155.10 CONFIDENTIAL REPORTS. (REPEALED)

(EDITOR'S NOTE: Former Section 155.10 was repealed by Ordinance 59-2014, passed April 23, 2014.)

155.99 PENALTY.

(a) Whoever, being a person charged by this chapter with the duty of collecting or paying the taxes imposed by this chapter, willfully fails or refuses to charge and collect or to pay such taxes, or to make return to the Director of Finance as required by this chapter, or to permit the Director or his duly authorized agent, to examine his books and other records, in or upon any premises where the same are kept, to the extent necessary to verify any return made or to ascertain and assess the tax imposed by this chapter if no return was made, or to maintain and keep for three (3) years or such lesser or greater time as may be permitted or required by the Director shall be fined not more than one hundred dollars ($100.00) and upon conviction for a second or subsequent offense shall, if a corporation, be fined not more than five hundred dollars ($500.00), or, if an individual or member of a partnership, firm or association be fined not more than one hundred dollars ($100.00) or imprisoned not more than sixty (60) days or both.

(b) Whoever violates any provision of Section 155.10 is guilty of a misdemeanor of the fourth degree and shall be fined not more than two hundred fifty dollars ($250.00) or imprisoned not more than thirty (30) days, or both, in addition to the disqualification stated in Section 155.10.

BOARD OF REVIEW

157.2501 BOARD OF REVIEW ESTABLISHED.

A Board of Review is hereby created, consisting of:

(a) The ~~City Manager~~Mayor,

(b) The Director of Law, and

(c) The chairman of the Council Committee having jurisdiction of the subject matter hereof or a member of that Committee.

The Board shall select, each year for a one (1) year term, one (1) of its members to serve as Chairman and one (1) to serve as Secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 157.2309 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal. (A.O.; Ord. Passed .)

157.2502 DUTY TO APPROVE REGULATIONS AND HEAR APPEALS.

All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this chapter, must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator, and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.
(Ord. 77-1966. Passed 12-19-66.)

157.2503 RIGHT OF APPEAL.

(a) Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred hereby may appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator. Such appeal shall be in writing and shall state why the decision of the Administrator being appealed from should be deemed incorrect or unlawful.

(b) The Board of Review shall schedule a hearing within forty-five days of receipt of the request for hearing, unless the taxpayer waives a hearing and/or waives the forty-five day time period. The Board shall issue its decision on the appeal within ninety days of the Board's final hearing on the matter or within ninety days of receipt of notice of waiver of a hearing. On appeal the Board shall have jurisdiction to affirm, reverse or modify the ruling or decision being appealed or any part thereof. The Board shall send notice of its decision by ordinary mail to the taxpayer within fifteen business days after the issuance of the decision.
(Ord. 167-2000. Passed 12-18-00.)

157.2504 CONFIDENTIALITY OF PROCEEDINGS.

(a) Records of transactions before the Board of Review are not public records

(f) An opinion of the Tax Administrator issued under this section is not subject to appeal. (Ord. 2-2018. Passed 1-16-18.)

158.21 BOARD OF TAX REVIEW.

(a) (1) The Board of Tax Review shall consist of three (3) members. Two (2) members shall be appointed by City Council, but such appointees may not be employees, elected officials, or contractors with the City at any time during their term or in the five (5) years immediately preceding the date of appointment. One (1) member shall be appointed by the ~~City Manager of the City~~ Mayor. This member may be an employee of the City, but may not be the Director of Finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(2) The term for members of the Board of Tax Review ~~City~~ shall be two (2) years. There is no limit on the number of terms that a member may serve if the member is reappointed by the legislative authority. The board member appointed by the ~~City Manager of the City~~ Mayor shall serve at the discretion of the ~~administrative official~~ Mayor.

(3) Members of the Board of Tax Review appointed by the legislative authority may be removed by the legislative authority by majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such a member, the legislative authority must give the member a copy of the charges against the member and afford the member an opportunity to be publicly heard in person or by counsel in the member's own defense upon not less than ten days' notice. The decision by the legislative authority on the charges is final and not appealable.

(4) A member of the Board of Tax Review who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

(5) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty (60) days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the Board of Tax Review shall impair the power and authority of the remaining members to exercise all the powers of the Board of Tax Review.

(6) If a member is temporarily unable to serve on the Board of Tax Review due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the Board of Tax Review in the member's place. The appointment of such an individual shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

(b) Whenever a Tax Administrator issues an assessment, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed.

(c) Any person who has been issued an assessment may appeal the assessment to the Board of Tax Review by filing a request with the Board of Tax Review. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty (60) days after the taxpayer receives the assessment.

(d) The Board of Tax Review shall schedule a hearing to be held within sixty (60) days after receiving an appeal of an assessment under Subsection (c) herein, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board of Tax Review and may be represented by an attorney at law, certified public accountant, or other representative. The Board of Tax Review may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within one hundred twenty (120) days after the first day of the hearing unless the parties agree otherwise.

(e) The Board of Tax Review may affirm, reverse, or modify the Tax Administrator's assessment or any part of that assessment. The Board of Tax Review shall issue a final determination on the appeal within ninety (90) days after the Board of Tax Review's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the Board of Tax Review's final determination as provided in Section 5717.011 of the O.R.C.

(f) The Board of Tax Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Section 149.43 of the O.R.C. Hearings requested by a taxpayer before a Board of Tax Review created pursuant to this Section are not meetings of a public body subject to Section 121.22 of the O.R.C. or the provisions of Chapter 107 of the Codified Ordinances. (Ord. 2-2018. Passed 1-16-18; Ord. Passed .)

158.22 AUTHORITY TO CREATE RULES AND REGULATIONS.

The Tax Administrator may adopts rules and regulations to administer this Chapter. Nothing in this Chapter prohibits the legislative authority of the City, or a Tax Administrator pursuant to authority granted to the administrator by resolution or ordinance, to adopt rules to administer an income tax imposed by the City in accordance with this Chapter. Such rules shall not conflict with or be inconsistent with any provision of this Chapter. Taxpayers are hereby required to comply not only with the requirements of this Chapter, but also to comply with the Rules and Regulations.

All rules adopted under this Section shall be published and posted on the Internet. (Ord. 2-2018. Passed 1-16-18.)

158.23 RENTAL AND LEASED PROPERTY.

(a) All property owners of real property located in the City, who rent or otherwise lease the same, or any part thereof, to any person for residential dwelling purposes, including apartments, rooms and other rental accommodations, during any calendar year, or part thereof, commencing with the effective date of this section, shall file with the Tax Administrator on or before the January 31 first following such calendar year a written report disclosing the name, address and also telephone number, if available, of each tenant known to have occupied on

159.04 TAX PAYMENT AT REGISTRATION APPLICATION.

The tax imposed by this chapter shall be paid to the Registrar of Motor Vehicles of the State of Ohio or to a Deputy Registrar at the time of application for registration of a motor vehicle as provided in Ohio R.C. 4503.10.
(Ord. 80-1987. Passed 9-8-87.)

159.05 USE OF FUNDS.

All moneys derived from the tax imposed by this chapter shall be used by the City of Cleveland Heights for the purposes set forth in Ohio R.C. 4504.06.
(Ord. 80-1987. Passed 9-8-87.)

159.06 CERTIFICATION TO BUREAU OF MOTOR VEHICLES.

The ~~City Manager~~Mayor and the Clerk of Council are authorized and directed to complete any and all documents necessary to ensure that this chapter is certified to the Bureau of Motor Vehicles on or before September 30, 1987.
(Ord. 80-1987. Passed 9-8-87; Ord. Passed .)

CROSS REFERENCES

Interest in contracts - see CHTR. Art. III, Sec. 10;
GEN. OFF. 525.10
Franchises - see CHTR. Art. X, PRELIM. Table A
Contracts for utility services without advertising for bids - see Ohio R.C. 9.30
Service Department contracts - see Ohio R.C. 735.05 et seq.

171.01 MANNER OF EXECUTION.

All contracts and agreements for public work shall be executed in the name of the City by the ~~City Manager~~Mayor, endorsed as to their legal form and correctness by the Director of Law, and bear the certificate of the Director of Finance required of the fiscal officer by the Ohio Revised Code relative to the availability of funds. Such sum so certified thereafter shall not be considered unappropriated until the City is discharged from the contract. Until such contract or agreement is so signed, endorsed and certified, no person shall have any right, claim or demand against the City. (A.O.; Ord. Passed .)

171.02 COMPETITIVE BIDDING AND ADVERTISEMENT; EXCEPTIONS; CITY COUNCIL APPROVAL.

(a) Contracts or agreements which involve the expenditure of fifty thousand dollars ($50,000) or less, or contracts for personal services, may be made without published notice and without competitive bidding. But in all cases, except as otherwise provided for in this chapter or unless an alternative bidding method is authorized by Council by motion, where the expenditure exceeds fifty thousand dollars ($50,000), the contract shall be let only to the lowest and best responsible bidder, after advertising for bids once a week for not less than two nor more than four consecutive weeks in a newspaper of general circulation in the City. All bids received pursuant to such advertisement shall be opened publicly by the ~~City Manager~~Mayor or ~~his or her~~ designee in the presence of one or more other City employees. This provision is subject to subsection (g) hereof.

(b) Whenever the ~~City Manager~~Mayor finds that personal property or services can be obtained from the Federal or State government, or agency thereof, or from any political subdivision, or agency thereof, at prices less than would be obtained by taking bids from private persons, the ~~City Manager~~Mayor may purchase, lease or obtain use of such property or engage such services directly from the Federal government or through the State Superintendent of Purchasing and Printing or the Director of Transportation, or other State agency, or from the political subdivision, or agency thereof, without the necessity of advertising to obtain bids, with notice, and upon such formalities and such terms as are required by the Federal or State government or political subdivision. This provision is subject to subsection (g) hereof.

(bb) Whenever the ~~City Manager~~Mayor finds that personal property or services can be obtained from a party at prices less than would be obtained by utilizing the Ohio Department of Transportation (ODOT) Cooperative Purchasing Program, the Ohio Department of Administrative Services Cooperative Purchasing Program, the National Joint Powers Alliance Program, the Cuyahoga County Cooperative Purchasing Program, The Sourcing Alliance Network Purchasing Program, the ~~City Manager~~Mayor may purchase, lease or obtain use of such property or engage such services without published notice and without competitive bidding. This provision is subject to subsection (g) hereof.
(Ord. 52-2014. Passed 4-23-14; Ord. Passed .)

(c) Notwithstanding the provisions of this chapter, when the ~~City Manager~~Mayor determines that the emergency repair or purchase of personal or real property costs more than fifty thousand dollars ($50,000) and is necessary to provide essential governmental services, he shall cause such emergency services to be accomplished and advise Council of such act at the earliest time possible. Council shall approve by motion the expenditure for such emergency repair or purchase.
(Ord. 157-2012. Passed 11-7-12; Ord. Passed .)

(d) Notwithstanding the provisions of subsection (a) hereof and Sections 171.03, 171.04 and 171.05, the Council may award a contract for the construction of any permanent improvement without advertising to obtain bids, bidding or other compliance with respect to such sections if Council shall adopt an ordinance or resolution determining that:

(1) The estimated cost of the proposed permanent improvement is in excess of seventy-five thousand dollars ($75,000); and

(2) It is in the best interests of the City and shall, in the opinion of the Council, be cost-effective to the City to select a construction manager, who may be a general contractor, for the improvement, who will enter into a contract to provide labor and materials for all phases of the improvement, which may but need not include architectural and engineering services, at a guaranteed maximum price; and

(3) The selection of such a construction manager shall, in the opinion of the Council, expedite the selection and coordination of other qualified contractors or subcontractors and the performance of the work on and completion of the improvement on an expedited basis.

The procedures and process to be followed with respect to a guaranteed maximum price contract with a construction manager selected pursuant to this subsection (d) shall be pursuant to the provisions of Sections 171.06 through 171.09. As set forth in this chapter, the term "construction manager" may include a general contractor or other party contracting with the City to construct an improvement on a design-build basis.
(Ord. 38-2010. Passed 4-19-10.)

(e) Notwithstanding the provisions of subsection (a) hereof and Sections 171.03 and 171.05, the ~~City Manager~~Mayor may establish special Regulations relating to the process of selecting contractors for the renovation of homes under the Neighborhood Stabilization Program. The Regulations shall be in accordance with all federal regulations and the requirements of this Chapter 171 with respect to the Manner of Contract Execution. The Regulations shall provide for public advertising to establish a pool of qualified contractors who wish to participate in the Program; submitting proposals for bids on any project to at least three (3) contractors on the list on a rotating basis; and awarding contracts to the lowest responsive bidder; and reporting such contracts to Council as a matter of record, but shall exempt such contracts from other formal bidding requirements unless provided for in the Regulations. The Regulations, which shall pertain only to the Neighborhood Stabilization Program, shall be approved by the Director of Law and filed with the Clerk of Council. As used herein the term "renovation" shall include emergency repairs. (Ord. 7-2010. Passed 1-19-10; Ord. Passed .)

(f) Notwithstanding the provisions of subsection (a) hereof and Sections 171.03 and 171.05, the ~~City Manager~~Mayor may establish special Regulations relating to the process of selecting companies for the demolition of homes under the Neighborhood Stabilization Program. The Regulations shall be in accordance with all federal regulations and the requirements of this Chapter 171 with respect to the Manner of Contract Execution. The Regulations shall provide for public advertising to establish a pool of qualified companies who wish to participate in the Program; submitting proposals for bids on any demolition project to at least three (3) companies on the list on a rotating basis; and awarding contracts to the lowest responsive bidder; and reporting such contracts to Council as a matter of record, but shall exempt such contracts from other formal bidding requirements unless provided for in the Regulations. The Regulations, which shall pertain only to the Neighborhood Stabilization Program, shall be approved by the Director of Law and filed with the Clerk of Council.
(Ord. 6-2010. Passed 1-19-10; Ord. Passed .)

(g) The ~~City Manager~~Mayor shall not be required to obtain City Council approval for contracts or agreements involving the expenditure of fifty thousand dollars ($50,000) or less.
(Ord. 176-2013. Passed 10-21-13; Ord. Passed .)

171.021 BLANKET PURCHASE ORDERS.

The ~~City Manager~~Mayor is hereby authorized to create rules and regulations for the use of blanket purchase orders, pursuant to Ohio R.C. 5701.41(D)(3), with all purchase orders not to exceed the sum of fifty thousand dollars ($50,000.00) per vendor for each fiscal year.
(Ord. 157-2012. Passed 11-7-12; Ord. Passed .)

171.03 BIDDING FOR AN AWARD OF PUBLIC CONTRACTS.

(a) Where applicable, the ~~City Manager~~Mayor shall submit to Council his request for authorization to proceed to bid for any public improvement and shall, prior to going to bid, obtain by proper motion, authority to bid a given improvement to one (1) general contractor, or to two (2) or more prime contractors, or a combination thereof. In considering whether to bid a particular public improvement for one (1) or more contractors, the ~~City Manager~~Mayor shall recommend to Council the procedure to be followed based upon the nature of the particular improvement, the location and size of the site, the necessity for extraordinary precautions in protecting the site, the accessibility of the site, parking available to workers on such project, whether or not separate on-site construction offices shall be provided for more than one (1) contractor, the nature of traffic on the street or streets adjacent to the site, the necessity and difficulty of coordination of and scheduling more than one (1) contractor or subcontractors and all other relevant considerations. Council shall, by motion, either approve or disapprove the recommendation of the ~~City Manager~~Mayor based upon the criteria hereinabove outlined.

(b) If, in the opinion of the ~~City Manager~~Mayor, the lowest bidder is also responsible and the best bidder, he shall award the contract or agreement for public work to the lowest and best responsible bidder, enter into such contract or agreement in behalf of the City and make a report to Council. However, if the ~~City Manager~~Mayor has a doubt as to the lowest and best bidder being also responsible and the best bidder, he shall then report the matter to Council with his recommendation, and Council shall award the contract to the bidder whom it determines to be the lowest and best responsible bidder. The ~~City Manager~~Mayor shall thereafter enter into such contract or agreement in accordance with the decision of Council.
(Ord. 121-1981. Passed 12-7-81; Ord. Passed .)

171.04 RECORD OF BIDS IN MINUTES.

All bids received pursuant to advertisement, whether the award is made by the ~~City Manager~~Mayor or by Council, shall be reported to Council by the ~~City Manager~~Mayor and made a matter of record on the minutes. (Ord. 55-1930. Passed 4-21-30; Ord. Passed .)

171.05 STATE LAW TO GOVERN PUBLIC WORKS CONTRACTS.

Except as provided in this chapter, or as provided by the City Charter, the general laws of the State shall govern the letting of all contracts and agreements for public work.
(Ord. 55-1930. Passed 4-21-30.)

171.06 BIDDING PROCEDURE FOR PERMANENT IMPROVEMENTS INVOLVING CONSTRUCTION MANAGER.

(a) All portions of any permanent improvement performed pursuant to Section 171.02(d), that the construction manager does not perform with its own forces, shall be performed under separate contracts by and between the construction manager and contractors for each separate and distinct trade or kind of mechanical labor, employment or business involved in

the permanent improvement. Each contract which exceeds twenty-five thousand dollars ($25,000) shall be awarded by the construction manager to the lowest and best bidder after the contractor has developed trade contractor interest, provided there has been an opportunity for open and fair competition, including:

(1) Reasonable advertisement or notice, by newspaper publication or publication in trade journals or other notice, of the expectation that such contracts will be awarded by the construction manager, and

(2) The provision of an adequate description, through notices to bidders, specifications or other written documents, of the work and labor to be performed, and the materials, supplies, equipment and facilities to be provided to those persons, firms or corporations requesting in writing such description from the construction manager.

(b) Each contract to be awarded by the construction manager which exceeds the amount of one hundred thousand dollars ($100,000) shall be approved by Council, by ordinance or resolution, and each contract to be awarded by the construction manager which exceeds twenty-five thousand dollars ($25,000) but does not exceed one hundred thousand dollars ($100,000) shall be approved in a writing signed by the ~~City Manager~~Mayor or an administrative official or employee of the City designated as authorized to approve such contract by the ~~City Manager~~Mayor.

(Ord. 4-2004. Passed 1-5-04; Ord. Passed .)

171.07 BID GUARANTY.

The construction manager may require each person bidding for a contract with the construction manager pursuant to Section 171.06 to file with his bid a guaranty in the form of either a bond, a certified check, cashier's check or letter of credit provided by a bank licensed to do business in Ohio and in a form approved by the construction manager and revocable only at the option of the construction manager, equal to an amount not to exceed ten percent (10%) of the amount bid. Such bid guaranty, if required by the construction manager, shall be conditioned to provide that if the bid is accepted, the bidder will, after the selection and approval for the award of the contract, enter into a proper contract in accordance with the bid and any plans, details, specifications and bills of material. (Ord. 77-1984. Passed 10-1-84.)

171.08 TRADE AND OTHER CONTRACTS.

Each contract entered into pursuant to Section 171.06 shall be between the contractor and the construction manager and shall provide for the following:

(a) That in the hiring of employees for the performance of work under the contract or any subcontract, neither the contractor, any subcontractor nor any person acting on his behalf, shall, by reason of race, creed, sex, sexual orientation, gender identity or expression, disability or color, discriminate against any person in the employment of labor or any worker who is qualified and available to perform work to which the contract relates;

(b) That neither the contractor, subcontractor nor any person acting on his behalf, shall in any manner discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, sex, sexual orientation, gender identity or expression, disability or color;

(Ord. 81-2009. Passed 8-17-09.)

(c) That for each person discriminated against or intimidated in violation of

subsections (a) or (b) hereof there shall be deducted from the amount payable to the contractor by the construction manager the sum of twenty-five dollars ($25.00), and all money deducted from the amount payable to the contractor by the construction manager under this subsection shall be used to pay costs of the project and, if not required for such purpose, the deducted amounts shall be paid into the City's bond retirement fund ninety (90) days after the completion of the project and its final acceptance by the City;

(d) That in the hiring of employees for the performance of work under the contract or any subcontract, the contractor, any subcontractor or any person acting on his behalf, shall comply with the prevailing wage laws as set forth in Ohio R.C. Chapter 4115;

(e) That the contractor shall accept payment for work performed based on a schedule prepared by the construction manager and that any payments made shall be made at a rate of:

(1) Ninety percent (90%) of the contract price for work completed with respect to the provision of materials, supplies, equipment or facilities provided; and

(2) Ninety percent (90%) of the contract price for labor performed until fifty percent (50%) of the amount to be paid for labor under the contract has been paid or retained and one hundred percent (100%) of the contract price for labor performed after fifty percent (50%) of the amount to be paid for labor under the contract has been paid or retained;

(f) That all amounts retained by the construction manager pursuant to subsection (e) hereof shall be for a period of ninety (90) days from the date of substantial completion of the contract;

(g) That at the end of ninety (90) days following the date of substantial completion of the contract, the retained percentages shall be released and paid to the contractor upon approval by the ~~City Manager~~Mayor, less such amounts as shall be required for correction of all work found within such ninety (90) day period to be defective or not in accordance with the contract documents, provided that this provision shall not limit the liability of the construction manager or any contractor or subcontractor of the construction manager for damages or other remedies for defective work, materials or failure to perform pursuant to the contract documents;

(h) That the date and time the work contemplated by the contract shall be substantially completed and the amount and manner of the determination of any liquidated damages or other delay costs to be paid by the contractor or subcontractor to the City or the construction manager, which amounts shall be deducted from any payment due or to become due to the contractor or subcontractor in the event the contractor or subcontractor shall not substantially complete their work by such time or date. Where liquidated damages or other delay costs are to be paid by the contractor to the City, the amount and manner of their determination shall be consistent with the provisions of the City's contract with the construction manager, and, if such contract is silent, such provisions with respect to liquidated damages or other delay, costs to be paid to the City shall be approved by Council by ordinance or resolution.

(Ord. 77-1984. Passed 10-1-84; Ord. Passed .)

171.09 CONTRACT WITH CONSTRUCTION MANAGER.

Each contract entered into between the City and a construction manager, who may be a general contractor, pursuant to Section 171.02(d), shall require:

(a) That in hiring employees and the selection of contractors with respect to the contract, and in the performance of its contract, the construction manager or any person acting on his behalf shall not:

(1) By reason of race, creed, sex, sexual orientation, gender identity or expression, disability or color, discriminate against any person in the employment of labor or workers who are qualified and available to perform work to which the contract relates; and

(2) Discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, sexual orientation, gender identity or expression, disability or color.

(Ord. 81-2009. Passed 8-17-09.)

For each person discriminated against or intimidated in violation of subsections (a)(1) and (a)(2) hereof, there shall be deducted from the amount payable to the construction manager by the City the sum of twenty-five dollars ($25.00), and all money deducted from the amount payable to the construction manager under this subsection shall be used to pay costs of the project and, if not required for such purpose, the deducted amounts shall be paid into the City's bond retirement fund ninety (90) days after the completion of the project and its final acceptance by the City.

(b) That in hiring employees and awarding contracts to contractors or subcontractors, the construction manager, or any person acting on his behalf, shall comply with the prevailing wage laws as set forth in Ohio R.C. Chapter 4115.

(c) That the contract between the construction manager and the City be accompanied by a performance bond in a form and manner and by a surety as shall be determined by the contract between the City and the construction manager, or, if not provided for in such contract, as determined by the ~~City Manager~~Mayor with the approval of the Director of Law, for the amount of the contract price applicable to the provision or supply of labor, work, materials, supplies, equipment and facilities to indemnify the City against all damage suffered by the construction manager's or its contractor's or subcontractor's failure to perform the contract according to its provisions and in accordance with plans, details, specifications and bills of material and to pay all lawful claims of contractors and subcontractors, materialmen and laborers for labor performed or furnished in carrying forward, performing or completing the contract; and agreeing and asserting that the undertaking shall be for the benefit of any contractor or subcontractor, materialman or laborer having a just claim, as well as for the City. The construction manager may require such performance bonds, guarantees and indemnifications of its contractors and subcontractors as it shall determine, but any such bond, guaranty or indemnity shall also be for the benefit of the City. If permitted by the contract with the City, the performance bond of a contractor or subcontractor of the construction manager may be utilized in lieu of a portion of the principal amount of the performance bond the construction manager must provide to the City, but such substitute bond of a contractor or subcontractor of the construction manager must be specifically approved in writing by the ~~City Manager~~Mayor and Director of Law.

(d) That the construction manager shall fully comply with Section 171.06 through 171.09, and other applicable provisions of the City's Codified Ordinances and other ordinances and resolutions of the City, and any State or Federal laws which shall be finally determined to be applicable to the contract or the work or labor undertaken under the contract.

(Ord. 77-1984. Passed 10-1-84; Ord. Passed .)

171.10 OHIO DEPARTMENT OF TRANSPORTATION (ODOT) COOPERATIVE PURCHASING PROGRAM.

The ~~City Manager~~Mayor is hereby authorized to complete any and all necessary applications and forms, and take all other actions as required by the Ohio Department of Transportation for acceptance into and participation in the Cooperative Purchasing Program ODOT administers pursuant to Ohio R.C. 5513.01 for the purchase of machinery, materials, supplies or other articles, and to participate in such program to the extent it would be in the City's best interests as determined by the ~~City Manager~~Mayor. All contracts and agreements entered into pursuant to this section shall be in forms approved by the Director of Law.
(Ord. 109-1991. Passed 10-7-91; Ord. Passed .)

171.11 OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES COOPERATIVE PURCHASING.

(a) The ~~City Manager~~Mayor is hereby authorized to complete any and all necessary application, and other forms, and to pay all necessary fees, as required by the State of Ohio, Department of Administrative Services for acceptance into and participation in the program it administers pursuant to Ohio's Cooperative Purchasing Act, as set forth in Ohio R.C. 125.04, and to participate in such program to the extent that it would be in the City's best interest as determined by the ~~City Manager~~Mayor and in accordance with law as determined by the Director of Law.

(b) The ~~City Manager~~Mayor is further authorized to agree in the name of the City of Cleveland Heights to pay each vendor directly, under each State contract in which it participates, for items it receives pursuant to such contracts, and to file all reports and take all other actions which are required for the City's continued participation in the program.

(c) The ~~City Manager~~Mayor is directed to file a certified copy of this section with the Administrator, Office of State Purchasing.
(Res. 115-1988. Passed 12-5-88; Ord. Passed .)

171.12 NATIONAL JOINT POWERS ALLIANCE.

The ~~City Manager~~Mayor is hereby authorized to complete any and all necessary applications and forms, and take all other actions as required by the National Joint Powers Alliance for acceptance into and participation in the program it administers pursuant to Ohio R.C. 9.48 for the purchase of equipment, material, supplies or services, and to participate in such program to the extent that it would be in the City's best interests as determined by the ~~City Manager~~Mayor. All contracts and agreements entered into pursuant to this section shall be in forms approved by the Director of Law.
(Ord. 136-2013. Passed 8-5-13; Ord. Passed .)

171.13 CUYAHOGA COUNTY COOPERATIVE PURCHASING PROGRAM.

The ~~City Manager~~Mayor is hereby authorized to complete any and all necessary

applications and forms, and take all other actions as required by the Cuyahoga County Cooperative Purchasing Program for acceptance into and participation in the program it administers pursuant to Ohio Revised Code Section 9.48 for the purchase of equipment, material, supplies or services, and to participate in such program to the extent that it would be in the City's best interests as determined by the ~~City Manager~~Mayor. All contracts and agreements entered into pursuant to this section shall be in forms approved by the Director of Law.
(Ord. 52-2014. Passed 4-23-14; Ord. Passed .)

171.14 SOURCING ALLIANCE NETWORK PURCHASING PROGRAM.

The ~~City Manager~~Mayor is hereby authorized to complete any and all necessary applications and forms, and take all other actions as required by the Sourcing Alliance Network Purchasing Program for acceptance into and participation in the program it administers pursuant to Ohio Revised Code Section 9.48 for the purchase of equipment, material, supplies or services, and to participate in such program to the extent that it would be in the City's best interests as determined by the ~~City Manager~~Mayor. All contracts and agreements entered into pursuant to this section shall be in forms approved by the Director of Law.
(Ord. 52-2014. Passed 4-23-14; Ord. Passed .)

171.15 HOUSTON-GALVESTON AREA COUNCIL COOPERATIVE PURCHASING PROGRAM.

The ~~City Manager~~Mayor is hereby authorized to complete any and all necessary applications and forms, and take all other actions as required by the Houston-Galveston Area Council Cooperative Purchasing Program for acceptance into and participation in the program it administers pursuant to Ohio Revised Code Section 9.48 for the purchase of equipment, material, supplies or services, and to participate in such program to the extent that it would be in the City's best interests as determined by the ~~City Manager~~Mayor. All contracts and agreements entered into pursuant to this section shall be in forms approved by the Director of Law.
(Ord. 89-2019. Passed 10-7-19; Ord. Passed .)

CHAPTER 173
Bonds and Notes

173.01 State law to govern.
173.02 Bid opening.
173.03 Record of bids in minutes.
173.04 Procedure if no bid received.

CROSS REFERENCES

Restrictions on bond issues - see CHTR. Art. IX, Sec. 8
Uniform bond law - see Ohio R.C. Ch. 133

173.01 STATE LAW TO GOVERN.

All bonds and notes of the City shall be sold in the manner provided by the general laws of the State of Ohio.
(Ord. 53-1930. Passed 4-21-30.)

173.02 BID OPENING.

All bids for bonds shall be opened publicly by the Director of Finance or his designee in the presence of the ~~City Manager~~Mayor or ~~his~~ designee, at the time and place indicated in the notice of bond sale.
(A.O.; Ord. Passed .)

173.03 RECORD OF BIDS IN MINUTES.

All bids received pursuant to any notice of bond sale shall be reported by the Director of Finance to Council and made a matter of record in the minutes.
(Ord. 53-1930. Passed 4-21-30.)

173.04 PROCEDURE IF NO BID RECEIVED.

If no legal bid is received, pursuant to the notice of bond sale, such fact shall be reported to Council, which shall determine whether to readvertise or to sell at private sale. If it is determined to sell at private sale, the Director of Finance shall proceed to sell to the person who will pay the most for such bonds in accordance with the general laws of the State of Ohio, but in

CHAPTER 177
Accounting Funds

177.01 Establishment of funds.
177.02 Current funds.
177.03 Transfer of funds.
177.04 Capital Improvements Fund.
177.05 Budget Stabilization Account.

CROSS REFERENCES

Finances - see CHTR. Art. IX
Contract execution - see ADM. 171.01

177.01 ESTABLISHMENT OF FUNDS.

It is hereby declared necessary for the orderly and lawful accounting of revenues and expenditures of the City to be carried out by the Department of Finance that certain funds as listed hereinafter be established. From time to time by law, ordinance or administrative order, additional funds may be established or funds considered no longer necessary may be deleted as deemed necessary by Council or the ~~City Manager~~Mayor.
(Ord. 24-1992. Passed 3-16-92; Ord. Passed .)

177.02 CURRENT FUNDS.

The necessity is hereby declared for the establishment and maintenance of the following funds:

General Fund

Special Revenue Funds:

Street Construction, Maintenance and Repair
Foundation Grants
First Suburbs Consortium
Communications System Operating

Restricted Funds:

First Suburbs Development Council Fund
(Ord. 30-2014. Passed 3-17-14.)
Juvenile Diversion Program Fund
(Ord. 31-2014. Passed 3-17-14.)

177.03 TRANSFER OF FUNDS.

From time to time as may be declared necessary by the Council or the ~~City Manager~~Mayor funds may be transferred in accordance with the City's appropriation ordinances. (Ord. 24-1992. Passed 3-16-92; Ord. Passed .)

177.04 CAPITAL IMPROVEMENTS FUND.

(a) The ~~City Manager~~Mayor shall, each year upon presentation of the City's annual tax budget to Council, outline for Council his extended capital improvement needs for the ensuing tax budget year.

(b) It shall be the policy of Council that an expenditure for any property asset or improvement meeting the City's capitalization criteria as certified and established by the Director of Finance in the City's fixed assets policies shall be considered a capital expenditure and shall be funded through the issuance of unvoted bond anticipation notes or unvoted bonds unless Council authorizes another method of funding through appropriation ordinance or otherwise. (Ord. 24-1992. Passed 3-16-92; Ord. Passed .)

177.05 BUDGET STABILIZATION ACCOUNT.

(a) The Budget Stabilization Account shall be used to accumulate resources against increases in expenditures or decreases in revenues in the General Fund. Such changes may include additional payroll expenses due to an extra pay period within the fiscal year or substantial losses to the City's tax base.

(b) The Director of Finance shall set aside for the Budget Stabilization Account no more than five percent (5%) of the revenues credited to the General Fund in the preceding fiscal year.

(c) At any time, Council, by resolution or ordinance, may eliminate or reduce the Budget Stabilization Account, and any funds remaining will become a part of the General Fund unencumbered balance.

(d) In the event the City can no longer make payments out of the General Fund, the Director of Finance shall make payments from Budget Stabilization Account.
(Ord. 134-2015. Passed 12-21-15.)

(e) "Qualified securities' dealer" means a securities broker or firm who transacts business in any investments listed in Section 179.05(b), and who is registered either with the Securities and Exchange Commission or with a state regulatory agency of similar jurisdiction.

(Ord. 128-1983. Passed 10-3-83.)

179.02 COUNCIL FINDINGS; INAPPLICABILITY OF AND INCORPORATION OF STATE LAWS.

(a) Council hereby makes the following findings with respect to the authorization and the establishment of the policies and procedures for the deposit and investment of public moneys in the City's treasury:

(1) The authorization and establishment of such policies and procedures are powers of local self-government that may be exercised by the City through its ordinances under Ohio Constitution Article XVIII Sections 3 and 7 City Charter Article II; and

(2) The authorization and establishment of such policies and procedures are in the best interests of the City and its residents:

A. To provide a more efficient management of the City's moneys and investments; and

B. To enable the City to earn a greater yield on its investments and provide safeguards of the City's moneys.

(b) It is hereby determined that the Uniform Depository Act shall not apply to the City, except as it may be adopted by reference under this chapter and further provided that Ohio R.C. 135.11, pertaining to exemption from conflict of interest laws, shall apply to the City.

(c) Ohio R.C. 731.56 to 731.59, inclusive, shall not apply to the City, except as Ohio R.C. 731.59 is incorporated in part in Section 179.05(h).

(d) Unless incorporated by reference or otherwise made applicable in this chapter, no other provision of the Ohio Revised Code which is inconsistent or in conflict with this chapter shall apply to the City.

(Ord. 95-1981. Passed 10-5-81.)

179.03 DEPOSITORIES.

(a) The ~~City Manager~~Mayor shall determine the amount of public moneys which shall be available in active deposits to:

(1) Provide the needed cash flow to pay warrants and checks issued and outstanding, and to provide for a reasonable surplus in addition to the amount needed to pay such warrants and checks; and

(2) Maximize the interest received on public moneys of the City. Interest on active deposits shall be paid or credited by the City's designated eligible depositories at least quarterly and when funds are withdrawn, computing the time of payment from the date of deposit.

No service charge shall be made by a designated eligible depository against an active deposit or collected from or paid by the Director of Finance unless such service charge is the same as is customarily imposed by institutions receiving money on deposit subject to check, in the City, in which event the Director may pay such charge. All public moneys of the City not deposited in active deposits shall be invested pursuant to Section 179.05.

(b) The ~~City Manager~~Mayor shall, by a writing filed with the Clerk of Council, designate one (1) or more eligible depositories as the depository or depositories of the City's active deposits. In making such designation the ~~City Manager~~Mayor shall consider the following:

(1) The convenience of the location of the depository's offices;

(2) The rate or rates of interest, if any, which the depository shall pay on the active deposits;

(3) The service charges, if any, that shall be made for the services of the depository; and

(4) Any other terms or conditions with respect to the depository's acceptance of the City's active deposit.

(Ord. 95-1981. Passed 10-5-81; Ord. Passed .)

(c) The initial designation of depositories for the City's active deposits shall be for a period not to exceed six (6) months and may be made without giving the notice hereinafter provided for. Subsequent designations of depositories for the City's active deposits shall be: (1) for a period specified in the ~~City Manager's~~Mayor's written designation of depositories pursuant to subsection (b) hereof, which period shall not be less than six (6) months nor longer than five (5) years; and (2) shall be made after the Director has provided written notice by first-class mail to the eligible depositories having an office in the City, and such other eligible depositories as determined by the Director, at least sixty (60) days prior to the date of the action of the ~~City Manager~~Mayor designating depositories for the City's active deposits. Such notice shall: (1) provide an estimate of the maximum amount of such active deposits at any time during the period of designation, and the proposed period of designation or alternative proposed periods of designation; (2) request such depositories to apply in writing for all or part of the City's active deposits on or before a date and time specified in the notice; (3) request such depositories to state in their application the amount of such active deposits that shall be accepted by it, the rate or rates of interest, if any that shall be paid on such active deposits, the service charges, if any, that shall be made for its services, other terms or conditions with respect to the depository's acceptance of all or part of the City's active deposits and the location of its offices in the City, or if none are located in the City, the location of its nearest offices; and (4) include or request any other information to or from such depositories which the Director deems relevant. The request for written applications or their receipt does not constitute a bidding procedure. Rather such request and application are intended to provide relevant information to the ~~City Manager~~Mayor for his or her designation pursuant to subsection (b) hereof and to provide notice to eligible depositories that the City shall receive applications and proposals for its active deposits.

(Ord. 193-2001. Passed 11-19-01; Ord. Passed .)

(d) The ~~City Manager~~Mayor shall enter into a contract, approved as to form and content by the Director of Law, with such depositories for the appropriate period determined pursuant to subsection (c) hereof. Such contract shall establish the rate or rates of interest, if any, to be paid by the depository on the City's active deposits, the service charges, if any, the depository may make for its services, and other terms or conditions of the depository's acceptance of the City's active deposits.

(e) The limitations on the aggregate amounts of public moneys that may be on deposit with eligible depositories as set forth in the Uniform Depository Act shall apply under this chapter.
(Ord. 95-1981. Passed 10-5-81; Ord. Passed .)

179.04 SECURITY FOR REPAYMENT OF DEPOSITS.

(a) The Director of Finance, before making the initial deposit in a public depository pursuant to an award made under Section 179.03 or pursuant to an investment in a certificate of deposit under Section 179.05(b)(7) shall require the institution designated as the depository to pledge to and deposit with him, as security for the repayment of all public moneys to be deposited in the depository during the period of designation pursuant to the award, eligible securities of aggregate market value equal to the excess of the amount of public moneys to be at the time so deposited, over and above such portion or amount of such moneys as is at such time insured by the Federal Deposit Insurance Corporation or by any other agency or instrumentality of the federal government or of the State of Ohio as may be approved by the ~~City Manager~~Mayor and Director of Law, or the Director of Finance may require such institution to deposit with him surety company bonds or other insurance policies approved by the ~~City Manager~~Mayor and Director of Law which, when executed, shall be for an amount equal to such excess amount. In the case of any deposit other than the initial deposit made during the period of designation, the amount of the aggregate market value of securities required to be pledged and deposited, or of the surety company bonds required to be deposited or the other insurance coverage required, shall be equal to the difference between the amount of public moneys on deposit in such public depository plus the amount to be so deposited, minus such portion or amount of the aggregate as is at the time insured as provided in this section. The Director of Finance may require additional eligible securities to be deposited to provide for any depreciation which may occur in the market value of any of the securities so deposited.

(b) The following securities shall be eligible for the purposes of this section:

(1) Bonds, notes or other obligations of the United States; or bonds, notes or other obligations guaranteed as to principal and interest by the United States or those for which the faith of the United States is pledged for the payment of principal and interest thereon, by language appearing in the instrument specifically providing such guarantee or pledge and not merely by interpretation or otherwise;

(2) Bonds, notes, debentures or other obligations or securities issued by any federal government agency, or the export-import bank of Washington; bonds, notes or other obligations guaranteed as to principal and interest by the United States or those for which the faith of the United States is pledged for the payment of principal and interest thereon, by interpretation or otherwise and not by language appearing in the instrument specifically providing such guarantee or pledge;

(3) Bonds and other obligations of this State;

(4) Bonds and other obligations of any county, township, school district, municipal corporation, including the City or other legally constituted taxing subdivision of this State, which is not at the time of such deposit, in default in the payment of principal or interest on any of its bonds or other obligations, for which the full faith and credit of the issuing subdivisions is pledged;

(5) Bonds of other states of the United States which have not during the ten (10) years immediately preceding the time of such deposit defaulted in payments of either interest or principal on any of their bonds; and

(6) Obligations guaranteed as to principal and interest by the Ohio student loan commission.

(c) If the depository fails to pay over any part of the deposit made therein as provided by law, the Director of Finance shall sell at public sale any of the bonds or other securities deposited with him pursuant to this section or Ohio R.C. 131.09. Thirty (30) days' notice of such sale shall be given in a newspaper of general circulation at the county seat of the county in which the office of the Director is located. Pursuant to Ohio R.C. 135.18(C), when a sale of bonds or other securities has been so made and upon payment to the Director of the purchase money, the Director shall transfer such bonds or securities whereupon the absolute ownership of such bonds or securities shall pass to the purchasers, and any surplus remaining after deducting the amount due the State or subdivision and expenses of sale shall be paid to the depository.

(d) An institution designated as a depository may, by written notice to the Director designate a qualified trustee and deposit the eligible securities required by this section with the trustee for safekeeping for the account of the Director and the institution as a depository, as their respective rights to and interests in such securities under this section may appear and be asserted by written notice to or demand upon the trustee pursuant to Ohio R.C. 135.18(D). In such case, the Director shall accept the written receipt of the trustee describing the securities which have been deposited with the trustee by the depository, a copy of which shall also be delivered to the depository. Thereupon all such securities so deposited with the trustee are, pursuant to Ohio R.C. 135.18(D), deemed to be pledged with the Director of Finance and to be deposited with him, for all the purposes of this section.

(e) Council may make provisions for the exchange and release of securities and the substitution of other eligible securities therefor except where the depository has deposited eligible securities with a trustee for safekeeping as provided in this section.

(f) When the depository has deposited eligible securities described in subsection (b)(1) hereof with a trustee for safekeeping, the depository may at any time substitute or exchange eligible securities described in subsection (b)(1) having a current market value equal to or greater than the current market value of the securities then on deposit and for which they are to be substituted or exchanged, without specific authorization from Council or the Director of such substitution or exchange.

(g) When the depository has deposited eligible securities described in subsection (b)(2) to (6) hereof with a trustee for safekeeping, the depository may at any time substitute or exchange eligible securities having a current market value equal to or greater than the current market value of the securities then on deposit and for which they are to be substituted or exchanged without specific authorization of Council or the Director of any such substitution or exchange only if:

(1) The Director has authorized the depository to make such substitution or exchange on a continuing basis during a specified period without prior approval of each substitution or exchange. Such authorization may be effected by the Director sending to the trustee a written notice stating that substitution may be effected on a continuing basis during a specified period which shall not extend beyond the end of the period of designation during which the notice is given. The trustee may rely upon such notice and upon the period of authorization stated therein and upon the period of designation stated therein.

(2) No continuing authorization for substitution has been given by the Director, the depository notifies the Director and the trustee of an intended substitution or exchange, and the Director fails to object to the trustee as to the eligiblity or market value of the securities being substituted within ten (10) calendar days after the date appearing on the notice of proposed substitution. The notice to the Director and to the trustee shall be given in writing and delivered personally or by certified or registered mail with a return receipt requested. The trustee may assume in any case that the notice has been delivered to the Director. In order for objections of the Director to be effective, receipt of the objections shall be acknowledged in writing by the trustee.

(3) The Director gives written authorization for a substitution or exchange of specific securities.

(h) The depository shall notify the Director of any such substitution or exchange under subsection (g)(1) or (2) hereof. Upon request from the Director, the trustee shall furnish a statement of the securities pledged against such public deposits.

(i) Pursuant to Ohio R.C. 135.18(I), any federal reserve bank or branch thereof located in this State, without compliance with Ohio R.C. 1109.03, 1109.04, 1109.17 and 1109.18 or this chapter and without becoming subject to Ohio R.C. 1109.15 or any other law of Ohio relative to the exercise by corporations of trust powers generally, is qualified to act as trustee for the safekeeping of securities, under this section. Pursuant to Ohio R.C. 135.18(I), any institution mentioned in Ohio R.C. 135.03 which holds a certificate of qualification issued by the superintendent of banks or any institution complying with Ohio R.C. 1109.03, 1109.04, 1109.17 and 1109.18, is qualified to act as trustee for the safekeeping of securities, other than those belonging to itself, under this section and such Ohio R.C. 135.18. Pursuant to Ohio R.C. 135.18, upon application to him in writing by any such institution, the superintendent of banks shall investigate the applicant and ascertain whether or not it has been authorized to execute and accept trusts in Ohio and has safe and adequate vaults and efficient supervision thereof for the storage and safekeeping within Ohio of such securities. If the superintendent finds that the applicant has been so authorized and does have such vaults and supervision thereof, he shall, pursuant to Ohio R.C. 135.18, approve the application and issue a certificate to that effect, the original or any certified copy of which shall be conclusive evidence that the institution therein named is qualified to act as trustee for the purposes of this section with respect to securities other than those belonging to itself.

Notwithstanding the fact that a depository is required to pledge eligible securities in certain amounts to secure deposits of public moneys, a trustee shall have no duty or obligation to determine the eligibility, market value or face value of any securities deposited with the trustee by a depository. This applies in all situations including, without limitation, a substitution or exchange of securities.

Pursuant to Ohio R.C. 135.18, any charges or compensation of a designated trustee for acting as such under this section shall be paid by the depository and in no event shall be chargeable to the City or to the Director or to any officer of the City. Pursuant to Ohio R.C. 135.18, such charges or compensation shall not be a lien or charge upon the securities deposited for safekeeping prior or superior to the rights to and interests in such securities of the City or of the Director. Pursuant to Ohio R.C. 135.18 the Director and his bondsmen or surety shall be relieved from any liability to the City or to the depository for the loss or destruction of any securities deposited with a qualified trustee pursuant to this section.
(Ord. 95-1981. Passed 10-5-81; Ord. Passed .)

179.041 POOLING OF SECURITIES.

(a) In lieu of the pledging requirements prescribed in Section 179.04, an institution, with the consent of the Director of Finance, may pledge a single pool of eligible securities to secure the repayment of public moneys deposited in the institution and not otherwise secured pursuant to law, provided that at all times the total value of the securities so pledged, based on the valuations prescribed in subsection (b) hereof, is at least equal to 110 percent (110%) of the total amount of all public deposits to be secured by the pooled securities, including the portion of

179.05 INVESTMENTS.

(a) All public moneys of the City not deposited in active deposits or kept by the Director of Finance as a cash reserve as may be prescribed by the ~~City Manager~~Mayor, shall be invested by the Director pursuant to this section, and investments shall not be limited to such moneys which will not be needed for a period of six (6) months.

(b) The Director may invest in any of the following classifications of obligations, which are hereby determined to be eligible for investment:

(1) Bonds, notes or other obligations of or guaranteed by the United States, or those for which the faith of the United States is pledged for the payment of principal and interest thereon;

(2) Bonds, notes, debentures or other obligations or securities issued by any federal government agency or the export-import bank of Washington;

(3) Discount notes of the federal national mortgage association and bonds issued by the homeowners' loan corporation, as defined in Ohio R.C. 731.56;

(4) Bonds and notes of the State of Ohio;

(5) Bonds and notes of any municipal corporation, including the City, county, township or other political subdivisions of Ohio as to which there is no default of principal, interest or coupons;

(Ord. 95-1981. Passed 10-5-81; Ord. Passed .)

(6) The Director may enter into a repurchase agreement with any eligible institution mentioned in Ohio R.C. 135.03, or with any qualified securities' dealer provided that in the latter case such securities subject to repurchase shall be safekept with a qualified trustee as provided in Ohio R.C. 135.18. Under the terms of such agreement, the Director of Finance purchases for the City, and such institution agrees unconditionally to repurchase any of the securities listed in subsections (b)(1) or (2) hereof that will mature or are redeemable within five (5) years from the date of purchase; and

(Ord. 128-1983. Passed 10-3-83.)

(7) Certificates of deposit of eligible depositories, which may provide (and if so, shall be shown on its face) that the amount of such deposit is payable upon written notice a specified period before the date of the repayment maturity.

(8) Insured deposit accounts in eligible depositories paying interest at a rate greater than the interest rate paid on the City's active deposits, provided that such investments shall be approved in writing by the ~~City Manager~~Mayor and Director of Law and that such approval by the ~~City Manager~~Mayor and Director of Law shall also include approval of the insurance provided to secure and protect the City's ability to recover the principal deposited in such deposit account.

(9) Shares of the State Treasury Asset Reserve of Ohio, commonly known as STAR Ohio.

(c) The ~~City Manager~~Mayor may order the Director of Finance to sell any of the securities, obligations or certificates of deposit or to close any accounts held as investments. Such order shall be in writing and shall specifically describe the securities, obligations, certificates of deposit or accounts and fix the date on which they are to be sold or closed. Securities, obligations, certificates of deposit or accounts ordered to be sold or closed by the ~~City Manager~~Mayor shall be sold or closed for cash by the Director on the date fixed in the ~~City Manager's~~Mayor's order at the then current market price.

(d) The Director may sell any securities, obligations or certificates of deposit or close any accounts held as investments without the written order of the ~~City Manager~~Mayor mentioned in subsection (c) hereof for cash and for a sum not less than their current market price.

(e) The Director of Finance, ~~City Manager~~Mayor, Director of Law and members of Council shall not be held accountable or personally liable for any loss occasioned by the sale of securities, obligations or certificates of deposit or by the closing of insured deposit accounts authorized pursuant to subsections (c) or (d) hereof at prices lower than their cost or balance. Any loss or expense in making such sales or closings shall be payable as other expenses of the City.

(f) Investments authorized by subsection (b) hereof shall not be made at a price in excess of the current market price. The members of Council, ~~City Manager~~Mayor, Director of Law and Director of Finance shall not be personally liable for or with respect to the purchase of securities, obligations or certificates of deposit or the deposit of public moneys in insured deposit accounts authorized as investments pursuant to subsection (b) hereof; and the members of Council, ~~City Manager~~Mayor and Director of Law shall not be personally liable for any unauthorized investment by the Director of Finance.

(g) If any securities, obligations or certificates of deposit purchased under the authority of this section are issuable to a designated payee or to the order of a designated payee, the name of the Director of Finance and the title of his office shall be so designated. If any such securities, obligations or certificates of deposit are registrable either as to principal or interest, or both, then such securities shall be registered in the name of the Director as such.

(h) The Director is responsible for the safekeeping of all securities, obligations or certificates of deposit acquired by him under this section. Any of such securities, obligations or certificates of deposit may be deposited for safekeeping with a qualified trustee as provided in Ohio R.C. 135.18, except the delivery of securities acquired under a repurchase agreement shall be made to a qualified trustee. If securities, obligations or certificates of deposit are not deposited with a qualified trustee, they shall be in the custody of the Director and shall be kept by him in a safe deposit box or vault belonging to an eligible depository, and such safe deposit box or vault shall be opened only upon a warrant or order of the Director or a person duly authorized as the Acting Director of Finance in the presence of one (1) or more of the Director of Finance,

Director of Law or ~~City Manager~~Mayor or persons duly authorized as Acting Directors of Finance or Law or Acting ~~City Manager~~Mayor.

The warrant or order to open such safety deposit box or vault shall direct the deposit or removal of such securities, obligations or certificates of deposit, clipping of coupons or other official business reason for opening the box or vault. A report of what is placed in, removed from or other official business conducted shall, on the same day of the opening of the box or vault, be signed by the officer witnessing such opening and the Director of Finance, and such report shall be retained by the Director.

Interest earned on any investments, including certificates of deposit, authorized by this section shall be collected by the Director and credited by him to the proper fund of the City as required by law.

(i) Upon the expiration of the term of office of the Director or in the event of a vacancy in the office of the Director by reason of death, resignation, removal from office or otherwise, the Director or his legal representative shall transfer and deliver to his successor all securities, obligations and certificates of deposit held by him. For the securities, obligations and certificates of deposit so transferred and delivered, such Director shall be credited with and his successor shall be charged with the amount of money invested in such securities, obligations and certificates of deposit.

(j) Whenever securities, obligations or certificates of deposit acquired under this section mature and become due and payable, the Director shall present them for payment according to their tenor, and shall collect the moneys payable thereon. The moneys so collected shall be treated as public moneys subject to the provisions of this chapter.

(k) The Director shall maintain accounts in which he shall make appropriate entries of all transactions relating to the investment of treasury funds. The Director shall keep a record of the number and maturity of interest coupons on instruments in which the City has invested.

(l) On and after January 1, 1982, the Director shall provide to the ~~City Manager~~Mayor and each member of Council monthly statements showing the deposits, withdrawals and balances in the various depositories of the City; and, upon request of the ~~City Manager~~Mayor or Council, shall provide periodic reports, in such detail as required by Council or the ~~City Manager~~Mayor, of all investments purchased, sold and held.
(Ord. 95-1981. Passed 10-5-81; Ord. Passed .)

179.06 MISCELLANEOUS PROVISIONS.

(a) The Director of Finance, ~~City Manager~~Mayor, Director of Law and members of Council and their bondsmen or sureties shall be relieved from any liability for the loss of any public moneys deposited or invested pursuant to and in compliance with this chapter, including, but not limited to losses occasioned by the failure of any depository.

(b) Ohio R.C. 731.55 shall be applicable to the City and the insurance authorized by such section may be procured by the ~~City Manager~~Mayor and the costs of such insurance shall be

paid by the City.
(Ord. 95-1981. Passed 10-5-81; Ord. Passed .)

181.02 FILING.

(a) Two persons seeking to become domestic partners may complete and file a Declaration of Domestic Partnership with an office ~~of the City~~ designated by the City ~~Manager~~.

(b) No individual who has previously filed a Declaration of Domestic Partnership in this City may file a new Declaration of Domestic Partnership until at least ninety days after the date that a Notice of Termination of Domestic Partnership was filed with the City under this chapter. This prohibition does not apply if the previous domestic partnership ended because one of the domestic partners died.

(Init. Ord. approved by voters 11-4-03; Ord. Passed .)

181.03 TERMINATION OF A DOMESTIC PARTNERSHIP.

(a) A domestic partnership terminates when:

(1) One of the partners dies.

(2) A Notice of Termination of Domestic Partnership has been filed with the City.

(b) Within ninety days of the dissolution of the domestic partnership, at least one former partner shall file, by certified mail, a Notice of Termination of Domestic Partnership with an office ~~of the City~~ designated by the City ~~Manager~~. Upon receipt, the City shall provide the domestic partner who filed the Notice of Termination with two copies of the Notice marked "filed." Unless the partners jointly file the Notice, the partner filing the Notice, shall within five days, send, by certified mail, a copy of the filed Notice to the other partner's last known address.

This requirement does not apply if the termination is due to a death of one of the domestic partners.

(c) The termination shall be effective upon filing of the Notice of Termination with the City by one or both partners or on the date of the death of one of the domestic partners.

(d) A former domestic partner who has given a copy of the Declaration of Domestic Partnership to any third party to qualify for any benefit or right and whose receipt of that benefit or enjoyment of that right has not otherwise terminated, shall, upon termination of the domestic partnership, give or send to the third party, at the last known address of the third party, written notification that the domestic partnership has been terminated.

(e) Failure to provide third-party notice required in subsection (d) shall not delay or prevent the termination of the domestic partnership.

(Init. Ord. approved by voters 11-4-03; Ord. Passed .)

181.04 REGISTRATION.

(a) The ~~City Manger~~Mayor or designee shall develop standard forms for the "Declaration of Domestic Partnership" and "Notice of Termination of Domestic Partnership."

(b) The "Declaration of Domestic Partnership" form shall require each individual who wants to become a domestic partner to:

(1) State that he or she meets the requirements of Section 181.01 at the time the form is signed;

(2) Provide a mailing address;
(3) Sign the form under penalty of perjury;
(4) Have a notary public acknowledge his or her signature.

(c) The City shall have these forms available at ~~a public~~an office ~~of the City~~ designated by the City ~~Manager~~.

(d) The ~~City Manager~~Mayor or designee shall determine the actual cost of processing these forms and the City shall charge these fees to the persons filing a Declaration of Domestic Partnership. No fee shall be charged for the filing of a Notice of Termination of Domestic Partnership.

(e) The City shall register the Declaration of Domestic Partnership in a registry for those partnerships, and shall return a copy of the declaration form to the domestic partners at the address provided as their common residence.

(f) The City shall register the Notice of Termination of Domestic Partnership and shall return a copy of the Notice to the partners, if jointly filed; or to the filing partner.
(Init. Ord. approved by voters 11-4-03; Ord. Passed .)

181.05 LEGAL EFFECT.
(a) Any marriage, civil union, or other domestic partnership that is valid under the laws of the jurisdiction under which it was created shall be entitled to all of the rights and privileges available to domestic partners created in accord with Section 181.02.

(b) Filing for domestic partnership by two persons who are also married to each other in this or another State shall under no circumstances, in this or any other state, be considered as evidence, knowledge, awareness, or an admission that the partners are not lawfully married and it shall not be given any other legal effect, in this or any other state, with regard to whether the persons are lawfully married.
(Init. Ord. approved by voters 11-4-03.)

181.06 DEFINITIONS.
As used in this section:
(a) "Domestic partner" means an individual who has signed and filed a Declaration of Domestic Partnership with the City.
(b) "Share a common residence" means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.
(c) "Mutual interdependence" means that each partner contributes to the maintenance

303.06 FREEWAY USE PROHIBITED BY PEDESTRIANS, BICYCLES AND ANIMALS.

No person, unless otherwise directed by a police officer, shall:

(a) As a pedestrian, occupy any space within the limits of the right-of-way of a freeway, except: in a rest area; on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for pedestrian use; in the performance of public works or official duties; as a result of an emergency caused by an accident or breakdown of a motor vehicle; or to obtain assistance;

(b) Occupy any space within the limits of the right of way of a freeway, with: an animal-drawn vehicle; a ridden or led animal; herded animals; a pushcart; a bicycle, except on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for bicycle use; a bicycle with motor attached; a motor driven cycle with a motor which produces not to exceed five brake horsepower; an agricultural tractor; farm machinery; except in the performance of public works or official duties.

(c) If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code.

(ORC 4511.051)

303.07 APPLICATION TO DRIVERS OF GOVERNMENT VEHICLES.

The provisions of this Traffic Code applicable to the drivers of vehicles shall apply to the drivers of all vehicles owned or operated by the United States, any state or any political subdivision thereof, including this Municipality, except as may be otherwise provided by law and subject to such specific exceptions as are set forth with reference to authorized emergency and public safety vehicles.

303.08 IMPOUNDING OF VEHICLES; REDEMPTION.

(a) Police officers are authorized to provide for the removal and impounding of a vehicle under the following circumstances:

(1) When any vehicle is left unattended upon any street, park, or other public property and is inoperable or is so illegally parked that it constitutes a public hazard or obstruction to the normal flow of traffic, or interferes with street cleaning, street repair or other public utility repair, or snow removal operations. (Ord. 61-2001. Passed 5-7-01.)

(2) Abandoned vehicles.

A. When any "abandoned junk motor vehicle", as defined in Ohio R.C. 4513.63, is left on private property for more than forty-eight consecutive hours without the permission of the person having the right to the possession of the property; or

B. When any vehicle is left on private residential property, as defined in Ohio R.C. 4513.60 and such property is not posted as a private tow-away zone, for more than four consecutive hours without the permission of the person having the right to the possession of the property; or

C. When any vehicle or "abandoned junk motor vehicle", as defined

in Ohio R.C. 4513.63, is left on a public street or other property open to the public for purposes of vehicular travel or parking, or is left upon or within the right of way of any road or highway for forty-eight consecutive hours or longer without notification to the Police Chief of the reasons for leaving such vehicle in such place.

(3) When any vehicle has been reported as stolen or as being operated without the consent of the owner.

(4) When any vehicle on any street, park or other public property displays illegal license plates or fails to display the currently lawful required plates.

(5) When any vehicle has been used in or connected with the commission of a felony or misdemeanor of the first degree.

(6) When any vehicle is standing or parked in front of or so near to a fire hydrant as to impair accessibility to the hydrant or is parked in a marked fire lane.

(7) When any vehicle is standing or parked in front of a driveway.

(8) When any vehicle has either been so damaged as to be inoperable or violates equipment provisions of this Traffic Code whereby its continued operation would constitute a hazard to life, limb or property.

(9) When any vehicle is not displaying a currently valid City sticker as provided in Chapter 355 and is parked in the permit area of a municipal parking lot or is so parked that it constitutes an obstruction or interferes with parking in a municipal parking lot.

(Ord. 50-1984. Passed 6-18-84; Ord. 108-1984. Passed 12-3-84.)

(b) Police officers are authorized to provide for the removal and impoundment of a motor vehicle when such vehicle is in violation of subsections (b)(1), (2) or (3) hereof and if the conditions outlined in subsection (b)(4) hereof are not satisfied.

(1) When any vehicle is left unattended due to the removal of an ill, injured or arrested operator.

(2) When any vehicle on any street, park or other public property displays only one license plate, or fails to display current valid license plates.

(3) When any vehicle has been operated by any person who is driving without a lawful driver's license.

(4) No tow or impoundment authorized by this subsection shall be undertaken and completed unless:

A. The operator of the vehicle is unwilling or unable to remove or provide for the removal of the vehicle in question.

B. Satisfactory arrangements are made for removal of such vehicle and the vehicle is not actually removed within three hours from such time.

(c) When any vehicle is located within the City for which three or more parking tickets or summons for such violation have been issued, and the owner or operator of such vehicle has failed to respond to such parking tickets by payment thereof, and the City has mailed, by regular mail, a final notice to the owner of such vehicle at his or her last known address notifying such person of the violation of the Traffic Code, and directing such person to either pay the parking tickets existing against such vehicle, or to request, in writing, a hearing by the Cleveland Heights Chief of Police no later than fourteen days from the date listed on such final notice to contest the validity of such tow and impoundment, then such person shall either request a hearing or pay the parking tickets within such fourteen-day period or such

vehicle may be towed and impounded after the ~~City Manager~~Mayor or designee has approved a tow list specifically including such vehicle for failure to comply with the provisions of this Traffic Code. If a hearing is requested and the owner or operator of such vehicle contends payment has been made for the tickets and the administrative records of the City are in error by not reflecting the payment, the issue shall be deemed satisfied and the vehicle shall not be added to the tow list.

(d) When the impounding of a motor vehicle has occurred, the Police Department shall forthwith notify the registered vehicle owner of the fact of such removal and impounding, reasons therefor, and the place of storage. Such party shall be afforded, upon written request to the ~~City Manager~~Mayor or ~~his~~ designee, no later than fourteen days after impoundment/tow, an opportunity to contest the validity of such impoundment/tow. Any person desiring to redeem an impounded vehicle shall appear at the Police Department to furnish satisfactory evidence of identity and ownership or right to possession. Prior to the issuance of a release form, the claimant, owner or operator shall either:

(1) Pay the amount due for any fines or violations on account of which such vehicle was impounded; or

(2) As the Court may require, post a bond in an amount set by the Court to answer such violations; and shall either

(3) Pay the pound operator all towage and storage charges; or

(4) Post a cash or surety bond in an amount not to exceed two hundred dollars ($200.00) guaranteeing the payment of all towage and storage charges should it be determined, by plea or otherwise, that the vehicle in question was, in fact, lawfully impounded.

(e) No pound operator in possession of a vehicle first impounded pursuant to this section shall impose a charge for towage in excess of its then prevailing charge for vehicles similarly towed in its ordinary course of business, nor a charge for storage in excess of its then prevailing charge for vehicles similarly stored on its own premises in its ordinary course of business.

(Ord. 27-1982. Passed 3-15-82; Ord. Passed .)

303.09 FINES AND PENALTIES CREDITED TO GENERAL FUND.

All fines and penalties collected under the provisions of this Traffic Code shall be paid into the City Treasury and credited to the General Fund.

(Ord. 109-1990. Passed 12-3-90.)

303.10 VEHICLE TRESPASS.

No person shall enter into or upon any vehicle, motorcycle or motor vehicle, the property of another person, without the consent of the owner or operator thereof.

303.11 ENFORCEMENT OF CERTAIN PARKING OFFENSES.

It shall be the duty of police officers of the City, acting in accordance with instructions

signs or markings.

351.06 SELLING OR REPAIRING VEHICLE UPON ROADWAY.

No person shall stop, stand or park a vehicle upon any roadway for the principal purpose of:

(a) Displaying such vehicle for sale;

(b) Greasing or repairing such vehicle except repairs necessitated by an emergency.

351.07 UNATTENDED VEHICLE: DUTY TO STOP ENGINE, REMOVE KEY, SET BRAKE AND TURN WHEELS.

(a) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, effectively setting the parking brake, and, when the motor vehicle is standing upon any grade, turning the front wheels to the curb or side of the highway.

The requirements of this section relating to the stopping of the engine, locking of the ignition and removing the key from the ignition of a motor vehicle do not apply to any of the following:

(1) A motor vehicle that is parked on residential property;

(2) A motor vehicle that is locked, regardless of where it is parked;

(3) An emergency vehicle;

(4) A public safety vehicle. (ORC 4511.661)

(b) Whenever any police officer finds any motor vehicle parked or standing unattended, with an ignition key in such vehicle, the police officer is authorized to remove the ignition key from the vehicle and to deliver such key to the officer in charge of the police station of the City.

351.08 OPENING VEHICLE DOOR ON TRAFFIC SIDE.

No person shall open the door of a vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers. (ORC 4511.70(C))

351.09 ALL NIGHT PARKING REGULATIONS.

(a) No person, except a physician making an emergency call, shall park any vehicle on any street in the City between the hours of 3:00 a.m. and 6:00 a.m. Nothing herein contained shall limit the authority of the Safety Director to further limit or entirely prohibit parking between such hours at places which he may designate and cause to be marked with appropriate signs. (Ord. 103-1976. Passed 1-17-77.)

(b) The aforementioned regulations contained in this Section 351.09 of Part Three

(Traffic Code) of the Codified Ordinances of the City of Cleveland Heights shall remain in full force and effect upon all streets not specifically enumerated below, but the enforcement thereof shall be temporarily suspended for the period ending December 31, 2021, or such earlier date as Council may subsequently prescribe, on the following-described streets in the City of Cleveland Heights.

(1) Mayfield Road from the Westerly line of Eddington Road west to Coventry Road.

(2) Euclid Heights Boulevard from Coventry Road to Edgehill Road.

(3) Derbyshire Road from Euclid Heights Boulevard to Norfolk Road.

(4) The entire length of the east side of Surrey Road.

(5) Bellfield Avenue from Cecil Court Southerly to North Park Boulevard.

(6) Middlehurst Road from Mayfield Road to the south side of Hampshire Road.

(7) South side of Hampshire Road from Hampshire Lane to Coventry Road.

(8) Grandview Avenue from Cecil Place Southerly to West St. James Parkway.

(9) Superior Park Drive from North Taylor Road to South Compton Road.

(10) Yorkshire Road from Lee Road, extending in an Easterly direction on the south side to a point coinciding with the Westerly property line of a single-family home identified as 3220 Yorkshire Road, and extending in a Westerly direction on the south side of Yorkshire Road to a point coinciding with the Easterly property line of the first single-family home on Yorkshire Road west of Lee Road.

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(11) Norfolk Road between Cedar Road and Derbyshire Road.

(12) East side of Overlook Road from south of the Edgehill Road intersection in front of PPN 685-03-057 to the northern driveway of 2300 Overlook Road, PPN 685-02-002.

(13) The area directly in front of 3251 East Overlook Road.

(c) The ~~City Manager~~Mayor or designee is authorized to issue permits to residents and owners of property on Kensington Road between Lee Road and Cottage Grove Road which will allow such permit holders to park either in Municipal Lot No. 16 or overnight on Kensington Road between Lee Road and Cottage Grove Road. Such permits will be available for sale for a period from January 1, 2021, through December 31, 2021, at a cost of one hundred fifteen dollars ($115.00) per calendar quarter.

(d) The ~~City Manager~~Mayor or designee is additionally authorized to issue permits to residents and owners of property on Hampshire Road and Overlook Road to park overnight on Hampshire Lane and Overlook Road at Euclid Heights Boulevard and on the east side of Overlook Road from south of the Edgehill Road intersection in front of PPN 685-03-057 to the northern driveway of 2300 Overlook Road, PPN 685-02-002. Such permits shall be available for sale from January 1, 2021, through December 31, 2021, at a cost of one hundred fifteen dollars ($115.00) per calendar quarter.

(e) The ~~City Manager~~Mayor or designee is further authorized to issue permits to residents and owners of property on Hillcrest, Belmar, Glenmont and Eddington Roads between Mayfield Road and Avondale Road to park overnight on the owner's or resident's street in the area between Mayfield Road and Avondale Road. Such permits shall be available for sale for a period from January 1, 2021, through December 31, 2021, at a cost of one hundred fifteen dollars ($115.00) per calendar quarter.

(f) The ~~City Manager~~Mayor or designee is also authorized to issue two permits to residents and owners of property at 3251 East Overlook Road to park overnight directly in front of the same. Such permits shall be available for sale from January 1, 2021, through December 31, 2021, at a cost of one hundred fifteen dollars ($115.00) per calendar quarter.
(Res. 137-2020. Passed 12-7-20; Ord. Passed .)

351.10 PARKING ON PRIVATE OR PUBLIC PROPERTY OTHER THAN STREETS.

(a) The parking of vehicles on private or public property other than streets shall be prohibited without the consent of the owner of such private property or the proper governmental agency in charge of such public property.

(b) No vehicle shall be parked on public property in violation of the rules and regulations established by the governmental agency controlling such public property.

(c) No vehicle shall be parked on any private property in violation of any regulations established by the owner of such private property.

(d) The provisions of subsections (b) and (c) hereof shall not be applicable unless the private or public property is posted in a conspicuous manner setting forth the prohibition of parking or the conditions and regulations under which parking is permitted.
(Ord. 31-1971. Passed 5-17-71.)

351.101 PARKING PROHIBITED IN LANDSCAPED YARD AREAS.

(a) No parking of a motor vehicle shall be permitted nor shall any person park a motor vehicle in a landscaped front, side or rear yard area.

(b) The terms "landscaped"; "yard"; "yard, front"; "yard, rear"; and "yard, side" shall have the same meanings as those terms are defined in the City's Zoning Code.
(Ord. 120-1987. Passed 9-6-88.)

351.11 OBSTRUCTING LANE ACCESS TO PUBLIC BUILDINGS.

No person shall park or stand any vehicle or place any other obstacle in any lane, alley, privately owned public parking lot, driveway or service area, in such a manner as to obstruct the free passage of public safety vehicles or any other vehicle passing through or over such area.

(2) No person shall stop, stand or park any motor vehicle in an area that is commonly known as an access aisle, which area is marked by diagonal stripes and is located immediately adjacent to a special parking location provided under subsection (e) of this section or at a special clearly marked parking location provided in or on a privately owned parking lot, parking garage, or other parking area and designated in accordance with that subsection.

(c) When a motor vehicle is being operated by or for the transport of a person with a disability that limits or impairs the ability to walk and is displaying a removable windshield placard or a temporary removable windshield placard or special license plates, or when a motor vehicle is being operated by or for the transport of a handicapped person and is displaying a parking card or special handicapped license plates, the motor vehicle is permitted to park for a period of two hours in excess of the legal parking period permitted by local authorities, except where local ordinances or police rules provide otherwise or where the vehicle is parked in such a manner as to be clearly a traffic hazard.

(d) As used in this section:

(1) "Handicapped person" means any person who has lost the use of one or both legs, or one or both arms, who is blind, deaf or so severely handicapped as to be unable to move without the aid of crutches or a wheelchair, or whose mobility is restricted by a permanent cardiovascular, pulmonary or other handicapping condition.

(2) "Person with a disability that limits or impairs the ability to walk" has the same meaning as in Ohio R.C. 4503.44.

(3) "Special license plates" and "removable windshield placard" mean any license plates or removable windshield placard or temporary removable windshield placard issued under Ohio R.C. 4503.41 or 4503.44, and also mean any substantially similar license plates or removable windshield placard or temporary removable windshield placard issued by a state, district, country or sovereignty. (ORC 4511.69)

351.13 EMERGENCY PARKING BAN DURING SNOW CONDITIONS.

(a) Whenever the ~~City Manager,~~Mayor or ~~in his absence his~~ designee, shall declare an emergency to exist by reason of his determination, that snow has accumulated to the depth of two inches or more, the parking of any vehicle, except for the immediate loading or unloading of passengers, shall be prohibited for the duration of such emergency on all streets and highways within the City.

(b) Such ban shall commence one hour after the first announcement by radio or television stations that such emergency has been declared. The emergency parking ban shall remain in effect until cancelled by the ~~City Manager~~Mayor or ~~his~~ designee. The ~~City Manager,~~Mayor or ~~his~~ designee, shall use reasonable means, including announcements by radio or television stations, to notify the public of the existence or cancellation of the emergency parking ban set forth in this section, but no person shall be excused from compliance with this section on the grounds that he was not informed that such emergency parking ban was in effect.

(c) A police officer may order the removal of any vehicle parked or standing upon a street or highway in violation of the foregoing provision and require the driver or other person in charge of such vehicle to remove the same. The police officer may also effect the towing and impoundment of the vehicle.

(d) Any vehicle found standing on any street or highway which has been exempted by ordinance from the all night parking prohibition of Section 351.09 shall also be exempt from the provisions of this section.

(e) The penalty for violation of this section shall be as provided in Section 351.99 except that the registered owner or other person found to be in charge of the vehicle shall be liable to pay any towing and storage charges in connection with the removal of the vehicle. (Ord. 110-1987. Passed 11-16-87; Ord. Passed .)

351.14 PARKING EXPIRED MOTOR VEHICLES.

No person shall park any vehicle upon any public street, highway, or municipal lot upon which is displayed an expired license plate or an expired validation sticker. (Ord. 119-2018. Passed 10-15-18.)

351.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for misdemeanor classifications and penalties.)

Whoever violates any provision of Chapter 351 is guilty of a misdemeanor of the fourth degree.

CHAPTER 355
Municipal Parking Lots

355.01 ~~City Manager to establish, construct, maintain and operate.~~ Establishment, construction, maintenance and operation of off-street parking facilities.
355.02 Request to establish and operate off-street parking.
355.03 Appropriations and site improvements.
355.04 Rules and regulations.
355.05 Use of meters or parking by permit.
355.06 Permit application and issuance; permit transfer to another vehicle.
355.07 Fees and rental periods.
355.08 Affixing permit.
355.09 Permit revocation for violation.
355.10 Financing assistance by Councilmanic bonds.
355.11 Parking inoperative or unlicensed motor vehicles.
355.99 Penalty.

CROSS REFERENCES
Off-street parking facilities - see Ohio R.C. 717.05 et seq.
Registered owner prima-facie liable for unlawful parking - see TRAF. 351.02
Use of slugs; defacing or tampering with meter - see TRAF. 353.06; GEN. OFF. 545.11
Single vehicle use of metered parking space - see TRAF. 353.07

355.01 ~~CITY MANAGER TO ESTABLISH~~ ESTABLISHMENT, ~~CONSTRUCT~~CONSTRUCTION, ~~MAINTAIN~~MAINTENANCE AND ~~AND OPERATE~~ OPERATION OF OFF-STREET PARKING FACILITIES.
When Council by resolution determines that off-street parking facilities for motor

vehicles should be established in a designated location, the ~~City Manager~~Mayor or designee shall be authorized to lay out, establish, construct, maintain and operate such facilities upon receipt of indentures of conveyances, in form approved by the Director of Law, of the titles to the several parcels of land comprising such location and/or of easements therein, and/or of leasehold interests therein. The estates so conveyed to the City may be conditional upon establishment and maintenance of such off-street parking facilities. The City may discontinue the operation of any such facility at any time, whereupon the City's officers shall return all its estates in such land to the grantors, except that if the City has paid full compensation for and acquired a fee simple title in any of such lands, title thereto shall remain in the City.
(Ord. 52-1956. Passed 2-4-57; Ord. Passed .)

355.02 REQUEST TO ESTABLISH AND OPERATE OFF-STREET PARKING.

When any person requests the City to establish and operate an off-street parking facility for motor vehicles in a designated location, he shall furnish the ~~City Manager~~Mayor or designee with the following:

(a) Assurance satisfactory to him that such person probably can procure delivery to the City of indentures of conveyances as described in Section 355.01;

(b) Drawings describing such property and the proposed improvements thereof; and

(c) Estimates of the cost of laying out, establishment and construction of such facility.

The ~~City Manager~~Mayor or designee shall report such request to Council with such data and with such additional information as he considers appropriate and shall make recommendations for such action as he shall consider proper.

(Ord. 52-1956. Passed 2-4-57; Ord. Passed .)

355.03 APPROPRIATIONS AND SITE IMPROVEMENTS.

If Council by resolution determines that off-street parking facilities for motor vehicles should be established and maintained on any proposed site and makes appropriation of the money necessary to lay out, establish and construct such facility, which may include garages for parking and any other structures needed for the proper operation of such facility, and if and when the ~~City Manager~~Mayor or designee shall have received the indentures of conveyances as described in Section 355.01, the ~~City Manager~~Mayor or designee shall proceed to grade, drain, surface and otherwise improve such site in such manner and with such structures as have been or may be approved by Council, either by contract or by force account according to law as may be determined.

(Ord. 52-1956. Passed 2-4-57; Ord. Passed .)

355.04 RULES AND REGULATIONS.

(a) It shall be the duty of the ~~City Manager~~Mayor to prepare rules and regulations for the operation of any off-street parking lot or facility owned, operated or controlled by the City. If rental charges are deemed necessary or desirable, a schedule of such charges is to be made for the use of parking thereon and a recommendation of the number of parking meters to be installed, shall be reported to Council. Council thereupon shall by ordinance approve such rules and regulations, such schedule of rental charges, as recommended by the ~~City Manager~~Mayor or as modified by Council, and shall determine the number of parking meters to be installed, whereupon such rules and regulations and the rental charges shall become the legal rules and regulations governing the operation of such parking lot and enforceable by law as hereinafter provided.

(Ord. 52-1956. Passed 2-4-57; Ord. Passed .)

(b) The ~~City Manager~~Mayor is hereby authorized to establish and promulgate such rules and regulations as are not inconsistent with the provisions of this chapter, governing the operation and control of Municipal parking lots of the City. All users of the Municipal parking lots, including permit holders shall be subject to all the terms, conditions and penalties provided

by this chapter and to the rules and regulations established by the ~~Manager~~Mayor.
(Ord. 67-1954. Passed 10-4-54; Ord. Passed .)

(c) The fee for each transfer or replacement permit shall be ten dollars ($10.00).

(d) The fee for each permit issued in Lot 32, Taylor Commons Plaza, shall be one hundred three dollars and fifty cents ($103.50) per three-month rental period.

(e) Permits may be issued to registered Cleveland Heights High School students authorizing said students to park in Municipal Lot No. 5 and/or the Cedar-Lee Parking Deck during school hours as provided herein. The permits shall be valid from 7:30 a.m. through 4:30 p.m., Monday through Friday, on days when school is in session. The permits shall be sold by Cleveland Heights High School, with all collected funds being paid to the City. The fee for the permits shall be thirty-four dollars and fifty cents ($34.50) per school semester.
(Ord. 211-2013. Passed 12-16-13.)

355.08 AFFIXING PERMIT.

The permittee shall affix the permit to the passenger vehicle described in his application, in a position on the inside of the rear window so it will be plainly visible from the outside. Such permit shall at all times be maintained as herein provided.
(Ord. 52-1956. Passed 2-4-57.)

355.09 PERMIT REVOCATION FOR VIOLATION.

In addition to the penalties provided in Section 303.99, the ~~City Manager~~Mayor or designee shall have authority to revoke any permit for failure on the part of the permittee to comply with the provisions of this chapter or with the rules and regulations as established by the ~~City Manager~~Mayor.
(Ord. 52-1956. Passed 2-4-57; Ord. Passed .)

355.10 FINANCING ASSISTANCE BY COUNCILMANIC BONDS.

Council declares its intention to assist in financing any Municipal parking lots or facilities which hereafter may be established pursuant to the procedure set forth in this chapter, by issuing bonds of the City of appropriate character or nature, as determined by Council, and in such amount as Council may deem necessary. Such bonds will be issued from time to time and in such amounts as Council may hereafter determine at the time that any parking lot or facility may be established pursuant to the provisions of this chapter. However, nothing herein contained shall bind the City to issue any of such bonds to pay any part of the cost and expense of establishing or improving any particular parking lot or facility project which may be undertaken pursuant to the provisions of this chapter, Council reserving unto itself the full discretion to assist in the financing of such parking lot or facility project and to such extent as may be determined at the time such project is accepted and approved.
(Ord. 52-1956. Passed 2-4-57.)

355.11 PARKING INOPERATIVE OR UNLICENSED MOTOR VEHICLES.

No person shall park any motor vehicle in a Municipal parking lot which is inoperative or

503.03 FRAUDULENT ADVERTISING.

No person shall directly or indirectly make, publish, disseminate, circulate or place before the public, in a newspaper, magazine or other publication, or in the form of a book, notice, handbill, poster, circular, pamphlet, letter, sign, placard, card, label or over any radio station, or in any other way, an advertisement or announcement of any sort regarding merchandise, securities, service, employment, real estate or anything of value offered by him for use, purchase or sale, and which advertisement or announcement contains any assertion, representation or statement which is untrue or fraudulent.

No person shall, in any manner, or by any means of advertisement or other means of communication, offer for sale any merchandise, commodity or service, as part of a plan or scheme with the intent, design or purpose not to sell the merchandise, commodity or service so advertised at the price stated therein, or with the intent, design or purpose not to sell the merchandise, commodity or service so advertised. Nothing in this section shall apply to any visual or sound radio broadcasting station, to a telephone company offering announcement service according to tariffs filed with the Public Utilities Commission of Ohio, or to any publisher or printer of a newspaper, magazine or other form of printed advertising, who broadcasts, publishes or prints such advertisement in good faith without knowledge of its false, deceptive or misleading character.

503.04 RINGING DOORBELLS FOR HANDBILLS.

No person distributing handbills, circulars or other advertisements shall ring any doorbell, sound any door knocker or otherwise call the resident of any residence to the door to receive such handbills, circulars or other advertisements.

503.05 FALSELY DESCRIBED MERCHANDISE.

No person, with intent to defraud by sale thereof, shall place on any merchandise any label or tag which falsely describes the kind, number, quantity, weight, grade or quality of such merchandise. No person shall sell or offer for sale any merchandise upon which, to his knowledge, a label or tag has been placed, which label or tag falsely describes the kind, number, quantity, weight, grade or quality of such merchandise.

503.06 SIGNS OR OBSTRUCTIONS ON PUBLIC PROPERTY.

No person shall attach, erect or maintain any sign of any type or description, or place any obstruction in, on or over any street or other public property within the City, without first obtaining a permit therefor from the ~~City Manager~~Mayor or designee or the Board of Education. (A.O.; Ord. Passed .)

503.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a minor misdemeanor. (See Section 501.99 for penalties applicable to any misdemeanor classification.)

CROSS REFERENCES

Power to restrain and impound animals - see Ohio R.C. 715.23
Dog license required - see Ohio R.C. 955.05 et seq.
Driving animals upon roadway - see TRAF. 303.05, 303.06

505.01 ENFORCEMENT BY ANIMAL WARDEN; POWERS AND DUTIES.

The ~~City Manager~~Mayor shall appoint an Animal Warden or other person(s) including, but not limited to, the Chief of Police and/or City police officers to enforce the terms of this chapter, and for the purposes of this chapter, "Animal Warden" shall be defined to include any such persons so appointed or authorized by the ~~City Manager~~Mayor. Such persons shall have the authority to enter all public and private property, and to do all other things reasonable and necessary to enforce this chapter. Nothing contained herein shall prohibit the Animal Warden from destroying an animal when in his judgement such act is necessary and proper to protect life and property.

(Ord. 94-2019. Passed 11-4-19; Ord. Passed .)

505.20 APPEAL

(a) There is hereby created a board consisting of the Chairperson of the Public Health and Safety ~~and Municipal Services c~~Committee of Council or other member of City Council appointed by the ~~Mayor~~President of Council, and the ~~City manager~~Mayor or designee, and a member of the City's Department of Community ~~Relations Division~~Services appointed by the ~~City manager. The Board shall have jurisdiction to hear appeals from notices and orders issued pursuant to this Chapter. The presence of two (2) members shall constitute a quorum. Any action of the Board shall require two (2) affirmative votes.~~ Mayor.
(A.O.; Ord. Passed .)

(b) Any person aggrieved by the order of the Animal Warden hereunder may appeal such order in writing to the board. Such appeal shall be filed within five (5) working days of the date of notice, and heard within ten (10) working days of the date the appeal is filed. The filing of a notice of appeal hereunder shall stay the requirements of Section 505.091, but shall not preclude the Animal Warden or Cuyahoga County Board of Health from impounding the dog if otherwise permitted by this chapter or other provisions of law and shall not in any way relieve the owner or other person harboring or having care or control of the dog from civil or criminal liability for injury or damage caused by the dog or for violations of provisions of this chapter other than Section 505.091.

(c) The provisions of this section are not applicable to dogs classified as vicious pursuant to the provisions of subsection (c)(2)C. of Section 505.091.
(Ord. 94-2019. Passed 11-4-19.)

505.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

509.02 FAILURE TO DISPERSE.

(a) Where five or more persons are participating in a course of disorderly conduct in violation of Section 509.03, and there are other persons in the vicinity whose presence creates the likelihood of physical harm to persons or property or of serious public inconvenience, annoyance or alarm, a law enforcement officer or other public official may order the participants and such other persons to disperse. No person shall knowingly fail to obey such order.

(b) Nothing in this section requires persons to disperse who are peaceably assembled for a lawful purpose.

(c) (1) Whoever violates this section is guilty of failure to disperse.

(2) Except as otherwise provided in subsection (c)(3) hereof, failure to disperse is a minor misdemeanor.

(3) Failure to disperse is a misdemeanor of the fourth degree if the failure to obey the order described in subsection (a) hereof, creates the likelihood of physical harm to persons or is committed at the scene of a fire, accident, disaster, riot, or emergency of any kind. (ORC 2917.04)

509.03 DISORDERLY CONDUCT; LOUD NOISES; INTOXICATION.

(a) No person shall recklessly cause inconvenience, annoyance or alarm to another, by doing any of the following:

(1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;

(2) Making unreasonable noise or offensively coarse utterance, gesture or display, or communicating unwarranted and grossly abusive language to any person;

(3) Insulting, taunting or challenging another, under circumstances in which such conduct is likely to provoke violent response;

(4) Hindering or preventing the movement of persons on a public street, sidewalk, road, highway or right of way, or to, from, within or upon public or private property, so as to interfere with the rights of others, and by any act which serves no lawful and reasonable purpose of the offender;

(5) Creating a condition which is physically offensive to persons or which presents a risk of physical harm to persons or property, by any act which serves no lawful and reasonable purpose of the offender.

(b) The following acts, among others, are declared to be loud, disturbing and unreasonable noises in violation of this chapter, but such enumerations shall not be deemed to be exclusive, namely:

(1) Horns, signaling devices, etc. The sounding of any horn or signaling device on any motor vehicle, motorcycle or other vehicle except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for an unnecessary and unreasonable period of time. The use of any

signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up.

(Ord. 76-1990. Passed 8-20-90.)

(2) Radios, phonographs, etc. The using or operating of any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. Such operation between the hours of 9:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifty feet from the building, structure or vehicle in which it is located, or such operation between the hours of 7:00 a.m. and 9:00 p.m. in such a manner as to be plainly audible at a distance of 100 feet from the building, structure or vehicle in which it is located, shall be prima facie evidence of a violation of this section. (Ord. 142-1996. Passed 10-21-96.)

(3) Loudspeakers, amplifiers for advertising. The using of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public.

(4) Exhausts. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(5) Shouting. The shouting and crying of peddlers, hawkers, vendors and others which disturb the peace and quiet of the neighborhood.

(6) Heavy equipment. The use of heavy earth-moving and construction equipment in close proximity to residential dwellings during the hours of 7:00 p.m. to 7:00 a.m. The above regulations shall apply except in periods of emergency upon permit issued by the ~~City Manager~~Mayor or designee.

(Ord. 76-1990. Passed 8-20-90; Ord. Passed .)

(7) Landscaping equipment. The operation of any powered lawn mower, leaf blower, edger, chainsaw or similar power-driven landscaping equipment within 300 feet of any dwelling before 7:00 a.m. or after 9:00 p.m.

(Ord. 58-2006. Passed 6-5-06.)

(c) No person, while voluntarily intoxicated shall do any of the following:

(1) In a public place or in the presence of two or more persons, engage in conduct likely to be offensive or to cause inconvenience, annoyance or alarm to persons of ordinary sensibilities, which conduct the offender, if he were not intoxicated, should know is likely to have such effect on others.

(2) Engage in conduct or create a condition which presents a risk of physical harm to himself or another, or to the property of another.

(3) Be found in a public place in such condition.

(d) When to an ordinary observer a person appears to be intoxicated, it is probable cause to believe such person is voluntarily intoxicated for purposes of subsection (c) hereof. (Ord. 76-1990. Passed 8-20-90.)

521.06 LEAVING ARTICLES OR EQUIPMENT ON STREETS OR OTHER PUBLIC PROPERTY.

(a) No person shall place, deposit or leave, or permit to be placed, deposited or left, any grocery cart or wagon or any other article or equipment, except newsracks installed, placed or maintained pursuant to and in accordance with Chapter 731 of the Codified Ordinances of the City of Cleveland Heights, on any portion of any public street, alley or sidewalk or public parking lot or other public property. Any such cart, wagon, article or other equipment so placed, deposited or left may be impounded by the City and recovered by the owner thereof upon the payment of not less than ten dollars ($10.00) per article or piece of equipment. Any such article or piece of equipment not claimed by the owner within thirty (30) days after impoundment shall be forfeited and may be sold by the City in the manner provided by law to cover expenses incurred.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 33-1984. Passed 9-17-84.)

521.07 UNLAWFULLY USING OR OBSTRUCTING FIRE HYDRANTS.

(a) No person, unless authorized by the City, or except in case of fire, shall tamper with, turn on, or use water from any fire hydrant, valve box, stop cock, pipe, apparatus or other fixture for supplying water, or in any way to use water therefrom for private use.

(b) No person shall in any manner obstruct any fire hydrant by placing or permitting to exist any material, article or equipment in front thereof, from the curb line to the center of the street, or to within five feet from either side thereof.

(c) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

521.08 LAWN SPRINKLING RESTRICTIONS.

(a) The ~~City Manager~~Mayor is hereby authorized during times of water shortage in the City to issue an order restricting the use of water and the sprinkling of lawns. Such order may state the hours of the day or night when such sprinkling shall not be permitted. The order shall be given by proclamation signed by the ~~City Manager~~Mayor.

(b) Such ban shall commence one hour after the first announcement by radio or television stations that such water shortage emergency has been declared. The emergency sprinkling ban shall remain in effect until cancelled by the ~~City Manager~~Mayor or ~~his~~ designee. The ~~City Manager,~~Mayor or ~~his~~ designee, shall use reasonable means, including announcements by radio or television stations, to notify the public of the existence or cancellation of the emergency sprinkling ban set forth in this section, but no person shall be excused from compliance with this section on the grounds that he was not informed that such emergency sprinkling ban was in effect.

(c) Whoever violates this section is guilty of a minor misdemeanor.

(A.O.; Ord. Passed .)

521.09 WATERCOURSE DIVERSION, OBSTRUCTION OR POLLUTION.

(a) No person shall cause or permit any watercourse or any portion thereof in the City to be diverted from its natural channel or enclose or in any way obstruct the same without first having obtained a permit from the ~~City Manager~~Mayor or designee.
(Ord. 12-1993. Passed 1-19-93; Ord. Passed .)

(b) No person shall throw, deposit or allow to collect or cause to be thrown or deposited in or on the banks of any watercourse in the City, materials of any kind, including, without limitation, litter, household waste, commercial waste, animal waste, construction debris or grass clippings, leaves, or other yard waste, in such close proximity to such watercourse that such materials or portions thereof will be washed away and carried down the stream.
(Ord. 14-2003. Passed 1-21-03.)

(c) No person shall pollute, corrupt or render unwholesome or impure any natural watercourse.

(d) Whoever violates this section is guilty of a minor misdemeanor.

521.10 AIRPLANES OR HELICOPTERS.

(a) No airplane or helicopter shall land or take off within the City without obtaining prior permission of the ~~City Manager~~Mayor.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(A.O.; Ord. Passed .)

521.11 HOURS OF SOLID WASTE COLLECTION AND TRANSPORTATION.

(a) No person owning or driving a vehicle hauling solid waste shall cause the collection, transportation or transfer of such waste other than between the hours of 7:00 a.m. and 7:00 p.m. Application for exceptions to this provision may be made to the ~~City Manager~~Mayor or designee, on a form provided by the ~~City Manager~~Mayor or designee. Such exceptions shall be granted only where the applicant is able to demonstrate circumstances of great practical difficulty in the collection and transportation of solid waste in areas where there is heavy daytime vehicular and pedestrian traffic and a concentration of commercial activity, and where the evening hauling will not have a deleterious effect on the residents of neighboring properties. For the purpose of this section, "solid waste" shall have the same meaning as the term "litter" in Section 527.01(f).

(b) Whoever violates this section is guilty of a minor misdemeanor on the first offense; on a second offense such person is guilty of a misdemeanor of the fourth degree; on a third or each subsequent offense, such person is guilty of a misdemeanor of the third degree.
(Ord. 36-1991. Passed 4-15-91; Ord. Passed .)

container. Any person removing usable furniture, appliances or building materials may do so only prior to 9:00 p.m. on the evening preceding collection day, and after 6:00 a.m. on the day of collection.
(Ord.145-2001. Passed 8-20-01.)

527.16 DUMPING PROHIBITED.

(a) No person shall dump or allow to accumulate any litter or solid waste on any public or private property or in a public trash receptacle, or place not licensed pursuant to or designated as an authorized dumping site by the City of Cleveland Heights.

(b) The ~~City Manager~~Mayor or designee is hereby authorized to send written notice to violators to remove debris illegally dumped. If the violator fails to comply with this order within three days, the City may remove the debris. The violator shall be liable for a civil penalty equal to three times the cost of such removal services.
(Ord. 37-1985. Passed 4-1-85; Ord. Passed .)

527.17 CONSTRUCTION SITES.

(a) Each contractor shall be responsible for maintaining the job site in such a manner that litter will be prevented from being carried or deposited by the elements upon any public place or private premises.

(b) Litter or other debris, including dirt and mud, deposited as the result of normal construction process upon any public or private premises shall be removed.
(Ord. 37-1985. Passed 4-1-85.)

527.18 CATCH BASINS AND MANHOLES.

No person shall dispose of any litter, household waste, commercial waste, animal waste, construction debris, grass clippings, leaves or other yard waste, or any other substance or material other than water, in any catch basin, drainage grate or manhole in the City of Cleveland Heights.
(Ord. 14-2003. Passed 1-21-03.)

527.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a minor misdemeanor, except that any violation of Sections 527.04, 527.06, 527.07, 527.15(b), 527.16 and 527.17 shall be a misdemeanor of the fourth degree. (See Section 501.99 for penalties applicable to any misdemeanor classification.)
(Ord. 37-1985. Passed 4-1-85.)

CROSS REFERENCES

Municipal powers to regulate - see Ohio R.C. 715.44, 715.47
Abatement - see Ohio R.C. 3707.01 et seq.

553.01 DEFINITIONS.

(a) "Nuisance" means:

(1) An unreasonable interference with a right common to the general public. Unreasonable interference includes:

A. Conduct that significantly interferes with public health, safety, peace, comfort, or convenience;

B. Conduct that is contrary to a statute, ordinance, or regulation; or

C. Conduct that is of a continuing nature or has produced a permanent or long-lasting effect, and has a significant effect upon the public right, of which the actor is aware or should be aware;

(2) Any weeds or any grass growing upon a parcel of land and/or any abutting treelawn that is six (6) inches or higher in height or any vegetation that obstructs views compromising safe ingress or egress or otherwise impedes traffic, including pedestrian traffic, on any public rights of way. Treelawn means the landscaped area between the sidewalk and the paved portion of a street; (Ord. 122-2015. Passed 11-2-15.)

(3) Any deterioration of structural materials or lack of repair or maintenance of a building, structure or real estate that is a hazard to the health, safety or welfare of its occupants or the public or that, if not abated, will become a blighting or deteriorating factor in the neighborhood that impairs or adversely affects the value of neighboring property. Such deterioration shall include, but not be limited to, deterioration of sidewalks or vegetation; an unsecured vacant structure; abandoned, unusable personal property or other debris; and conditions found and declared to be conducive to harboring mice and rats. Conditions conducive to harboring mice and rats

shall include, but not be limited to, broken, cracked or defective ceilings, walls, floors or foundations in which are holes or cracks of a size sufficient to permit a rat or mouse to pass through; materials, including rubbish, piled, stored or kept on the premises, into, among or under which rats or mice have burrowed or may burrow; buildings, foundations of buildings, appurtenances to buildings, floor, walks or driveways under which mice or rats have burrowed; portable buildings, boxes, crates and materials, including rubbish, piled, stored or kept so that they rest directly on the ground surface or less than eighteen (18) inches above such surface; garbage containers without watertight tops, sides and bottoms or without tight-fitting tops or around or under which mice or rats have burrowed or may burrow; and feeding of wild animals, birds or other wild life, other than in suitable containers for food, elevated at least thirty-six (36) inches above the ground level, or in any other manner which attracts or may attract rodents. (Ord. 8-2019. Passed 2-4-19.)

(4) The following activities committed on properties in the City:

A. Unreasonable noise and other acts of disorderly conduct in violation of Section 509.03 or substantially equivalent state laws;

B. A felony drug activity in violation of Ohio R.C. Chapter 2925 or substantially equivalent federal laws;

C. Any drug abuse offense in violation of Sections 513.03, 513.05, 513.07, or 513.08 or substantially equivalent state laws;

D. Assault in violation of Section 537.03 or substantially equivalent state laws;

E. Littering and/or maintenance of litter in violation of Sections 527.05, 527.12, 527.13, 1351.29 and/or 1369.07 or substantially equivalent state laws;

F. Barking or howling animals in violation of Section 505.04 or substantially equivalent state laws;

G. Keeping a vicious dog on the premises, on a permanent or temporary basis, or allowing such a dog to remain on the premises, in violation of Section 505.091 or substantially equivalent City or state laws as amended from time to time; or

H. Any of the following activities, when conducted by a resident or occupant of a premises against a person who resides within 1,000 feet of the resident or occupant or against the property of such a person:

1. A theft offense in violation of Sections 545.05 or 545.08 or substantially equivalent state laws;

2. An offense against property in violation of Sections 541.02, 541.03, 541.04, 541.05, 541.051, 541.06 or 541.08 or substantially equivalent state laws;

3. An offense against a person in violation of Sections 537.03, 537.04, 537.05, 537.051, 537.06, 537.07, 537.08, 537.09, 537.10 or 537.11 or substantially equivalent state laws; or

4. Littering in violation of Section 527.12 or substantially equivalent state laws.

I. Commercial parties in residential districts in violation of Section 509.09 or substantially equivalent state laws.

The above references to sections of the General Offenses Code and state and federal laws should not be interpreted to mean that a prosecution of the specific charge is a necessary prerequisite to an action under this Chapter nor shall it be interpreted to mean that proof of the action beyond a reasonable doubt is required. Nothing in this Chapter shall be construed in a manner to penalize victims of domestic violence or otherwise discourage victims of domestic violence to seek law enforcement assistance.

(5) Actions committed by a juvenile occurring on properties in the City that would constitute an offense listed in Section 553.01(a)(4) if committed by an adult; or

(6) Any designation of a nuisance by City ordinance or resolution, state law, or a court of law, or any ongoing violation of state or City law that unreasonably interferes with a right common to the general public.

(b) "Responsible Party" means the owner of the property. If the property is rented or occupied by another party and the ~~City Manager~~Mayor or designee has determined that the renter or occupant may be creating or otherwise contributing to the Nuisance, then the renter or occupant of the property is also the Responsible Party.
(Ord. 122-2015. Passed 11-2-15; Ord. Passed .)

553.02 NUISANCE ABATEMENT BOARD OF REVIEW.

There is hereby created a Nuisance Abatement Board of Review ("Board"), consisting of the Chairperson of the ~~Housing & Transportation~~Public Safety and Health Committee of Council or other member of City Council appointed by the ~~Mayor~~President of Council, and the ~~City Manager~~Mayor or designee, and a member of the City's Department of Community Relations ~~Division~~ appointed by the ~~City Manager~~Mayor. The Board shall have jurisdiction to hear appeals from notices and orders issued pursuant to this ~~C~~chapter. The presence of two (2) members shall constitute a quorum. Any action of the Board shall require two (2) affirmative votes. (Ord. ~~20-2018.~~ Passed ~~3-19-18~~.)

553.03 AUTHORITY OF CITY OFFICIALS.

(a) Whenever there shall be done or exist within the City any act, thing, use, or condition of a kind which is defined as a Nuisance pursuant to this Chapter, the ~~City Manager~~Mayor or ~~the~~ designee is authorized and directed promptly to cause its abatement as hereinafter provided.

(b) As set forth herein, should the ~~City Manager~~Mayor or designee or Board determine that razing a property or structure is the best method to abate a Nuisance, Council first shall declare said property or structure a Nuisance prior to the issuance of an order to raze.

(c) As set forth herein, should the ~~City Manager~~Mayor or designee or Board determine that revocation of a Certificate of Occupancy or Certificate of Business Occupancy is the best method to abate a Nuisance, Council first shall declare said property or use of a property a Nuisance prior to the issuance of an order to revoke.

(Ord. 122-2015. Passed 11-2-15; Ord. Passed .)

553.04 RELATIONSHIP TO OTHER LAWS.

The authority to abate Nuisances granted hereby and the procedures set forth herein shall be in addition to and shall not limit the authority to abate Nuisances or take any other action granted in other City ordinances, resolutions, state law, or courts of law.
(Ord. 122-2015. Passed 11-2-15.)

553.05 PROCEDURES TO ABATE NUISANCES INVOLVING VEGETATION.

The following procedures shall apply to the abatement of a Nuisance as defined by Section 553.01(a)(2):

(a) It shall be the responsibility of each owner of property within the City to maintain their property and abutting treelawns in a manner that prevents any weeds or grass from growing six (6) inches or higher in height and that prevents any vegetation from obstructing views compromising safe ingress or egress or otherwise impeding traffic, including pedestrian traffic, on any public rights of way. If the owner does not cut or destroy, or cause to be cut or destroyed, vegetation as required herein, the ~~City Manager~~Mayor or designee is authorized to cause said Nuisance to be cut. Such abatement may be issued by the ~~City Manager~~Mayor or designee without reporting said Nuisance to Council in the manner provided herein.

(b) The owner of property determined to be in violation of this Section shall be served a written notice upon the first identified violation per calendar year. Such notice shall state that the owner has two (2) calendar days to cut or destroy, or cause to be cut or destroyed, any weeds or grass that is six (6) inches or higher in height or any vegetation that obstructs views compromising safe ingress or egress or otherwise impedes traffic, including pedestrian traffic, on any public rights of way.

Further, the notice shall conspicuously state that failure to comply will result in the City causing the work to be done and the costs to be assessed against the property in the manner provided by this Section. The notice shall also conspicuously state that any subsequent violations of this Section concerning the same property during the same calendar year shall require no further notice.

(c) When it is deemed necessary for the City to cut vegetation, in accordance with the provisions of this Section, the owner shall be charged at the rate of two hundred dollars ($200.00) per hour or portion thereof, or the actual cost of the work, whichever is larger. The minimum charge shall be two hundred dollars ($200.00). Within thirty (30) calendar days after such work is performed, the City shall serve an order to the owner to pay the cost of such cutting, which shall include a statement of the amount of costs incurred and an explanation of the appeals process set forth in Section 553.10 herein. The order shall additionally state that failure to pay within thirty (30) calendar days or timely appeal will result in the charge being certified to the County Fiscal Officer for collection as other taxes and assessments are collected.

(d) If within thirty (30) calendar days after the mailing of the order, the cost is neither paid nor timely appealed, it may be certified to the County Fiscal Officer for collection as other taxes and assessments are collected or the City may seek recovery of such costs by civil action against the property owner involved. An Affidavit of Facts shall be filed if more than one thousand dollars ($1,000) has been expended by the City in abating the Nuisance.

(Ord. 122-2015. Passed 11-2-15; Ord. _____ Passed _____.)

553.06 PROCEDURES TO ABATE STRUCTURAL OR MAINTENANCE NUISANCES.

The following procedures shall apply to the abatement of a Nuisance as defined by Section 553.01(a)(3):

(a) The ~~City Manager~~Mayor or designee, upon finding that a Nuisance as defined by Section 553.01(a)(3) exists, may cause written notice and an order to abate to be served upon the Responsible Party.

(b) This notice and order shall set forth:

(1) The nature of the Nuisance;

(2) An order to abate the Nuisance and a statement of the act or acts to be taken to abate it;

(3) The estimate of the cost of abating the same if done by the City;

(4) A reasonable time, of at least fourteen (14) calendar days, within which the owner shall abate the Nuisance or pay the estimate cost to the City;

(5) A statement explaining the procedures of the appeals process, as set forth in Section 553.10 herein;

(6) A statement that failure to abate the Nuisance as ordered, pay the estimated cost, or timely appeal will result in the charge being certified to the County Fiscal Officer for collection as other taxes and assessments are collected.

(c) Such notice and order to abate may be issued without reporting same to Council unless the ~~City Manager~~Mayor or designee determines that razing a building or structure and/or the revocation of a Certificate of Occupancy or Certificate of Business Occupancy is the best method to abate the Nuisance. In such cases, Council shall first declare said property or use of property a Nuisance prior to the issuance of an order to raze or an order to revoke in accordance with Section 553.03 herein.

(d) If said Nuisance is not abated in the manner and/or timeframe established by the notice and order to abate or if the notice and order is not timely appealed, the ~~City Manager~~Mayor or designee has the authority to abate said Nuisance. Within thirty (30) calendar days of the work being performed, the City shall serve the Responsible Party an order to pay costs, which shall include a statement of the amount of costs incurred and an explanation of the appeals process set forth in Section 553.10 herein. The order shall additionally state that failure to pay within thirty (30) calendar days or timely appeal will result in the charge being certified to the County Fiscal Officer for collection as other taxes and assessments are collected.

(e) If within thirty (30) calendar days after the mailing of the order, the cost is neither paid nor timely appealed, it may be certified to the County Fiscal Officer for collection as other taxes and assessments are collected or the City may seek recovery of such costs by civil action against the property owner involved. An Affidavit of Facts shall be filed if the City has razed a building or structure or if more than one thousand dollars ($1,000) has been expended by the City in abating the Nuisance. (Ord. 122-2015. Passed 11-2-15; Ord. Passed .)

553.07 PROCEDURES TO ABATE NUISANCES INVOLVING CRIMINAL ACTIVITY; COSTS OF ENFORCEMENT.

The following procedures shall apply to the abatement of a Nuisance as defined by Section 553.01(a)(4) or (5):

(a) The ~~City Manager~~Mayor or designee shall have full authority to abate Nuisances as defined by Section 553.01(a)(4) or (5) in accordance with law including, but not limited to, the use of administrative and law enforcement action.

(b) All administrative and law enforcement costs incurred by the City in abating any such Nuisances may be charged to the Responsible Party under the procedure set forth herein if two (2) or more of the Nuisances, as defined by Section 553.01(a)(4) or (5), have occurred on the same property within a twelve (12) month period, or one (1) felony drug activity in violation of

Ohio R.C. Chapter 2925, or a substantially equivalent federal law has occurred on the property.

(c) Within thirty (30) calendar days of the most recent commitment of an activity listed in Section 553.01(a)(4) or (5), the City shall give notice to the Responsible Party to pay such administrative and law enforcement costs, which notice shall be accompanied by an order to pay within thirty (30) calendar days, a statement of the amount of costs incurred, and an explanation of the appeals process set forth in Section 553.10 herein. The order shall additionally state that failure to pay or timely appeal will result in the cost being certified to the County Fiscal Officer for collection as other taxes and assessments are collected.

(d) If within thirty (30) calendar days after the mailing of the notice and order, the cost is neither paid nor timely appealed, it may be certified to the County Fiscal Officer for collection as other taxes and assessments are collected or the City may seek recovery of such costs by civil action against the property owner involved. An Affidavit of Facts shall be filed if more than one thousand dollars ($1,000) has been expended by the City in abating the Nuisance.

(e) If the ~~City Manager~~Mayor or designee finds that a use of a property constitutes a Nuisance due to repeated criminal activities listed in Section 553.01(a)(4) or (5), the official shall report such facts to Council which may thereupon declare such use to be a Nuisance. The ~~City Manager~~Mayor or designee shall determine what reasonable activities are necessary to abate such nuisance including, but not limited to, the revocation of the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy.

(f) Upon such finding and declaration, the ~~City Manager~~Mayor or designee shall proceed in the manner provided in Section 553.06 (a), (b), (d) and (e), unless the method of abatement is the revocation of the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy. In such event, the ~~City Manager~~Mayor or designee shall cause the service of a written notice and an order to revoke the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy. The order shall set forth an explanation of the appeals process set forth in Section 553.10 herein. If the order is not timely appealed, the certificate shall be revoked.

(Ord. 122-2015. Passed 11-2-15; Ord. Passed .)

553.08 PROCEDURES TO ABATE OTHER NUISANCES.

(a) If the ~~City Manager~~Mayor or designee finds the existence of a Nuisance as defined by Section 553.01(a)(1) or Section 553.01(a)(6), such official shall report such facts to Council which may thereupon declare such use, condition, building, or structure to be a Nuisance. The ~~City Manager~~Mayor or designee shall determine what reasonable activities, repairs, or maintenance are necessary to abate such nuisance including, but not limited to, razing the building and structure or the revocation of the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy.

(b) Upon such finding and declaration, the ~~City Manager~~Mayor or designee shall proceed in the manner provided in Section 553.06 (a), (b), (d) and (e), unless the method of abatement is the revocation of the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy. In such event, the ~~City Manager~~Mayor or designee shall cause the service of a written notice and an order to revoke the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy. The order shall set forth an explanation of the appeals process set forth in Section 553.10 herein. If the order is not timely appealed, the certificate shall be revoked.

(Ord. 122-2015. Passed 11-2-15; Ord. Passed .)

553.09 SERVICE OF NOTICE AND ORDER TO ABATE.

Unless otherwise noted, all notices and orders issued pursuant to this Chapter shall be

553.11 EMERGENCY.

If it is determined by the ~~City Manager~~Mayor or ~~the D~~designee that an emergency exists by reason of the continuing presence of a Nuisance, the City may perform any action which may be required under this Chapter or other applicable state or federal law without prior notice or hearing.

Within thirty (30) calendar days of the action being performed, the City shall serve the Responsible Party an order to pay costs, which shall include a statement of the amount of costs incurred and an explanation of the appeals process set forth in Section 553.10 herein. The order shall additionally state that failure to pay within thirty (30) calendar days or timely appeal will result in the charge being certified to the County Fiscal Officer for collection as other taxes and assessments are collected. (Ord. 122-2015. Passed 11-2-15; Ord. Passed .)

(g) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct or chimney.

(h) "Refuse" includes garbage, rubbish, trade wastes, leaves, salvable material, agricultural wastes and other wastes.

(i) "Ringelmann Chart" means the chart published and described in the United States Bureau of Mines Information Circular 8333 of May, 1967.

(Ord. 57-1973. Passed 11-19-73; Ord. 8-2019. Passed 2-4-19.)

555.02 OPEN BURNING PROHIBITED; EXCEPTIONS.

(a) No person shall dispose of refuse or other waste material by open burning, or cause, permit or maintain open burning of refuse or other waste material. No person shall conduct, cause or permit the conduct of a salvage operation by open burning.

(b) No person shall maintain any open fire except as follows:

(1) Fires for noncommercial cooking of food for human consumption.

(2) Fires for recreational or ceremonial purposes.

(3) Fires to abate a fire hazard, providing a hazard is so declared by the Fire Department.

(4) Fires for training personnel in the methods of fire fighting.

(5) Fires for the disposal of dangerous materials, where there is no alternate method of disposal and such burning is approved by the ~~City Manager~~Mayor or designee.

(6) Fires for other essential purposes for which approval has been granted by the ~~City Manager~~Mayor or designee. (Ord. 57-1973. Passed 11-19-73; Ord. 8-2019. Passed 2-4-19; Ord. Passed .)

555.03 AIR POLLUTION NUISANCES PROHIBITED.

No person shall cause, permit or maintain any public nuisance by causing or contributing to air pollution, or by the emission or escape into the ambient air from any source, of smoke, ashes, dust, dirt, grime acids, fumes, gases, vapors, odors or any other substances or combinations of substances, in such manner or in such amounts as to endanger or tend to endanger the health, comfort, safety or welfare of the general public or neighboring property owners or residents, or which is unreasonably offensive and objectionable to the public, or which causes unreasonable injury or damage to property or interferes with the comfortable enjoyment of property or normal conduct of business. (Ord. 57-1973. Passed 11-19-73; Ord. 8-2019. Passed 2-4-19.)

555.04 FUEL-BURNING EQUIPMENT AND INCINERATORS.

No person shall operate, maintain or permit the operation or maintenance of any fuel-burning equipment or incinerator which causes or contributes to air pollution or the emission or escape into the ambient air or the atmosphere inside the structure containing such equipment or incinerator, of any sparks, flyash or unreasonable offensive odors.

(c) This section shall not apply to:

(1) Traveling or the providing of services and commodities incidental thereto;

(2) Recreation, sports, amusements, entertainment or exhibitions or the providing of services and commodities incidental thereto;

(3) Fairs held under the authority of the State or a political subdivision, or independent fairs, or the providing of services and commodities incidental thereto;

(4) The operation of publicly owned places of entertainment, recreation or education, by a public officer, concessionaire, exhibitor or employees of all or any of them, or any other person, or the providing of services and commodities incidental thereto.

(ORC 3773.24)

701.02 ISSUANCE OF PERMITS AND LICENSES.

Unless otherwise provided by ordinance, the Director of Finance shall issue all permits and licenses for businesses after approval of the application and payment of the required fees.

701.03 APPLICATION.

All persons desiring to conduct or operate any business regulated by ordinance shall make application to the City upon forms provided by the City. Such applications shall be approved by the ~~City Manager~~Mayor or designee or such other officer of the City as may be designated by him.

(A.O.; Ord. Passed .)

701.04 LICENSE TERM; NONTRANSFERABILITY; NO FEE PRORATION.

Unless otherwise provided for by ordinance, all licenses shall be issued on an annual basis and shall expire on December 31 of the year of issue, and may be renewed for a calendar year upon payment of the prescribed fee. No licenses or permits shall be transferable unless otherwise specifically authorized by ordinance. Except as otherwise provided, there shall not be proration of fees for a period less than a calendar year, and all fees collected shall be deposited in the General Fund.

701.05 POSTING OF LICENSE ON PREMISES.

No licensee, owner, manager or person in charge of any business licensed by the City shall fail to prominently post the license within public view upon the premises covered by such license during the term thereof.

701.06 LICENSE REVOCATION OR SUSPENSION.

The ~~City Manager~~Mayor or designee may, upon conviction of any person for a violation of any City ordinance or State statute, revoke or suspend the license or permit of or relating to the business of the person convicted. Any license or permit transferred without consent of the City shall also be cause for revocation or suspension. No refund of any paid license fee shall be made for the unexpired term of any license which is suspended or revoked. No license or permit shall be issued to any person whose license or permit has been revoked until the expiration of one (1)

year from the date of such revocation.
(A.O.: Ord. Passed .)

701.07 APPEALS BOARD AND PROCEDURE.

Any person whose application for a license or permit has been denied by any City official so authorized, or whose license or permit has been revoked or suspended by the ~~City Manager~~Mayor or designee may appeal such denial, revocation or suspension to a Board of Appeals consisting of the Director of Law and the Director of Finance or their designated representatives and the Chairperson of the Council Housing and Transportation Committee or a member of that Committee. The appeal shall be filed with the Board within ten (10) days of notice of the action being appealed. The Board shall act within ten (10) days of the filing of the notice of appeal and the Board's action in any appeal shall be final.
(Ord. 20-2018. Passed 3-19-18; Ord. Passed .)

701.99 GENERAL CODE PENALTY.

Whenever in Part Seven of the Codified Ordinances entitled, "Business Regulation Code", any act is prohibited or is made or declared to be made unlawful or an offense or a misdemeanor, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision shall be punishable by a fine not exceeding five hundred dollars ($500.00), or by imprisonment not exceeding six (6) months, or both. Any such violation shall constitute a separate offense on each successive day continued.

709.03 LICENSE APPLICATION AND ISSUANCE; QUALIFICATIONS.

(a) Application for a billiard room or bowling alley license shall be made to the ~~City Manager~~Mayor or designee in writing and in such form as shall be approved by the ~~City Manager~~Mayor or designee.

(b) The application shall contain:

(1) The name and address of the applicant.

(2) If such applicant is a club, society or corporation, the names and addresses of all officers thereof.

(3) The name and address of the manager or person in charge of the bowling alley or billiard room.

(4) The address of the premises to be licensed.

(5) Whether the applicant and manager are citizens of the United States.

(6) Whether the applicant has been engaged in operating a bowling alley or billiard room in the preceding five (5) years and, if so, the period during which and the location where such operation has been conducted.

(7) The name and address of the owner of the premises where such operation is proposed to be conducted.

(c) No license shall be issued to any applicant who is not a citizen of the United States.

(d) Upon payment of the fees provided for in Section 709.05, the ~~City Manager~~Mayor or designee shall issue the license applied for if he finds that:

(1) The applicant is a person of good moral character, is at least twenty-one (21) years of age, and is a citizen of the United States.

(2) No similar license previously held by the applicant, whether issued by Cleveland Heights or any other public body or corporation, has been revoked for any reason.

(3) The premises sought to be licensed and the proposed operation will comply in all respects with all regulations, ordinances or laws applicable thereto.

(Ord. 9-1964. Passed 4-6-64; Ord. Passed .)

709.04 LICENSE EXPIRATION, TRANSFER AND REVOCATION.

(a) All licenses for a billiard room or bowling alley issued pursuant to the provisions of this chapter shall expire on December 31 next following the date of issuance.

(b) No transfer of any such license, for an applicant or licensee or place of operation shall be permitted except by written approval of the ~~City Manager~~Mayor or designee.

(c) Any such license may be revoked by the ~~City Manager~~Mayor or designee at any time upon proof that:

(1) False or incorrect information was given on the application for such

license;

~~1994 Replacement~~

(2) The premises being used pursuant to such license do not conform with this chapter or other applicable provisions of law or ordinance; or

(3) The operation being conducted pursuant to such license does not comply with all provisions and regulations set forth in this chapter or other applicable provisions of law or ordinance.

(Ord. 9-1964. Passed 4-6-64; Ord. Passed .)

709.05 LICENSE FEES; PRORATION.

(a) Annual bowling alley and billiard room license fees shall be as follows and the total amount of fees for each license applied for shall accompany the application for such license:

(1) For bowling alleys: fifty dollars ($50.00) for each alley proposed to be operated or used under such license.

(2) For billiard rooms: fifty dollars ($50.00) for each billiard or pool table proposed to be used or maintained under such license.

(Ord. 155-2004. Passed 10-18-04.)

(b) The fees for the first license issued to any applicant shall be prorated for each quarter year or fraction thereof remaining in the calendar year for which the license is issued. (Ord. 9-1964. Passed 4-6-64.)

709.06 BILLIARD ROOM HOURS OF OPERATION.

No person whether as owner or operator shall operate any billiard room or permit any person to play at the game of billiards therein at any time between the hours of 2:00 a.m. and 9:00 a.m.
(Ord. 87-1993. Passed 8-16-93.)

709.07 BOWLING ALLEY HOURS OF OPERATION.

No person whether as owner or operator shall operate any bowling alley or permit any person to engage in bowling therein between the hours of 2:00 a.m. and 9:00 a.m.
(Ord. 9-1964. Passed 4-6-64.)

709.08 MINORS.

(a) Bowling Alleys. No owner, operator, manager or person in charge of any bowling alley licensed under this chapter shall permit any person under the age of sixteen (16) years to bowl in or remain or be present in any such bowling alley or any room adjoining or adjacent thereto and connected therewith after the hour of 10:00 p.m., unless such person is accompanied by the parent or natural guardian of such person.

No person under the age of sixteen (16) years shall so bowl or be present after such hour.

CROSS REFERENCES
Drug abuse - see GEN. OFF. Ch. 513

711.01 DEFINITIONS.

Unless otherwise defined herein, the terms in the Chapter shall have the same meaning as set forth in Ohio Revised Code Section 3796.01.

(a) "Applicant" shall mean any person or entity applying for a License pursuant to this Chapter.

(b) "License" shall mean a license issued pursuant to this Chapter.

(c) "Licensee" shall mean a person or entity with a valid License received pursuant to this Chapter.

(d) "Medical Marijuana Entity" shall mean a medical marijuana cultivator, processor, dispensary, or testing laboratory authorized by Ohio Revised Code Chapter 3796.

(Ord. 84-2017. Passed 7-17-17.)

711.02 LICENSE REQUIRED.

No Medical Marijuana Entity shall operate within the City, without a valid License, which is in full force and effect and issued pursuant to this Chapter, or without a valid state certificate or license, as applicable. (Ord. 84-2017. Passed 7-17-17.)

711.03 LICENSING AUTHORITY.

(a) The ~~City Manager~~Mayor or designee is the licensing authority and, pursuant to this Chapter, shall consider the applications and renewal for Licenses and issue, suspend, revoke, or deny issuances of Licenses.

(b) An application for a License shall be granted on the approval of the ~~City Manager~~Mayor or designee at his/her sole discretion.

(c) A renewal application for a License shall be granted on the approval of the ~~City Manager~~Mayor or designee at his/her sole discretion.

(d) Nothing in this Chapter shall be construed to limit the Police Division's ability to investigate unlawful activity in relation to a License or the unlawful operation of a Medical Marijuana Entity. (Ord. 84-2017. Passed 7-17-17; Ord. Passed .)

711.04 LICENSE PROCEDURES AND FEES.

(a) Applicants desiring to operate a Medical Marijuana Entity shall make an application upon a form provided by the ~~City Manager~~Mayor or designee.

(b) All applications, including renewals, shall include a security plan, subject to approval by the Chief of Police. Said security plan shall be in a form proscribed by the Chief of Police. Applicant shall supply any and all additional information requested by the Chief of Police to evaluate said security plan. All applicants, except renewals, shall include a non-refundable application fee of two hundred and fifty dollars ($250.00).

(c) Upon approval by the ~~City Manager~~Mayor or designee, Applicant shall pay a license fee of five thousand dollars ($5,000.00) per calendar year or fraction thereof.

(d) Each License shall be an annual license, which covers the period of the issuance until December 31.

(e) A renewal application shall be submitted ~~by~~ on or before October 1 of each year upon a renewal form provided by the ~~City Manager~~Mayor or designee to be processed prior to December 31.

(f) Any Medical Marijuana Entity that fails to timely obtain a renewal of License shall not operate after the License expires on December 31.
(Ord. 84-2017. Passed 7-17-17; Ord. Passed .)

711.05 RESPONSIBILITIES OF THE LICENSEE.

(a) Each License shall be displayed permanently in a conspicuous place on the premise of the Medical Marijuana Entity for which it is issued.

(b) Each License shall be only assignable or transferable, as to person or location, upon written consent of the ~~City Manager~~Mayor or designee.

(c) Licensee shall immediately notify the ~~City Manager~~Mayor or designee of any material change to information provided in the application including, but not limited to, changes to the security plan.

(d) If, at any time, the Medical Marijuana Entity or it owner or principal is subject to any enforcement action by the State of Ohio, the Medical Marijuana Entity shall immediately notify the ~~City Manager~~Mayor or designee and shall provide any relevant information or documentation requested by the ~~City Manager~~Mayor or designee.

(e) If, at any time, the Medical Marijuana Entity or its employee has a reasonable belief that an actual loss, theft, or diversion of medical marijuana or currency over one hundred dollars ($100.00) has occurred, the Medical Marijuana Entity shall immediately notify the Cleveland Heights Police Department, and such notification shall be provided no later than 24 hours after discovery of the loss, theft, or diversion.
(Ord. 84-2017. Passed 7-17-17; Ord. Passed .)

711.06 LICENSE SUSPENSION OR REVOCATION.

The ~~City Manager~~Mayor or designee may suspend or revoke any License for violation of any City ordinance, false or incorrect information submitted on the license application, or for failure to comply with the approved security plan.
(Ord. 84-2017. Passed 7-17-17; Ord. Passed .)

711.07 SERVICE OF DENIAL OR REVOCATION NOTICE.

All notices of denial or revocation issued pursuant to this Chapter shall be served by first-class mail to the address supplied on the License application.
(Ord. 84-2017. Passed 7-17-17.)

711.08 MEDICAL MARIJUANA REVIEW BOARD.

(a) There is hereby created a Medical Marijuana Review Board (hereafter, the "Board") consisting of the Chairperson of the Public Safety and Health Committee of Council or other member of City Council appointed by the ~~Mayor~~President of Council, the ~~City Manager~~Mayor or designee, and Director of Economic Development or designee.

(b) The presence of two (2) members of the Board shall constitute a quorum. Any action of the Board shall require two (2) affirmative votes.
(Ord. 84-2017. Passed 7-17-17; Ord. Passed .)

711.09 HEARING BEFORE THE MEDICAL MARIJUANA BOARD.

(a) Any Licensee issued a revocation, suspension, or denial of a renewal license pursuant to this Chapter may request a hearing before the Board. A hearing request must be made in writing and received by the Director of Law within seventeen (17) calendar days of the date of the first-class mailing of the notice.

(b) The hearing shall be held within a reasonable time from receipt of the request to appeal. The Applicant shall been given at least fourteen (14) calendar days' notice of the date, time, and location of the hearing and shall have the opportunity to present sworn evidence to the Board and cross examine any sworn witnesses presented by the City. The hearing shall proceed in a manner prescribed by the Board.

(c) After said hearing, the Board shall render a written decision affirming or reversing the License revocation, suspension, or renewal denial.
(Ord. 84-2017. Passed 7-17-17.)

711.99 PENALTY.

Whoever violates any provision of this Chapter is guilty of a minor misdemeanor on a first offense and a fourth degree misdemeanor on a second or subsequent offense with penalties as provide by Section 501.99 of the Codified Ordinances.
(Ord. 84-2017. Passed 7-17-17.)

CHAPTER 713
Rental Halls

713.01 Definition.
713.02 Rental hall license required; approval and fee.
713.03 Investigation of rental hall premises.
713.031 Permit required for each event.
713.04 Maintenance of rental hall premises.
713.05 Adequate police protection.
713.06 Prohibitions for conduct in a rental hall; suspension or revocation of license.
713.07 Hours of operation.
713.99 Penalty.

CROSS REFERENCES

Power to regulate - see Ohio R.C. 715.61
Permit required for public dancing - see Ohio R.C. 3773.19
Liquor control - see GEN. OFF. Ch. 529

713.01 DEFINITION.

The following term as used in this chapter shall have the meaning ascribed to it in this section:

"Rental hall" means any auditorium, hall, public dance hall, academy, room, place, restaurant or night club the primary use of which is to be rented for a fee to any person for public or private parties, wedding receptions, talent shows, concerts or other gatherings or functions. (Ord. 67-1992. Passed 7-6-92.)

713.02 RENTAL HALL LICENSE REQUIRED; APPROVAL AND FEE.

No person shall operate any rental hall until the premises shall be first duly licensed for that purpose. The owner of a rental hall shall apply to the ~~City Manager~~Mayor or designee for a license on a form which shall be furnished by the ~~City Manager~~Mayor or designee. Upon the approval of the license, the applicant shall pay the Director of Finance an annual "rental hall" license fee of twenty-five dollars ($25.00). Such license shall be for a period of one (1) year.

(Ord. 67-1992. Passed 7-6-92; Ord. Passed .)

713.03 INVESTIGATION OF RENTAL HALL PREMISES.

No rental hall license shall be issued until the ~~City Manager~~Mayor or designee causes an investigation of the premises to be made and determines that it complies with all health, fire, and other applicable City ordinances, that it is properly ventilated and supplied with adequate toilet facilities, and that it is a safe and sanitary place for the purpose for which it is to be used. (Ord. 67-1992. Passed 7-6-92; Ord. Passed .)

713.031 PERMIT REQUIRED FOR EACH EVENT.

No event at any rental hall shall take place until the owner of the rental hall or his or her agent has received a permit for the specific event from the Chief of Police. Application for the permit shall be made to the Chief of Police in writing at least ten (10) calendar days in advance of the event. The application shall disclose the date and nature of the event, the commencement and closing hours, security provisions and the number of people anticipated to be in attendance. (Ord. 67-1992. Passed 7-6-92.)

713.04 MAINTENANCE OF RENTAL HALL PREMISES.

All rental halls shall be kept at all times in a clean, healthful and sanitary condition and all stairways and other passages shall be kept clear and well lighted. (Ord. 67-1992. Passed 7-6-92.)

713.05 ADEQUATE POLICE PROTECTION.

The licensee shall provide for adequate police protection at all times during the conduct of an event being held in the rental hall. The Chief of Police may require that the licensee hire one (1) or more off-duty Cleveland Heights police officers to provide for adequate police protection. (Ord. 67-1992. Passed 7-6-92.)

713.06 PROHIBITIONS FOR CONDUCT IN A RENTAL HALL; SUSPENSION OR REVOCATION OF LICENSE.

No person, when conducting an event in a rental hall, shall permit:

(a) Any person having in his possession or being under the influence of, selling or offering for sale, or giving away or using any drugs in violation of City ordinances or the Ohio Revised Code.

(b) Gambling in any form unless permitted by State law or the City's ordinances.

(c) Any intoxicated person to remain on the premises.

(d) Fighting or other disorderly conduct.

(e) The carrying of knives or other weapons on the premises, except the lawful carrying of firearms as defined in Ohio R.C. 2923.11.

(f) The sale of any beer or intoxicating liquor unless properly licensed by the Ohio Department of Liquor Control.

(g) The furnishing of any beer or intoxicating liquor to a minor in violation of City ordinances or the Ohio Revised Code.

(h) Any act which is a violation of City ordinances or the Ohio Revised Code.
(Ord. 105-2019. Passed 12-2-19.)

The license of any rental hall may be suspended or revoked by the ~~City Manager~~Mayor or designee for violation of any of the above prohibitions. A prior history of violations shall be cause for refusal to issue or renew a license. The rental hall may be entered at any time by the ~~City Manager~~Mayor or designee, his authorized representative or any City police officer for the purpose of ensuring compliance with this chapter.
(Ord. 67-1992. Passed 7-6-92; Ord. _____ Passed _____.)

713.07 HOURS OF OPERATION.

Any event at any rental hall shall close no later than 1:00 a.m.
(Ord. 67-1992. Passed 7-6-92.)

713.99 PENALTY.

(EDITOR'S NOTE: See Section 701.99 for general Code penalty applicable where no specific penalty is provided.)

(e) "Removal of business sale" means a sale held out in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease and discontinue business at the place of sale upon disposal of the stock of goods on hand.

(Ord. 67-1962. Passed 12-3-62.)

721.02 PERMIT REQUIRED.

No person shall conduct, hold or participate in any sale of the type hereinafter set forth in this section, or sell or offer to sell any goods at any sale which is, by any means, advertised or held to be a sale of such type, until a permit therefor has first been obtained from the ~~City Manager~~Mayor or designee. The permit shall be in full force and effect at all times during such sale.

(a) Going-out-of-business sale.

(b) Removal of business sale.

(c) Fire and other altered goods sale.

(d) Any other sale of a character similar to, or conducted or advertised in a manner similar to, any one (1) or more of the sales described in subsections (a), (b) or (c) hereof.

(Ord. 67-1962. Passed 12-3-62; Ord. Passed .)

721.03 APPLICATION OF REGULATIONS; EXEMPTIONS.

(a) Provisions Supplement General Licensing Ordinance. The provisions of this chapter are intended to augment and be in addition to the provisions of any general licensing ordinance or other ordinance of this City, now or hereafter enacted. Where this chapter imposes a greater restriction upon persons, premises, business or practices than is imposed by any other ordinance of this City, this chapter shall control.

(b) Established Business Requisite. Any person who has not been the owner of a business advertised or described in the application for a permit required by the provisions of this chapter for a period of at least six (6) months prior to the date of the proposed sale shall not be granted a permit, except that upon the death of a person doing business in this City, his heirs, devisees or legatees shall have the right to apply for a permit hereunder to sell, at the business location of such deceased person, goods owned by such person at the time of death.

(c) Interval Between Sales. Any person who has held a sale as regulated by this chapter at the location stated in the application, within eighteen (18) months last past from the date of such application, or within six (6) months at any other location in the City, shall not be granted a permit.

(d) Restricted Location. Where a person applying for a permit hereunder operates more than one (1) place of business, the permit issued shall apply only to the one (1) store or branch specified in the application, and no other store or branch shall advertise or represent that it is cooperating with it, or in any way participating in the authorized sale, nor shall the store or branch conducting the authorized sale advertise or represent that any other store or branch is

cooperating with it or participating in any way in the authorized sale.

(e) Persons Exempted. The provisions of this chapter shall not apply to or affect the following persons:

(1) Persons acting pursuant to an order or process of a court of competent jurisdiction;

(2) Persons acting in accordance with their powers and duties as public officials;

(3) Duly licensed auctioneers selling at auction at a sale which does not exceed one (1) day;

(4) Any publisher of a newspaper, magazine or other publication who publishes in good faith any advertisement, without knowledge of its false, deceptive or misleading character, or without knowledge that the provisions of this chapter have not been complied with.

(Ord. 67-1962. Passed 12-3-62.)

721.04 PERMIT FEE.

Any applicant for an original or renewal permit for a going-out-of-business, removal of business, fire and other altered goods sale or sale of a similar character shall submit to the ~~City Manager~~Mayor or designee with his application a fee of twenty-five dollars ($25.00).
(Ord. 67-1962. Passed 12-3-62; Ord. Passed .)

721.05 BOND REQUIRED.

Each applicant for a permit for a going-out-of-business, removal of business, fire and other altered goods sale or sale of a similar character shall execute and file with the ~~City Manager~~Mayor or designee a good and sufficient bond in the sum of two thousand five hundred dollars ($2,500) with two (2) or more sureties thereon who shall be freeholders within Cuyahoga County, or with the surety thereon a surety company authorized to do business in the State of Ohio. The bond shall be to the approval of the Director of Law, shall be conditioned upon faithful observance of all the conditions of this chapter and shall also indemnify any purchaser who suffers any loss by reason of misrepresentations of a sale authorized hereunder. The bond shall continue in effect for a period of one (1) year. The permittee shall notify the ~~City Manager~~Mayor or designee of any suit filed as a result of the operations hereby authorized.
(Ord. 67-1962. Passed 12-3-62; Ord. Passed .)

721.06 PERMIT APPLICATION.

A person desiring to conduct a going-out-of-business, removal of business, fire and other altered goods sale or sale of a similar character shall make a written application to the ~~City Manager~~Mayor or designee setting forth and containing the following information:

(a) The true name and address of the owner of the goods to be the object of the sale.

(b) The true name and address of the person from whom he purchased the goods to be sold and the price therefor, and if not purchased, the manner of such acquisition.

(c) A description of the place where such sale is to be held.

(d) The nature of the occupancy, whether by ownership, lease or sublease and the

effective date of termination of such occupancy or ownership.

(e) The dates of the period of time in which the sale is to be conducted, and the hours of sale upon such dates.

(f) A full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which the sale will be conducted.

(g) The means to be employed in advertising such sale, together with the proposed content of any advertisement.

(h) A complete and detailed inventory of the goods to be sold at such sale as disclosed by the applicant's records. The inventory shall be attached to and become part of the required application.

(1) All goods included in such inventory shall have been purchased by the applicant for resale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment.

(2) Such inventory shall not include goods ordered in contemplation of conducting a sale regulated hereunder. Any unusual purchase or additions to the stock of goods of the business hereby affected within thirty (30) days before the filing of an application hereunder shall be deemed to be of such character.

(Ord. 67-1962. Passed 12-3-62; Ord. Passed .)

721.07 PERMIT ISSUANCE.

Upon receipt of any application for a permit for a going-out-of-business, removal of business, fire and other altered goods sale or sale of a similar character, the ~~City Manager~~Mayor or designee shall make inquiry into the sale. When satisfied that neither any fraud or deception in the conduct of the sales or in the advertising thereof, nor any misrepresentation of the goods to be sold, is intended or will be practiced and that the applicant has complied with all requirements of law, and upon receipt of the bond required by Section 721.05 duly approved by the Director of Law as to form and sufficiency, the ~~City Manager~~Mayor or designee shall issue a permit as applied for.

(Ord. 67-1962. Passed 12-3-62; Ord. Passed .)

721.08 PERMIT CONDITIONS.

Any permit issued pursuant to the provisions of this chapter shall be issued subject to the following conditions:

(a) Duration of Sale. The permit shall authorize the sale described in the application for a period of not more than thirty (30) consecutive days, Sundays and legal holidays excluded, following the issuance thereof. Sale on Sunday contrary to Section 701.01 is prohibited.

(b) Nature of Sale. The permit shall authorize only the one (1) type of sale described in the application at the location named therein.

(c) Saleable Goods. The permit shall authorize only the sale of goods described in the inventory attached to the application.

(d) Nontransferability. Any permit herein provided for shall not be assignable or transferable.

721.09 DUTIES OF PERMITTEE.

A permittee for a going-out-of-business, removal of business, fire and other altered goods sale or sale of a similar character, shall:

(a) Adhere to Inventory. Make no additions whatsoever, during the period of the authorized sale, to the stock of goods set forth in the inventory attached to the application for permit.

(b) Advertise Properly. Refrain from employing any untrue, deceptive or misleading advertising.

(c) Adhere to Advertising. Conduct the authorized sale in strict conformity with any advertising or holding out incident thereto.

(d) Keep Duplicate Inventory. Keep available at the place of sale a duplicate copy of the inventory submitted with the application and shall present such duplicate to inspecting officials upon request.

(e) Segregate Noninventoried Goods. Keep any other goods separate and apart from the goods listed in the filed inventory as being objects of sale and shall make such distinction clear to the public by placing tags on all inventoried goods in and about the place of sale apprising the public of the status of all such goods.

(Ord. 67-1962. Passed 12-3-62.)

721.10 PERMIT REVOCATION.

The ~~City Manager~~Mayor or designee shall revoke any permit for a going-out-of-business, removal of business, fire and other altered goods sale or sale of a similar character issued pursuant to the provisions of this chapter if he finds that the permittee has violated any provision of this chapter, has made any material misstatement in his application, has failed to include in the inventory required by the provisions of this chapter all of the goods, wares and merchandise being offered for sale, has added or permitted to be added to such sale any goods, wares or merchandise not described in the original application and inventory or has failed to keep suitable records of such sale.

(Ord. 67-1962. Passed 12-3-62; Ord. Passed)

721.11 PERMIT RENEWAL.

The ~~City Manager~~Mayor or designee may, upon application therefor, renew a permit for a going-out-of-business, removal of business, fire and other altered goods sale or sale of a similar character for one (1) period of time only, such renewal period to be in addition to the thirty (30) days permitted in the original permit and not to exceed thirty (30) consecutive additional days, Sundays and holidays excluded, when he finds that:

(a) Facts exist justifying the permit renewal, and that the applicant has complied with the conditions of the original permit, and with the provisions of this chapter.

(b) The permittee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original application and inventory.

(Ord. 67-1962. Passed 12-3-62; Ord. Passed .)

725.03 APPLICATION FOR LICENSE.

(a) An application for an amusement device license shall be made to the ~~City Manager~~Mayor or designee upon forms to be prescribed by the ~~City Manager~~Mayor or designee. The applicant shall attach to the application a floor plan, drawn to scale, showing the proposed placement of each amusement device on the applicant's premises. All regular and emergency exits shall be clearly identified on the floor plan.

(b) The application for a license shall be denied if the ~~City Manager~~Mayor or designee shall determine that the application, as filed, exhibits an apparent violation of any provision of this chapter, any provision of the Codified Ordinances, any rule or regulation adopted pursuant thereto or any statute or code of the State of Ohio.

(c) The application for a license shall be denied if the ~~City Manager~~Mayor or designee shall determine that the applicant has, within ten (10) years of the date of application, been convicted of a felony or of a misdemeanor involving physical violence or unlawful gambling activity. The filing of the application shall be deemed to constitute consent by the applicant to the making of a criminal record investigation by the City.

For the purposes of compliance with this section and Section 725.06, the applicant shall be deemed to be any and all persons having a twenty-five percent (25%), or greater, ownership interest in the business of applicant. This requirement shall be applicable to a corporation, partnership, joint venture and any and all other forms of business organizations.
(Ord. 123-1981. Passed 12-21-81.~~)~~

~~(d) The City Manager~~; Ord. Passed .)

(d) The Mayor or designee shall not issue a license that shall permit more than seven (7) amusement devices upon any premises, unless and until the applicant has first obtained a conditional use permit pursuant to the applicable provisions of the Zoning Code. Any license issued thereafter shall include any and all conditions contained in the conditional use permit.
(Ord. 155-2004. Passed 10-18-04; Ord. Passed .)

(e) In the event that an application for a license is denied, the ~~City Manager~~Mayor or designee shall, upon the receipt of a written request from the applicant, state, in writing, the reason for the denial of the license.
(Ord. 123-1981. Passed 12-21-81; Ord. Passed .)

725.04 LICENSE ISSUANCE.

(a) Upon determining that the applicant's application for an amusement device license is in compliance with all applicable provisions of the Codified Ordinances, all applicable rules and regulations adopted pursuant thereto and all statutes and codes of the State of Ohio, and that the applicant is not disqualified by virtue of the provisions of Section 725.03(c) from receiving a license, the ~~City Manager~~Mayor or designee shall, upon payment of the license fee provided by

the Codified Ordinances, issue an amusement device license to the applicant, which license, unless cancelled by the applicant or suspended or revoked by the ~~City Manager~~Mayor or designee, shall be valid through December 31 of the year in which it was granted.

(b) Any license issued for a premises that is located within 1,000 feet of the property line of any elementary school, junior high school or senior high school shall include a provision requiring that the applicant render such amusement device(s) inoperable by any person on the days and during the hours that such school is in regular session.
(Ord. 123-1981. Passed 12-21-81; Ord. Passed .)

725.05 LICENSE FEES.

An annual license fee of one hundred fifty dollars ($150.00) for the first amusement device and fifty dollars ($50.00) for each additional amusement device shall be paid by the applicant, in advance, for each calendar year, or part thereof, on each amusement device to be licensed by the City. An amusement device license shall not be transferable from one (1) person to another or from one (1) premise to another. The license shall be displayed in a conspicuous place upon the applicant's premise. (Ord. 75-2013. Passed 5-6-13.)

725.06 LICENSE RENEWAL.

Applications for the renewal of an amusement device license shall be upon a form prescribed by the ~~City Manager~~Mayor or designee and may be filed with the ~~City Manager~~Mayor or designee after October 1, but before December 1, of the year preceding the calendar year for which the renewal is being sought. The ~~City Manager~~Mayor or designee shall not renew a license until he shall have determined that the applicant remains eligible to receive a renewal of the license, and that the premises referred to in the license is in compliance with all applicable provisions of the Codified Ordinances, all rules and regulations adopted pursuant thereto and all applicable statutes and codes of the State of Ohio. In the event of nonrenewal, the ~~City Manager~~Mayor or designee shall, upon the receipt of a written request from the applicant, state his reason for nonrenewal in writing.
(Ord. 123-1981. Passed 12-21-81; Ord. Passed .)

725.07 INTERIOR OF PREMISES.

The interior of any premises upon which there is a licensed amusement device shall provide, with respect to each such device, that there shall be a minimum area equal to the dimensions of the device, plus four (4) feet on any side of the device where players regularly stand or sit to operate the device, and two (2) feet on any side of the device not actually used by players to operate the device. The additional area required by this section shall not be required for any side of an amusement device that is placed immediately against a wall of the premises.
(Ord. 123-1981. Passed 12-21-81.)

725.08 APPLICABILITY.

The provisions of this chapter shall be applicable to all amusement device licenses issued and/or renewed on and after December 21, 1981. Section 725.03(d) shall not be applicable to any person who, on October 5, 1981, held a valid license from the City for more than three (3) amusement devices upon any premises, provided that the number of licensed amusement devices shall not be increased.

Any increase in number shall make the entire area of such premises subject to the provisions of Section 725.07. Section 725.07 shall not be applicable to any premises where an amusement device licensed by the City on October 5, 1981, was located, provided that the number of licensed amusement devices shall not be increased. Any such increase in number shall make the entire area of such premises subject to the provisions of Section 725.07. The provisions of this chapter shall not be applicable to amusement devices possessed and maintained in residences within the City and used exclusively by residents thereof and their invited guests.
(Ord. 123-1981. Passed 12-21-81.)

725.09 SUSPENSION; REVOCATION.

Any license issued pursuant to the provisions of this chapter shall be subject to suspension or revocation by the ~~City Manager~~Mayor or designee following the issuance of notice for any of the following reasons:

(a) A willful misrepresentation made by a person in applying for the amusement device license issued by the City;

(b) A conviction of the license-holder for any offense referred to in Section 725.03(c);

(c) More than one (1) conviction of the license-holder or of any person employed by the license-holder during any period of 365 days for any violation of the provisions of this chapter;

(d) A determination by the ~~City Manager~~Mayor or designee that the operation of the amusement device(s) licensed by the City has created a nuisance to the general public or has directly and proximately caused, encouraged or contributed to the delinquency or unruliness of a minor child.

The procedure for the suspension or revocation of a license for an amusement device shall be established by the ~~City Manager~~Mayor or designee. In the event of the suspension or revocation of a license, the ~~City Manager~~Mayor or designee shall, upon receipt of a written request from the license-holder, state the reason for the suspension or revocation in writing.
(Ord. 123-1981. Passed 12-21-81; Ord. Passed .)

725.10 APPEALS.

A determination made by the ~~City Manager~~Mayor or designee under the provisions of this chapter shall be determined to constitute the issuance of a final order, adjudication or decision, and may be appealed pursuant to Ohio R.C. Chapter 2506.
(Ord. 123-1981. Passed 12-21-81; Ord. Passed .)

725.99 PENALTY.

A violation of any provision of this chapter by any person shall constitute a minor misdemeanor with a penalty as provided by Section 501.99 of the Codified Ordinances. Each day of violation shall constitute a separate and distinct offense.
(Ord. 123-1981. Passed 12-21-81.)

CHAPTER 731
Newsracks

731.01 Definitions.
731.02 General prohibitions on placement.
731.03 Permit required.
731.04 Permit application, fee and renewal.
731.05 Criteria for permit issuance.
731.06 Conditions of installation.
731.07 Installation.
731.08 Advertising prohibited.
731.09 Maintenance.
731.10 Violation notice; hearing; removal.
731.11 Disposition of impounded newsracks.
731.99 Penalty.

CROSS REFERENCES

731.01 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

~~(a) "City Manager" means the City Manager or his designated representative.~~

(~~b~~a) "Crosswalk" means:

(1) That part of a street at intersections ordinarily included within the real or projected prolongation of property or curb lines or, in the absence of curbs, the edges of the traversable street;

(2) Any portion of a street at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the street surface;

(3) Notwithstanding subsections (b)(1) and (2) hereof, there shall not be a crosswalk where authorized signs have been placed prohibiting crossing.

(b) "Mayor" means the Mayor or designee.

(c) "Newsrack" means any self-service or coin-operated box, containing storage unit, device or other dispenser installed, used or maintained for the display, distribution or sale of any newspaper, periodical or other publications.

(d) "Public right of way" means any place owned by the public or dedicated to public use for pedestrian or vehicular traffic, including, but not limited to, a street, roadway, sidewalk, curb, gutter, highway, alley, mall, court or park.

(e) "Sidewalk" means the paved portion of the public right of way between the curb lines or the lateral lines of a street and the adjacent property lines intended for pedestrian travel.

(f) "Street" or "highway" means the entire width between the right-of-way lines of every way open to public use for purposes of vehicular travel.

(Ord. 33-1984. Passed 9-17-84; Ord. Passed .)

731.02 GENERAL PROHIBITIONS ON PLACEMENT.

(a) No person shall install, place or maintain a newsrack which projects onto, into or over any portion of any street, or which rests, wholly or in part, upon, along or over any portion of a street.

(b) No person shall install, place or maintain a newsrack in any area other than an area zoned C-1, C-2, C-3, S-1 or S-2.

(c) Subsection (b) hereof notwithstanding, a newsrack may be installed, placed or maintained within the confines of a structure erected within the public right of way by any governmental entity, provided that written permission of the entity is first obtained. A copy of such permission shall be attached to the permit application.

(Ord. 33-1984. Passed 9-17-84.)

731.03 PERMIT REQUIRED.

No person shall install, place or maintain any newsrack within the public right of way without first obtaining a permit therefor.

(Ord. 33-1984. Passed 9-17-84.)

731.04 PERMIT APPLICATION, FEE AND RENEWAL.

(a) Every person desiring to install, place or maintain a newsrack within the public right of way shall file a permit application with the ~~City Manager~~Mayor containing the following information:

(1) The proposed location of each newsrack.

(2) The name, address and telephone number of the owner.

(3) The name and address of the person to whom notice of any violation of this chapter or notice of relocation or removal should be given.

It is the responsibility of the owner to notify the ~~City Manager~~Mayor in writing of any changes in the information required by this subsection.

(b) A twenty-five dollar ($25.00) fee for each proposed newsrack location must accompany the application to defray the expenses incident to the administration of this chapter in determining compliance with the provisions thereof.

(c) Every person desiring to renew a newsrack permit shall file a permit renewal application with the ~~City Manager~~Mayor containing the information required by subsection (a) hereof.

(d) A ten dollar ($10.00) fee shall accompany each newsrack permit renewal application to defray the expenses incident to the administration of this chapter.
(Ord. 33-1984. Passed 9-17-84; Ord. Passed .)

731.05 CRITERIA FOR PERMIT ISSUANCE.

No permit application shall be approved and no permit shall be issued unless all of the following criteria are met:

(a) Location. Newsracks within the public right of way shall be placed adjacent and parallel to a curb or to a wall of a building. Newsracks placed near a curb shall face away from the street and shall be placed no less than eighteen (18) inches nor more than twenty-four (24) inches from the curb edge adjacent to the street. Newsracks placed adjacent to a wall shall be no more than six (6) inches from the wall nor less than three (3) feet from any doorway.

No newsracks shall be installed, placed or maintained:

(1) Within ten (10) feet of any marked crosswalk or of the curb return of any unmarked crosswalk;

(2) Within ten (10) feet of any fire hydrant, fire call box, police call box, or other emergency facility;

(3) Within five (5) feet of any driveway;

(4) Within five (5) feet ahead of or twenty (20) feet to the rear of any sign marking a designated bus stop;

(5) Within three (3) feet of any traffic sign, signal, device, mailbox or public utility pole;

(6) In or upon any area improved with lawn, flowers, shrubs, or trees or within three (3) feet of any display window of any building abutting the sidewalk or in such a manner as to impede or interfere with the reasonable use of such window for display purposes;

(7) Within five (5) feet of any automated bank teller machine; or

(8) At any location where the continuous undivided space for the passageway of pedestrians is reduced to less than six (6) feet.

(b) Design. All newsracks shall:

(1) Not exceed five (5) feet in height, thirty (30) inches in width, or two (2) feet in depth;

(2) Weigh at least 200 pounds when empty. Such weight may be achieved by attaching the newsrack to a lead, cement or similar block of material, the length and width of which do not exceed that of the newsrack base; and

(3) Have a functioning coin return mechanism if a fee is charged for the publication contained therein.

(c) Subsections (a) and (b)(1) and (2) hereof shall not be applicable to any newsrack installed, placed or maintained pursuant to Section 731.02(c).

(Ord. 33-1984. Passed 9-17-84.)

731.06 CONDITIONS OF INSTALLATION.

Prior to the installation of any newsrack, the newsrack owner or his agent shall:

(a) Execute a document, approved as to form by the Director of Law, agreeing to hold the City, its officers, employees and agents free and harmless from any claim, demand or judgment in favor of any person, arising out of the location of any newsrack located in a public right of way; and

(b) Deposit with the ~~City Manager~~Mayor a certificate of insurance evidencing that a liability insurance policy in minimum amounts set by the ~~City Manager~~Mayor has been issued, naming the City as a co-insured, and containing a provision that the policy cannot be cancelled except upon ten (10) days' written notice to the City of the fact of such cancellation. If such insurance is cancelled at any time during the time the newsrack is installed in or upon the public right of way, such newsrack shall be removed forthwith by the newsrack owner or his agent.

(Ord. 33-1984. Passed 9-17-84; Ord. Passed .)

731.07 INSTALLATION.

Newsracks shall not be cabled, chained or tethered to any object, including other newsracks, nor shall any newsrack be fastened in any way to a building or public sidewalk. (Ord. 33-1984. Passed 9-17-84.)

731.08 ADVERTISING PROHIBITED.

No newsrack shall be used for advertising signs or publicity purposes except that the masthead of the publication or a shortened version thereof may appear on the newsrack. (Ord. 33-1984. Passed 9-17-84.)

731.09 MAINTENANCE.

(a) Each newsrack shall be maintained in a properly functioning, clean, neat and attractive condition, free of rust, at all times, including, without limitation, the condition of any paint, lettering or windows.

(b) Each newsrack shall have permanently affixed to it the title, address and phone number of the person responsible for maintaining such newsrack in a place where such information may readily be seen.

(c) Each newsrack shall stock the most current edition or issue of the publication contained therein. Any newsrack containing a publication which is two (2) or more issues out of date, or which, if the publication is daily, weekly or bi-weekly, has remained empty for eight (8) consecutive days, or which, if the publication is monthly, has remained empty for three (3) consecutive weeks shall be subject to the provisions of Section 731.10. (Ord. 33-1984. Passed 9-17-84.)

731.10 VIOLATION NOTICE; HEARING; REMOVAL.

Whenever the ~~City Manager~~Mayor is advised that a newsrack is being maintained contrary to the provisions of this chapter, he shall notify the person designated pursuant to Section 731.04(a)(3) of such purported violation. The notice shall state therein the nature of the violation and give such person a reasonable period of time, not to exceed seven (7) consecutive calendar days, to remedy the violation. If such violation is not cured within the period of time allotted, the ~~City Manager~~Mayor shall deliver to such person an order to show cause, which shall state therein the time and place of an informal hearing to be conducted by the ~~City Manager~~Mayor to determine whether or not such newsrack should be removed. If the evidence at the time of the hearing shows that the newsrack is being maintained contrary to the provisions of this chapter, the ~~City Manager~~Mayor shall so notify the person designated and shall give a period of not less than seventy-two (72) hours, after the giving of such notice, to remove the newsrack or correct the violation. If such person fails within the time permitted to remove or correct the violation of such newsrack, the ~~City Manager~~Mayor shall take steps necessary to cause the newsrack to be removed and impounded.
(Ord. 33-1984. Passed 9-17-84; Ord. Passed .)

731.11 DISPOSITION OF IMPOUNDED NEWSRACKS.

(a) Unless the newsrack and its contents are being held as evidence in a criminal prosecution, the owner, or if there is no known owner a claimant who provides sufficient proof of ownership, of an impounded newsrack may, at any time up to and including the thirtieth day after the impoundment, obtain a return of the newsrack and its contents upon paying an impound fee of twenty-five dollars ($25.00) plus the reasonable additional costs, if any, of impounding the newsrack in excess of twenty-five dollars ($25.00).

(b) Any impounded newsrack which remains unclaimed after thirty (30) days shall be considered abandoned and shall be disposed of in any manner provided by Council pursuant to Section 110.04 of the Codified Ordinances.
(Ord. 33-1984. Passed 9-17-84.)

731.99 PENALTY.

(a) Whoever violates this chapter, in addition to the provisions for impounding newsracks, shall be subject to the general Code penalty provided for in Section 701.99 of the Codified Ordinances.

(b) Each day such violation occurs or continues shall constitute a separate offense.
(Ord. 33-1984. Passed 9-17-84.)

CHAPTER 733
Pawnbrokers

733.01 Definition.
733.02 License required; application.
733.03 License term, fee and nontransferability.
733.04 Bond required.
733.05 Records of transactions; contents and inspection.
733.06 Submission of daily report to police.
733.07 Article redemption limitation.
733.08 Receipts for articles and payments.
733.09 Auction of pawned property.
733.10 Hours of operation.
733.11 Pledge from minors or intoxicated persons; employment of minors.
733.12 Pawning mechanics' tools; proof of ownership.
733.99 Penalty.

CROSS REFERENCES

Power to regulate - see Ohio R.C. 715.61
State licensing - see Ohio R.C. Ch. 4727
Maximum interest allowed - see Ohio R.C. 4727.06
Auctions - see BUS. REG. Ch. 705

733.01 DEFINITION.

"Pawnbroker" means any person, firm or corporation who lends money on deposit of pledges or personal property, or purchases property or choses in action on condition of selling them back again at a stipulated price.

733.02 LICENSE REQUIRED; APPLICATION.

No person shall engage in or carry on the business of a pawnbroker in the City until he has first obtained a license to engage in and carry on such business. Every applicant for a license shall make an application in writing to the ~~City Manager~~Mayor or designee, which application shall set forth the name under which the business is to be conducted and the name of every person interested in such business and the location at which the business is to be carried on. The application must be made by the person who is to carry on the business and must contain references of at least two (2) other residents of the City as to the character of the applicant. (A.O.; Ord. Passed .)

733.03 LICENSE TERM, FEE AND NONTRANSFERABILITY.

Licenses for carrying on the business of a pawnbroker shall be four hundred dollars ($400.00) per year, issued annually and shall expire on December 31 of the year of issue with no fee proration for a lesser period. The license shall contain the name under which the business is to be conducted, the name of every person interested in the business and the location at which the business is to be carried on. Licenses issued under this chapter shall not be transferable to any other person and the business may be conducted only at the location for which the license is issued.

733.04 BOND REQUIRED.

Every licensee under this chapter shall execute and file a bond to the City in the sum of one thousand dollars ($1,000) with the surety to the satisfaction of the Director of Law that such licensee will conform to the requirements of all State laws and City ordinances.

733.05 RECORDS OF TRANSACTIONS; CONTENTS AND INSPECTION.

A licensee shall keep a correct detailed list and description, in a book for that purpose, of each article pledged or deposited with him, or on which advances of money have been made, or which has been purchased by him. He shall also require such depositor or pledgor to sign his name and place of residence in such books or upon a blank furnished for that purpose and shall also enter the date and hour when the deposit or pledge was made. The pledgor shall also reproduce thereon his right thumb print or left thumb print, if the right thumb is missing, at the place indicated therefor in the book or on the back of such card. Such thumb print shall be reproduced and taken in the usual approved manner and shall not be blurred or obliterated. The register shall also contain an entry setting forth the interest to be charged on the amount of money loaned. Entries shall be written in ink in the English language and no entry shall be erased, obliterated or defaced. Such book at all times shall be open to the inspection of the ~~City Manager~~Mayor or designee, Police Chief or any person authorized by either of them. Upon demand of any of them the licensee shall produce and show any article thus listed and described which is in his possession. (A.O.; Ord. Passed .)

733.06 SUBMISSION OF DAILY REPORT TO POLICE.

A licensee shall prepare and deliver to the Police Chief or to any person authorized by him, each day, before the hour of 12:00 noon, a legible and correct copy from such entries of the description of personal property, bonds, notes or other securities received on deposit or purchased during the preceding day, with the hour at which the article was received and a description of the person by whom the article was left in pledge or from whom the article was purchased.

733.07 ARTICLE REDEMPTION LIMITATION.

Bonds, notes, securities or personal property received on deposit, purchase or pledged by such pawnbroker shall not be redeemed or removed from his place of business for twenty-four (24) hours after the submission of the report required by Section 733.06.

733.08 RECEIPTS FOR ARTICLES AND PAYMENTS.

A receipt shall be given to every pledgor at the time the property is received, which receipt shall contain the name and address of the pledgor, a description of the property received, the amount of money loaned, the rate of interest, the date and hour when the property was received and the date when the loan is due. When payments are made by the pledgor, receipts for the payments shall be given to him, which receipts shall show the amount previously paid and the balance due.

733.09 AUCTION OF PAWNED PROPERTY.

After the expiration of twelve (12) months after the maturity of the pledge, the pawnbroker may proceed to sell the pawned property in the manner herein provided. At least ten (10) days' notice must be given the pledgor by mail before the date of sale and also a notice of the proposed sale shall be published in a newspaper printed in and of general circulation within the City at least once, which publication shall be made at least ten (10) days before the date of sale. The sale shall be by public auction and by an auctioneer approved by the ~~City Manager~~Mayor or designee. From the proceeds of the sale there shall be deducted the amount of the loan, the accrued interest and the expense of the sale, and the balance shall be paid to the pledgor. (A.O.; Ord. Passed .)

733.10 HOURS OF OPERATION.

No licensee shall receive on deposit or purchase personal property, bonds, notes, securities or articles, property or other things of value before 6:00 a.m. nor after 8:00 p.m. during the months of January, February, March, April, October, November and December of each year, or before 5:00 a.m. or after 9:00 p.m. during the months of May, June, July, August and September of each year.

733.11 PLEDGE FROM MINORS OR INTOXICATED PERSONS; EMPLOYMENT OF MINORS.

No licensee shall take or receive in pawn or pledge for money lent, or take, receive or purchase property, bonds, notes, securities or articles from a minor, or the ownership of which is in or is claimed by a minor, or may be in the possession or under the control of a minor, or a person appearing to be intoxicated or known to be a notorious thief, or known to have been convicted of larceny or burglary. A person so licensed shall not carry on another business or a vocation in the building in which pawnbroking is carried on, nor employ a person under the age of sixteen (16) years to take pledges in pawn.

733.12 PAWNING MECHANICS' TOOLS; PROOF OF OWNERSHIP.

When any person presents to any pawnbroker for the purpose of pledging the same as security for a loan, any implements or tools commonly used by mechanics, the pawnbroker shall require such person to give proof that he is the owner of the tools so offered as a pledge, and when the tools so offered are stamped with a name or any initial or symbols the pawnbroker shall require the person offering such tools or implements to produce the stamp by which such name,

(b) A uniform plastic sign stating "No Peddlers or Solicitors Allowed" shall be made available for sale to City residents for a fee of twenty-five cents (25¢). Proceeds from the sale of such signs shall be deposited in the General Fund.
(Ord. 47-1971. Passed 7-19-71.)

737.03 LICENSE APPLICATION, INVESTIGATION AND FEE.

(a) Any person desiring to engage in the business of a peddler or solicitor shall make application in person for a license at the City Hall, upon a form provided by the ~~City Manager~~Mayor or designee. The ~~City Manager~~Mayor or designee shall make such investigation of the character of the applicant and the business to be conducted as he deems necessary to protect the interests of City residents, and may require character references, photographs or fingerprints to be submitted.

(b) Upon approval by the ~~City Manager~~Mayor or designee the applicant shall pay a license fee of fifty dollars ($50.00) per year or fraction thereof.
(Ord. 56-2017. Passed 5-15-17; Ord. Passed .)

737.04 HOURS AND BUSINESS RESTRICTIONS.

(a) No person, whether licensed or not, shall engage in any profit or nonprofit solicitation before the hour of 9:00 a.m. or after the hour of 8:00 p.m. or the time of sunset, whichever is earlier, or on Sundays or any legal holiday.
(Ord. 206-2002. Passed 12-2-02.)

(b) No licensed peddler or solicitor shall engage in or transact any type of business or solicitation, other than that specified on the license application.

737.05 LICENSE SUSPENSION OR REVOCATION.

The ~~City Manager~~Mayor or designee may suspend or revoke any peddler's or solicitor's license for violation of any City ordinance, false or incorrect information submitted on the license application, or for any fraud or misrepresentation made in the solicitation.
(A.O.; Ord. Passed .)

737.06 STREET AND SIDEWALK BUSINESS STANDS.

No person shall erect, place or maintain in, upon or over any street, alley, sidewalk or other public place in the City any fruit stand, shoe shining stand, flower stand, vegetable stand, lunch wagon, table, box, bin or any other arrangement or structure for the display or sale of goods, wares or merchandise or for the pursuit of any occupation whatsoever. However, the ~~City Manager~~Mayor or designee may grant permission to do so, provided that where such permission has been granted, no food, food ingredients or food products shall be permitted to be placed in any street, sidewalk or other public place, unless at least two (2) feet above the surface thereof.
(Ord. 57-1973. Passed 11-19-73; Ord. 8-2019. Passed 2-4-19; Ord. Passed .)

CHAPTER 741
Residential Personal Property Sales

741.01 Permit required for sale on residential property.
741.02 Exceptions.
741.03 Permit application, issuance and conditions.
741.04 Permit fee for persons conducting sales other than occupants.
741.99 Penalty.

CROSS REFERENCES

Falsely described merchandise - see GEN. OFF. 503.05
Auctions - see BUS. REG. Ch. 705

741.01 PERMIT REQUIRED FOR SALE ON RESIDENTIAL PROPERTY.

No person, whether as owner, lessee, manager, occupant or any agent thereof, shall conduct or permit a sale of household goods, equipment, utensils, appliances, personal clothing or effects or other personal property, on any improved or unimproved real property within the City, which is classified as residential by ordinance or has been used for residential purposes in any manner within one (1) year preceding the date of a permit application therefor, without first obtaining a permit from the ~~City Manager~~Mayor or designee and complying with the provisions of this chapter.
(Ord. 6-1962. Passed 3-5-62; Ord. Passed .)

741.02 EXCEPTIONS.

The provisions of this chapter shall not apply to an officer executing a process or order of any court having jurisdiction within the State of Ohio for selling property, directed by law, court order or legal process to be sold on the property where the same is located or to the sale or offering for sale of personal property and chattels as described herein, which are encumbered by chattel mortgage or conditional sale agreement, the terms of which are in default, or to property sold at a garage or yard sale at a single or two-family home provided the conditions of Section 1165.021 and Section 1163.06(f) are met. (Ord. 168-2008. Passed 12-15-08.)

741.03 PERMIT APPLICATION, ISSUANCE AND CONDITIONS.

The following provisions and regulations shall govern the issuance of any personal property sale permit contemplated by the provisions of this chapter:

(a) Application for a permit shall be made in writing to the ~~City Manager~~Mayor or designee, in such form as shall be prescribed by the ~~City Manager~~Mayor or designee, at least three (3) days prior to the date proposed for the conduct of such sale.

(b) The application shall be signed by the person proposing to conduct or manage such sale and by the owner of the property where such sale is to be held, if the identity of such persons is different. The ~~City Manager~~Mayor or designee may waive the signature of the owner.

(c) The application shall set forth the address of the property where such sale is to be held; the name of the owner and occupant thereof; the name of the person who will be in charge of such sale; the dates upon which and the hours during which such sale is proposed to be conducted; a reasonably complete and comprehensive inventory of all property proposed to be so sold or offered for sale, together with the name of the owner of and the present location of such property and an estimate of the total value of such property.

(d) No permit shall be issued to authorize the conduct of a personal property sale which extends for more than three (3) days' duration, is conducted before 9:00 a.m. or after 9:00 p.m. on any sale day, or is conducted on Sunday. For good cause shown the ~~City Manager~~Mayor or designee may grant an extension of not to exceed two (2) days for the duration of any sale.

(e) No permit shall be issued to authorize the conduct of a personal property sale on any property where a permit for such a sale has previously been issued and used at any time within one (1) year of the date of application for the current permit. The ~~City Manager~~Mayor or designee may waive this restriction when there has been a change of ownership of the property within such one (1) year period or in cases where its enforcement would create undue hardship.

(f) No permit shall be issued to authorize the conduct of a personal property sale where it is intended to sell or offer for sale any property other than as is described in Section 741.01, or any property which on the date of the application is not legally owned by the occupant of the premises where such sale is proposed to be conducted, or any property which has not been continuously physically located upon such premises for a period of at least thirty (30) days next preceding the date of application for such permit.

(g) No permit shall be issued to authorize the conduct of a personal property sale when it is to be conducted or managed in any way, whether directly or indirectly, by any person other than the occupant of the premises where the sale is to be conducted, until there has been filed with the ~~City Manager~~Mayor or designee a good and sufficient bond in the sum of five hundred dollars ($500.00), with two (2) or more sureties thereon or with the surety thereon being a surety company authorized to do business within the State of Ohio. The bond shall be subject to the approval of the Director of Law and shall be conditioned upon the faithful observance of all the provisions and conditions of this chapter and the terms and conditions of the permit to be issued, and shall also indemnify any purchaser at such sale who suffers any loss by reason of any misrepresentation made in the course of such sale or with respect to any property sold.

(Ord. 6-1962. Passed 3-5-62; Ord. Passed .)

741.04 PERMIT FEE FOR PERSONS CONDUCTING SALES OTHER THAN OCCUPANTS.

Any person who conducts a personal property sale as regulated by this chapter and who is not the occupant of the premises where such sale is conducted shall pay a permit fee of ten dollars ($10.00) to the Director of Finance prior to issuance of the permit, and an additional five dollars ($5.00) for any sale extension granted by the ~~City Manager~~Mayor or designee. (A.O.; Ord. Passed .)

741.99 PENALTY.

(EDITOR'S NOTE: See Section 701.99 for general Code penalty applicable where no specific penalty is provided.)

CHAPTER 745
Taxicabs

745.01 Definitions.
745.02 Certificate of necessity, license to operate required.
745.03 Application for certificate of necessity; information and fee.
745.04 Council hearing on application; notice and investigation.
745.05 Determination of necessity.
745.06 Application for license to operate.
745.07 Vehicle and taximeter inspections; exceptions.
745.08 Continuous insurance required.
745.09 Issuance of license to operate; display and term.
745.10 Vehicle license fees.
745.11 Suspension or revocation; hearing ~~by City Manager~~.
745.12 Driver's license requirements; application information.
745.13 Photograph to be attached to license.
745.14 Investigation of applicant; certificate of physical examination.
745.15 Driver's license issuance; defacement; expiration date.
745.16 Affidavit of driver licensed by abutting municipality.
745.17 Driver's badge; issuance; display.
745.18 Renewal of drivers' licenses.
745.19 Driver's license fees.
745.20 Record of drivers' licenses.

745.01 DEFINITIONS.

(a) "Public vehicle" means every vehicle for the common carriage and conveyance of passengers for hire except motor buses and motor vehicles used solely for funerals.

(b) "Taxicab" means every public vehicle equipped with or without a taximeter, used for the transportation for hire of passengers for which public patronage is solicited, in whole or in part, upon the streets or in quasi-public places.

(c) "Taximeter" means and includes any mechanical device or instrument by which the charge for hire of such taxicab is mechanically calculated, and on which the charge to be made to the passenger is plainly indicated by means of figures.

(d) "Automobile for hire" means and includes every public vehicle as herein defined which does not seek its business on the public streets and which is driven and in charge of the owner or his agent.

(e) "Owner" means any person who has control, direction of operation, maintenance and the benefit of the collection of revenue derived from the operation of a public vehicle, as herein defined, on or over the streets of the City, whether as owner, licensee, bailee or otherwise, except a driver as hereinafter defined.

(f) "Driver" means and includes every person actually in charge of the operation as the chauffeur of a public vehicle as heretofore defined, whether as owner, agent, servant or employee of the owner.

(g) "Taxicab stand" means those portions of the street set aside and designated by the ~~City Manager~~Mayor for the parking of taxicabs waiting for and seeking employment.

(h) "Mayor" means Mayor or designee.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.02 CERTIFICATE OF NECESSITY, LICENSE TO OPERATE REQUIRED.

No owner shall operate a public vehicle within or from the City unless he is the holder of a certificate of necessity and a license to operate issued pursuant to the provisions of this chapter. (1943 R.O., Ch. II, Art. D.)

745.03 APPLICATION FOR CERTIFICATE OF NECESSITY; INFORMATION AND FEE.

(a) Any person desiring a certificate of necessity shall file with the ~~City Manager~~Mayor a written application therefor, on a form to be provided by the City. Such application shall be in affidavit form and contain the following information:

(1) The full name, age and residence of the applicant, and if the applicant is a partnership, the full name, age and residence of each of the partners, and if a corporation, the full name of the corporation together with the full name of its principal officers;

(2) The name under which the applicant will do business;

(3) The type of vehicle which is proposed to be used in such service with information as to the age, carrying capacity and motor power of same, the color scheme and local symbols to be used, together with all other lettering or marks proposed to be used by the applicant on such vehicle;

(4) The number of vehicles proposed to be used, and the rate of fare to be charged and the method of charging the same;

(5) That the applicant is capable of and will carry liability insurance or a bond as hereinafter provided for;

(6) The ~~City Manager~~Mayor may require information as to the applicant's financial responsibility or fitness and such other information as he may desire.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

(b) The application shall be accompanied by a fee of twenty-five dollars ($25.00) to cover City expenses in investigation and notice of public hearing to determine the granting or denial of the certificate of necessity.

745.04 COUNCIL HEARING ON APPLICATION; NOTICE AND INVESTIGATION.

The ~~City Manager~~Mayor shall report an application for a certificate of necessity to Council. Council shall thereupon set a date for a public hearing upon such application and shall cause a notice of such public hearing to be published in a newspaper of general circulation in the City at least one (1) week prior to the date of such hearing. The ~~City Manager~~Mayor shall investigate the statements contained in such application and report his findings and recommendation to Council before the date of such hearing.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.05 DETERMINATION OF NECESSITY.

If Council determines that the public convenience and necessity require the granting of such application and that the same will be for the best interest of the City and its residents, Council may grant such application and order the ~~City Manager~~Mayor to issue a certificate of necessity to such applicant.

In determining whether the public convenience and necessity require the granting of such certificate of necessity Council shall consider such relevant facts as it may deem necessary to the common good and welfare of the City and the health, safety and convenience of its people, and shall consider the character and financial responsibility of the applicant, the amount of taxicab service already available to the City from other operators and such other facts and circumstances as, in the judgment of Council, are pertinent to such matter.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.06 APPLICATION FOR LICENSE TO OPERATE.

The holder of a certificate of necessity issued pursuant to the provisions of this chapter may apply to the ~~City Manager~~Mayor for a license to operate any such public vehicle within the scope covered by the certificate of necessity. Such application shall be in writing and shall state the serial number of his certificate of necessity, the full name and address of the owner of the public vehicle and also of the applicant, the trade name under which the applicant does or will do business, the type of vehicle for which the license is desired, the length of time such vehicle has been in use, the number of persons it is capable of carrying, the motor power thereof, the design, color scheme and local symbol used or proposed to be used, together with all other lettering or marks used or proposed to be used by the applicant on such vehicle and whether the fare to be charged is to be by taximeter or by the zone system.

The ~~City Manager~~Mayor may require such additional information as to the financial responsibility and fitness of management, or of the officers and of stockholders of the applicant, and such other information as he may desire. Such application, together with any statements or further information required by the ~~City Manager~~Mayor, shall have affixed thereto an affidavit duly sworn to by the applicant. However, in the case of applicants already licensed by a municipality abutting the City and whose principal business is the carrying of passengers elsewhere than in the City, it shall be sufficient to file an affidavit containing a description of the vehicle, together with the license number of the municipality issuing such license and a statement as to the surety bond or liability insurance filed with the municipality which issued such license covering the operation of such vehicle.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.07 VEHICLE AND TAXIMETER INSPECTIONS; EXCEPTIONS.

No vehicle covered by the terms of this chapter shall be licensed until it has been thoroughly and carefully inspected and examined by the ~~City Manager~~Mayor, or by some person designated by him, and found to be in a thoroughly safe condition for the transportation of passengers. If charges are to be made by taximeter, the taximeter shall have been inspected and examined and found to be accurate within five percent, and shall correctly indicate the amount of fare to be charged the passenger. However, in the case of vehicles already licensed by a municipality abutting the City, it shall not be necessary to make the inspection hereinabove set forth.

The ~~City Manager~~Mayor is hereby authorized and empowered to establish such reasonable rules and regulations for the inspection of taxicabs and automobiles for hire, and their appurtenances, construction and condition of fitness as he shall deem best for the safety and adequate transportation of passengers and the public in general.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.08 CONTINUOUS INSURANCE REQUIRED.

No person shall engage in the business of operating a taxicab or operate or permit the same to be operated until such person deposits with the Director of Finance a policy or certificate of liability insurance for each vehicle for which a license is applied, for, acceptable to and

approved by the Director of Law,

indemnifying the applicant in the sum of two hundred thousand dollars ($200,000) for injury to one (1) person, five hundred thousand dollars ($500,000) for injury to more than one (1) person and ten thousand dollars ($10,000) for property damage in any one (1) accident for the operation of each taxicab for which the license is applied. The policy shall contain a clause obligating the surety company or insurance company to give ten (10) days' written notice to the ~~City Manager~~Mayor before the lapse, expiration or termination of such policy or policies, and if the same or any of them are allowed to lapse, the license to operate shall immediately expire. (A.O.; Ord. Passed .)

745.09 ISSUANCE OF LICENSE TO OPERATE; DISPLAY AND TERM.

If the ~~City Manager~~Mayor finds that an applicant for a license to operate is the holder of a valid certificate of necessity and that the vehicle for which the license to operate is sought is fit and safe for the transportation of passengers under such rules and regulations as the ~~City Manager~~Mayor may promulgate, he shall issue to such owner a license to operate upon the owner's depositing the insurance policy heretofore described and paying the license fee hereinafter set forth. There shall be delivered to such owner a license card of the size and design prescribed by the ~~City Manager~~Mayor, which shall contain the official license number, name and address of the licensee and such other information as the ~~City Manager~~Mayor shall prescribe. Such license card shall be affixed to the interior of the licensed public vehicle so as to be readily accessible and visible to any one desiring to examine the same. The license shall specify whether the vehicle shall be operated on the taximeter plan or on the zone fare plan. Any license issued hereunder shall expire on December 31 of the year in which it was issued.
(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.10 VEHICLE LICENSE FEES.

Every licensee shall pay a fee of five dollars ($5.00) per year for each public vehicle licensed, provided, however, in the case of vehicles already licensed by a municipality abutting the City, the license fee shall be two dollars ($2.00) per year per vehicle. For operators of large fleets already licensed by the City of Cleveland, the fee shall not exceed a total of two hundred dollars ($200.00) per year for the entire fleet. The fee for issuing any such license after July 1 in any year shall be fifty percent of those specified herein.
(1943 R.O., Ch. II, Art. D.)

745.11 SUSPENSION OR REVOCATION; HEARING ~~BY CITY MANAGER~~.

Any certificate of necessity and/or any license to operate may be suspended or revoked at any time by the ~~City Manager~~Mayor in case:

(a) The ~~City Manager~~Mayor finds the owner's past record to be unsatisfactory;

(b) The owner fails to operate any licensed taxicab in accordance with the provisions of this chapter and other ordinances of the City and the laws of Ohio;

(c) The owner ceases to operate such taxicabs for a period of thirty (30) consecutive days without first obtaining the consent of the ~~City Manager~~Mayor;

(d) The owner fails to keep on deposit with the City the policy of insurance or to comply with any order of the ~~City Manager~~Mayor in replacing the same with other policies of insurance.

However, no certificate of necessity or license to operate shall be revoked unless due notice of a hearing has been given to the holder thereof and a hearing has been held by the ~~City Manager~~Mayor.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.12 DRIVER'S LICENSE REQUIREMENTS; APPLICATION INFORMATION.

No person shall drive a public vehicle unless he is licensed to do so. An applicant for a driver's license shall:

(a) Be at least twenty-one (21) years of age and an American citizen or have declared his intention to become such a citizen;

(b) Be of sound physique with good eyesight and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle;

(c) Be able to read, write and speak the English language;

(d) Be clean in dress and person, of good moral character and not be addicted to the use of intoxicating liquors or drugs;

(e) Produce, upon a form to be provided by the ~~City Manager~~Mayor, affidavits of his good character from two (2) reputable residents of the City or of Cuyahoga County, who have known him personally, and a further testimonial, on a form provided for that purpose, from his last employer unless, in the estimation of the ~~City Manager~~Mayor, sufficient reason is given for omission of such testimonial;

(f) Fill out, upon a form to be provided by the ~~City Manager~~Mayor, a statement giving his full name, residence, experience in driving motor vehicles, place of residence for five (5) years previous to moving to his present address, age, color, height, color of eyes and hair, place of birth, length of time he has resided in the County of Cuyahoga, whether a citizen of the United States, place of previous employment, whether married or single, whether he has ever been arrested or convicted of a felony or misdemeanor, whether he has been summoned to court, whether he has previously been licensed as a driver or chauffeur, and if so, whether his license has ever been revoked and for what cause. Such statement shall be signed and sworn to by the applicant and filed with the ~~City Manager~~Mayor as a permanent record. The ~~City Manager~~Mayor is hereby authorized and empowered to establish such additional rules and regulations covering the issuance of drivers' licenses, not inconsistent herewith, as may be necessary and reasonable.

(Ord. 42-1946. Passed 10-21-46; Ord. Passed .)

745.13 PHOTOGRAPH TO BE ATTACHED TO LICENSE.

Each applicant for a driver's license shall file with his application three (3) unretouched photographs of himself, in such position as the ~~City Manager~~Mayor may direct, taken within the thirty (30) days preceding the filing of his application. Photographs shall be a size which may be easily attached to his license, one (1) of which shall be attached to the license when issued, the others shall be filed with the application in the office of the ~~City Manager~~Mayor. The photograph shall be attached to the license so that it cannot be removed and another photograph substituted without detection. Each licensed driver shall, upon demand of a City official, police officer or passenger, exhibit his license and photograph for inspection. Where the application for a license is denied, two (2) copies of the photograph shall be returned to the applicant by the ~~City Manager~~Mayor.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.14 INVESTIGATION OF APPLICANT; CERTIFICATE OF PHYSICAL EXAMINATION.

The ~~City Manager~~Mayor shall make such investigation or examination of every applicant for a driver's license as he shall deem necessary and he may, in his discretion, appoint deputies to serve without compensation in assisting him in investigating and examining applicants for drivers' licenses. The ~~City Manager~~Mayor may, if he deems it necessary, require any applicant for a driver's license to submit the certificate of a reputable physician showing that he has examined the applicant within sixty (60) days prior thereto and that he has found him to be of sound physique with good eyesight and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him unfit for the safe operation of a taxicab or automobile for hire.

(1943 R.O., Ch. II. Art. D.; Ord. Passed .)

745.15 DRIVER'S LICENSE ISSUANCE; DEFACEMENT; EXPIRATION DATE.

If upon satisfactory fulfillment of the foregoing requirements and if the ~~City Manager~~Mayor finds such applicant to be a fit and proper person to operate a taxicab or automobile for hire, upon the payment of the license fee hereinafter mentioned, there shall be issued to the applicant a driver's license which shall be in such form as to contain the photograph and signature of the licensee and blank spaces upon which a record may be made of any arrest or of any serious complaint against him. Any licensee who defaces, removes or obliterates any official entry made upon his license shall be punished by the revocation of his license. Drivers' licenses so issued shall be valid to and including December 31 of the year next succeeding their issuance unless previously revoked.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.16 AFFIDAVIT OF DRIVER LICENSED BY ABUTTING MUNICIPALITY.

The provisions of Sections 745.12 through 745.15 shall not apply to drivers already examined and licensed by a municipality abutting the City, in which case it shall be sufficient that there be filed, with the ~~City Manager~~Mayor, an affidavit to that effect, containing the name and address of the driver together with the number of his license as issued by such other municipality.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.17 DRIVER'S BADGE; ISSUANCE; DISPLAY.

There shall be delivered to each licensed driver a badge, of such form and style as the ~~City Manager~~Mayor may prescribe, with his license number thereon, which must, under penalty of revocation of the license, be constantly and conspicuously displayed on the driver's outer garment when he is engaged in his employment. However, in the case of drivers licensed by a municipality abutting the City, it shall be sufficient for him to display in the manner required herein, his badge furnished by that municipality.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.18 RENEWAL OF DRIVERS' LICENSES.

The ~~City Manager~~Mayor may renew a driver's license, from year to year, by appropriate endorsement thereon. A driver, in applying for a renewal of his license, shall make such application not less than thirty (30) days next preceding its expiration upon a form to be furnished by the ~~City Manager~~Mayor, entitled Application for Renewal of Licenses, which shall be filled out with the full name and address of the applicant, together with the date the original license was granted and the number thereof.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.19 DRIVER'S LICENSE FEES.

The following fees are hereby established for drivers' licenses:

(a) For each application for an original license, one dollar ($1.00);

(b) For each original license issued, two dollars ($2.00);

(c) For each renewal thereof, one dollar ($1.00);

(d) For the replacement of any license or badge lost by any licensee, one dollar ($1.00).

(1943 R.O., Ch. II, Art. D.)

745.20 RECORD OF DRIVERS' LICENSES.

There shall be kept in the office of the ~~City Manager~~Mayor a complete record of each license issued to the driver and of all renewals, suspensions and revocations thereof. Such record shall be kept on file with the original application of the driver for a license.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.21 DRIVER'S DUTIES AND PROHIBITIONS.

A driver while driving a taxicab shall:

(a) Not refuse nor neglect to convey any orderly person, upon request in the City, unless previously engaged or unable or forbidden by the provisions of this chapter to do so. However the driver may demand the payment of the legal rate of fare in advance and may refuse employment unless so prepaid;

(b) Not carry any other person than the passengers first employing such taxicab without the express consent of such passengers;

(c) Thoroughly search the interior of the cab after termination of each trip for any articles left therein and immediately take any property so found to the police station nearest where the passenger was discharged;

(d) Report all accidents to his employer;

(e) Report any change in address to the ~~City Manager~~Mayor within forty-eight (48) hours of such change;

(f) Answer all communications and summonses received from the ~~City Manager~~Mayor or Police Department and furnish, when requested, detailed information as to any person transported in a taxicab driven by him;

(g) Not operate a taxicab while under the influence of intoxicating liquors or drugs;

(h) Not operate a taxicab unless he has a driver's license in full force and effect;

(i) Not permit another driver to use his badge or identification card;

(j) Not permit his taxicab to be used for any immoral or illegal purposes;

(k) Proceed with his passenger to his destination by the shortest possible route if operating under the taximeter method of charging;

(l) Give a receipt for fare when requested;

(m) Display his badge on his outer garment at all times while on duty;

(n) When the taxicab is parked, shut off the engine and not run the same while standing unless necessary to warm the engine in cold weather;

(o) Obey all traffic rules established by the laws of Ohio and by the ordinances of the City;

(p) Obey all rules and regulations issued by the ~~City Manager~~Mayor governing the operation of taxicabs in the City;

(q) Not permit any person other than his passenger to occupy his taxicab.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.22 DRIVERS' LICENSES; SUSPENSION OR REVOCATION.

Drivers' licenses may be suspended or revoked at any time by the ~~City Manager~~Mayor for violations of any of the provisions of this chapter. Any such suspension shall be noted on the license, together with a statement of the reasons therefor. The driver shall be deprived of his badge by the ~~City Manager~~Mayor and the same shall not be returned until the expiration of the period of suspension. No driver, whose license has been revoked, shall again be licensed as a driver under this chapter, except upon presentation of reasons satisfactory to the ~~City Manager~~Mayor.

(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.23 OPTION FOR TAXIMETER OR ZONE SYSTEM OF FARES.

The owner shall elect whether to operate his taxicab under a taximeter system or a zone system of charging. Such election shall be made when applying for a certificate of necessity. Each certificate issued shall specify which system of charging shall be used and thereafter such owner shall not charge fare by any other system until Council has, at such owner's request, amended his certificate of necessity so as to permit a different system of charging. Such amendment shall be noted on such certificate. In such event the ~~City Manager~~Mayor shall make note of such amendment upon all outstanding licenses to drive held by such owner, and shall likewise make note of such amendment upon the license card provided for in Section 745.09. (1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.24 TAXIMETER REQUIREMENTS.

A taxicab licensed to operate under the taximeter plan of charging shall comply with the following:

(a) Be equipped with a taximeter. No person shall charge any higher rate of fare than is recorded in the reading face of such taximeter except that, at the option of the passenger, an hourly rate as hereinafter described may be used.

(b) After sunset, the face of every taximeter shall be illuminated by a suitable light so as to throw a continuous steady light thereon. No person shall use, permit to be used or drive for hire a taxicab equipped with a taximeter which shall be in such condition as to be inaccurate by more than five percent to the prejudice of the passenger.

(1943 R.O., Ch. II, Art. D.)

745.25 RATES OF FARE BY OWNER; POSTING AND FILE COPY.

The owner, whether operating by taximeter or by zone plan, shall establish his own rate of fare which may be charged at will. However, the owner shall at all times keep on file with the ~~City Manager~~Mayor the schedule he proposes to charge and shall post a printed copy of the same inside each taxicab where it will be plainly visible to any passenger riding therein. No owner or driver shall charge a higher rate of fare than the one so filed and posted.

Nothing contained herein shall preclude the owner or driver from making a special hourly rate with the passenger who expects to use such service for more than an hour at a time. (1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.26 DETERMINATION OF DISPUTED FARES; FAILURE TO COMPLY.

All disputes as to the lawful rate of fare shall, upon the request of the driver or passenger, be determined by the police officer in charge of the police station or the police officer who is nearest to the location of the dispute. Failure to comply with such determination shall subject the offender to a charge of disorderly conduct.

(1943 R.O., Ch. II, Art. D.)

745.27 TAXICAB STANDS; DESIGNATION AND USAGE.

The ~~City Manager~~Mayor is hereby authorized and directed to establish such taxicab stands as will best serve the interests of the public. The ~~City Manager~~Mayor shall designate such taxicab stands by stanchions or signs and designate the number of taxicabs permitted to park there. No vehicle other than a taxicab shall be allowed to park therein. The ~~City Manager~~Mayor is authorized to establish such rules and regulations with reference to the use of such taxicab stands and the operation of taxicabs in the City as, in his judgment, are needed to facilitate traffic on the streets and insure the safety of the public.
(1943 R.O., Ch. II, Art. D.; Ord. Passed .)

745.28 LOITERING NEAR TAXICAB STANDS.

No person shall loiter within a distance of twenty-five (25) feet of any taxicab occupying space within a taxicab stand.
(1943 R.O., Ch. II, Art. D.)

745.29 FRAUD IN APPLICATIONS PROHIBITED.

No person shall give any fictitious information or practice any fraud, misrepresentation or subterfuge in securing or attempting to secure a certificate of necessity, a license to operate or a driver's license provided for in this chapter.
(1943 R.O., Ch. II, Art. D.)

745.30 EMPLOYMENT OF UNLICENSED DRIVERS.

No person, operating a taxicab within or from the City shall employ as a driver of such taxicab any person other than a driver duly licensed or registered under the provisions of this chapter.
(1943 R.O., Ch. II, Art. D.)

745.99 PENALTY.

(EDITOR'S NOTE: See Section 701.99 for general Code penalty applicable where no specific penalty is provided.)

CHAPTER 747
Rental Listing Organizations

747.01 Definitions.
747.02 License required.
747.03 License application and issuance.
747.04 License expiration, transfer and revocation.
747.05 License fees; proration.
747.06 Listings.
747.07 Charges for services.
747.08 Injunctive powers.
747.99 Penalty.

CROSS REFERENCES
Housing delivery system - see BUS. REG. Ch. 749

747.01 DEFINITIONS.

(a) "Rental listing organization" means any person, partnership, association, or corporation, other than one (1) licensed under Ohio R.C. Chapter 4735, who for another and for a fee lists, or offers or attempts or agrees to list any real estate; or who advertises or holds himself, itself or themselves out as engaged in the business of listing real estate or assists in the procuring of prospects or the negotiation or closing of any transaction which does or is calculated to result in the leasing or rental of any real estate.

(b) "List" means any compilation gathered by a rental listing organization purporting to contain real estate available for lease or rent where such compilation is utilized by a rental listing organization in a transaction which is calculated to result in the lease or rental of any real estate.
(Ord. 49-1973. Passed 11-5-73.)

(c) "Mayor"means Mayor or designee.
(Ord. Passed .)

747.02 LICENSE REQUIRED.

No person shall open, operate, conduct or maintain a rental listing organization until a license for such business has been duly issued by the City.
(Ord. 49-1973. Passed 11-5-73.)

747.03 LICENSE APPLICATION AND ISSUANCE.

(a) An application for a rental listing organization business shall be made to the ~~City Manager~~Mayor, in writing, in such form as shall be approved by the ~~City Manager~~Mayor.

(b) The application shall contain:

(1) The name and address of the applicant.

(2) If such application is a club, society or corporation, the names and addresses of all officers thereof.

(3) The name and address of the manager or person in charge of the rental listing organization.

(4) The address of the premises to be licensed.

(5) A statement as to whether or not the applicant has been licensed under Ohio R.C. Chapter 4735.

(6) All other pertinent information requested by the ~~City Manager~~Mayor.

(c) Upon payment of the fees provided in this chapter, the ~~City Manager~~Mayor shall issue the license applied for if he finds that:

(1) The applicant is a person of good moral character and is at least twenty-one (21) years of age.

(2) No similar license previously held by the applicant, whether issued by Cleveland Heights or any other public body, has been revoked within two (2) years prior to date of this application.

(3) The premises sought to be licensed and the proposed operation will comply in all respects with the regulations, ordinances, and/or laws of this City and the State of Ohio.

(Ord. 49-1973. Passed 11-5-73; Ord. Passed .)

747.04 LICENSE EXPIRATION, TRANSFER AND REVOCATION.

(a) Any license issued pursuant to the provisions of this chapter shall expire on December 31 next following the date of issuance.

(b) No transfer of any such license for an applicant or licensee or place of operation shall be permitted except by written approval of the ~~City Manager~~Mayor.

(c) Any such license may be revoked by the ~~City Manager~~Mayor at any time upon proof that:

(1) False or incorrect information was given on the application for such license;

(2) The premises being used pursuant to such license do not conform with this chapter or other applicable provisions of law or ordinance; or

(3) The operation being conducted pursuant to such license does not comply with all provisions and regulations set forth in this chapter or other applicable provisions of law or ordinance.

(Ord. 49-1973. Passed 11-5-73; Ord. Passed .)

747.05 LICENSE FEES; PRORATION.

The fee for the issuance of a rental listing organization business shall be twenty-five dollars ($25.00) per year for each licensed premises.

Application for renewal of such a license shall be filed by December 1 of each year. (Ord. 49-1973. Passed 11-5-73.)

747.06 LISTINGS.

All listings of real estate used by a rental organization shall meet the following requirements:

(a) Written permission shall be obtained from the owner of any real estate before it can be listed by a rental listing organization as available for lease or rent.

(b) Listings shall be updated every week in order to keep the listings current and accurate.

(c) No rental listing organization shall list or advertise any real estate for rent, knowing it to be unavailable for rent or lease.

(d) The ~~City Manager~~Mayor or his representative shall have access to all necessary rental lists and supporting documents at all reasonable times to show compliance with the terms of Sections 747.06 and 747.07.

(Ord. 49-1973. Passed 11-5-73; Ord. Passed .)

747.07 CHARGES FOR SERVICES.

(a) No rental listing organization shall charge a fee for its services until a customer or client has actually rented real estate by utilizing the service of such rental listing organization, provided however that this section shall not apply if the customer or client, at the time he pays a fee, has signed a written statement agreeing that the rental listing organization may charge the prescribed fee without actually obtaining a rental unit for the customer or client, as a result of the services offered by such rental listing organization.

(b) The rental listing organization shall require the person signing this written statement to fill in the date of signing adjacent to such customer's or client's signature - and shall keep a copy of every signed written statement required herein for a period of no less than one (1) year from the date such statement is signed.

(c) Such written statement shall include immediately above the line upon which the customer or client signs, in underlined, clearly legible capital letters of no less sized print than ten (10) character per inch, the following statements:

"READ CAREFULLY BEFORE SIGNING.

"BY SIGNING THIS AGREEMENT YOU AGREE TO PAY THE FEE CHARGED BY SAID RENTAL LISTING ORGANIZATION, IN ADVANCE, WITHOUT ANY GUARANTEE WHATSOEVER, OR REPRESENTATION TO YOU BY THE RENTAL LISTING ORGANIZATION THAT IT WILL, OR IS OBLIGATED TO, FIND YOU A PLACE TO RENT AS A RESULT OF ITS SERVICES."

(Ord. 49-1973. Passed 11-5-73.)

(b) To create a procedure for investigating and settling complaints of discriminatory practices in a housing, employment, education, and public accommodation context, and

(c) To prohibit "blockbusting" and other similar real estate practices which limit housing options and result in the de-stabilization of communities, a decline in property values, and/or the segregation or resegregation of neighborhoods.

(Ord. 123-2014. Passed 11-3-14.)

749.03 DEFINITIONS.

As used in this Chapter, the following terms shall have these meanings:

(a) "Administrative Hearing" means a hearing conducted by the Board as set forth in Section 749.19. (Ord. 123-2014. Passed 11-3-14.)

(a1) "Age" means 40 years of age and older, as recognized by the Age Discrimination in Employment Act of 1967. (Ord. 4-2019. Passed 2-4-19.)

(b) "Aggrieved Person" includes any individual who claims to have been injured by an Unlawful Discriminatory Practice or who believes that he/she will be injured by an Unlawful Discriminatory Practice that is about to occur or a non-profit organization whose purpose is to prevent or eliminate Unlawful Discriminatory Practices and has reason to believe, because of testing conducted by said organization or otherwise, that an Unlawful Discriminatory Practice has occurred.

(c) "Board" means the Fair Practices Board as set forth in Section 749.04.

(d) "Business Days" means days that City Hall is open for normal operations.

(e) "Complainant" means an individual who files a Complaint and may be:

(1) An Aggrieved Person;

(2) An individual acting on behalf of an Aggrieved Person with his/her authority to do so, such as an attorney or other representative; or

(3) A legal guardian or legal custodian of an Aggrieved Person.

(f) "Complaint" means a complaint filed by the Complainant with the Complaint Officer as set forth in Section 749.17 and under the procedure set forth in Section 749.18.

(g) "Complaint Officer" means the individual designated by the ~~City Manager~~Mayor as set forth in Section 749.05.

(h) "Conciliation" means the attempted resolution of issues raised by a Complainant or by the investigation of a Complaint, through informal negotiations involving the Aggrieved Person, the Respondent, and the Complaint Officer.

(i) "Conciliation Agreement" means a written agreement setting forth the resolution of the issues in Conciliation. A Conciliation Agreement shall be subject to final approval of the Board as set forth in Section 749.18(g).

(j) "Covered Multi-Family Dwellings" means all dwelling units in buildings containing four (4) or more units with one (1) or more elevators, and all ground floor units in buildings containing four (4) or more units, without an elevator, as defined by 24 CFR 100.201.

(k) "Determination" means a determination made by the Board following the Complaint Officer's Recommendation as set forth in Section 749.18.

(l) "Disability" is defined by the Americans with Disability Act and means a physical

(m) "Disabled" means an individual with a Disability, including for illustrative purposes only, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, being HIV-positive (whether symptomatic or asymptomatic), mental retardation, emotional illness, specific learning disabilities, tuberculosis, drug addiction, and alcoholism or being regarded or perceived as having any of these diseases or conditions. (Ord. 123-2014. Passed 11-3-14; Ord. Passed .)

(n) The terms 'Discriminate,' 'Discriminating,' or 'Discrimination,' mean any act, policy, or practice that, regardless of intent, has or had the effect of subjecting any individual to different treatment as a result of that individual's Age, race, color, religion, Sex, Familial Status, national origin, Disability, Sexual Orientation, or Gender Identity or Expression, or the nonconsensual dissemination of that individual's private sexual images, except as otherwise set forth in this Chapter, and except that Age may be the basis of different treatment concerning Housing Practices (see Section 749.07) and/or Education Practices (see Section 749.14).

(Ord. 108-2019. Passed 7-6-20.)

(o) "Dwelling" means any building, structure, or part of a building or structure that is occupied as, or designed for or intended for occupancy as a residence or any vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a dwelling.

(p) "Educational Institution" means any public educational institution, including an academy, college, elementary or secondary school, extension course, kindergarten, pre-school, nursery school, university, and any business, nursing, professional, secretarial, technical, or vocational school. Educational Institution does not mean any private educational institution or any educational institution operated by a religious or denominational institution.

(q) "Employee" means an individual employed by an Employer, except those engaged in domestic service.

(r) "Employer" means any Person that employs four (4) or more individuals within the City of Cleveland Heights, except for an organized religious congregation, or an organization or institution limited to members of a single religious faith.

(s) "Familial Status" means either of the following:

(1) One (1) or more individuals who are under eighteen (18) years of age and who are domiciled with a parent or guardian having legal custody of the individual;

(2) One (1) or more individuals who are under eighteen (18) years of age and who or domiciled with a designee of the parent or guardian under written permission of the parent or guardian; or

(3) Any individual who is pregnant or in the process of securing legal custody of any individual who is under eighteen (18) years of age.

"Family" includes a single individual.

(t) "Gender Identity or Expression" means having or being perceived as having gender-related identity, appearance, expression, or behavior, whether or not that identity, appearance, expression, or behavior is different from that traditionally associated with the individual's actual or perceived sex.

749.05 COMPLAINT OFFICER.

The ~~City Manager~~Mayor shall designate a Complaint Officer. The Complaint Officer shall be an employee of the City or other designee who is familiar with the jurisdictions and authorities of the U.S. Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, the Office of Civil Rights for the U.S. Department of Education, and the Ohio Civil Rights Commission.
(Ord. 123-2014. Passed 11-3-14; Ord. Passed .)

749.06 COOPERATION WITH STATE AND FEDERAL AGENCIES.

(a) The Board and the Complaint Officer are encouraged to cooperate with the Secretary of Housing and Urban Development and the Attorney General of the United States in the enforcement of the Fair Housing Act of 1968, 42 U.S.C. §3601, et seq., as amended, and may assist the Secretary or Attorney General of the United States in any way consistent with the policy of this Chapter.

(b) The Board and the Officer are encouraged to cooperate with the Ohio Civil Rights Commission and any other state or federal agency in the enforcement of state or federal fair housing or any discrimination laws and may assist the Commission in any way consistent with the policy of this Chapter.
(Ord. 123-2014. Passed 11-3-14.)

749.07 UNLAWFUL DISCRIMINATORY HOUSING PRACTICES.

It shall be an Unlawful Discriminatory Housing Practice and a violation of this Chapter:

(a) For any Person or Real Estate Agent or Lending Institution:

(1) To Discriminate against any individual in the selling, renting, assigning or otherwise transferring of any interest in any Housing.

(2) To Discriminate against any individual by refusing to negotiate, making false representations on the availability of Housing, or withdrawing from the market any Housing which is for sale, lease, sublease or rental.

(3) To include in the terms, conditions or privileges of any sale, lease, sublease, rental, assignment or other transfer of any Housing, any clause, condition or restriction Discriminating against any individual in the use or occupancy of such Housing.

(4) To Discriminate in the furnishing of any facilities, repairs, improvements or services or in the terms, conditions, privileges or tenure of occupancy of any individual.

(b) For any Lending Institution or Person to Discriminate in lending money, guaranteeing loans, accepting a deed of trust or mortgage or otherwise making available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of any Housing or Discriminate in the fixing of the rates, terms, conditions or provisions of any such financial assistance or to discriminate on the basis of geographic location.

(c) For any Person or Real Estate Agent or Lending Institution, with respect to any prohibited act specified in this Chapter, to publish or circulate or cause to be published or circulated, any notice, statement, listing or advertisement, or to announce a policy or to make any

CHAPTER 751
Commercial Snow Removal and Commercial Landscaping

751.01 Definitions.
751.02 Permit required; application; fees.
751.03 Bond required.
751.04 Continuous insurance required.
751.05 Snow removal vehicles, safety equipment.
751.06 Prohibited acts.
751.07 Distribution of rules and regulations.
751.99 Penalty.

CROSS REFERENCES
Snow removal from sidewalks - see GEN. OFF. 521.04

751.01 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

(a) "Commercial snow removal services" means any person, firm or corporation using a vehicle or machine to remove snow from privately owned areas in the City for a fee or charge of any kind.

(b) "Public right of way" means any place owned by the public or dedicated for public use for pedestrian or vehicular traffic, including, but not limited to, a street, roadway, sidewalk, curb, gutter, highway, alley, mall, court or park.

(c) "Median strip" means any area between opposing lanes of traffic on a public roadway.

(d) "Vehicle" means every device, in, upon or by which any person or property may be transported or drawn upon a public roadway.

(Ord. 83-1987. Passed 10-19-87.)

(e) "Commercial landscaping service" means the planting of, caring for, maintaining, cutting or grooming of grass, flowers, shrubs, trees or plants by a person, firm or corporation for consideration on another person's property.

(Ord. 20-2009. Passed 3-16-09.)

(f) "Mayor" means Mayor or designee.

(Ord. Passed .)

751.02 PERMIT REQUIRED; APPLICATION; FEES.

(a) No person or other entity shall perform any commercial snow removal service or commercial landscaping service within the City until a permit therefor has first been obtained from the City.

(b) Prior to the issuance of each permit, the owner(s) of the commercial snow removal service or commercial landscaping service shall submit an application on a form which shall be furnished by the ~~City Manager~~Mayor. The applicant shall furnish the make, model and serial number of any vehicle(s) or machine(s) to be used and the name, address and telephone number of the owner(s) of the service.

(c) The annual cost of a permit shall be fifty dollars ($50.00) for a snowplowing permit, fifty dollars ($50.00) for a landscaping permit, or seventy-five dollars ($75.00) for a permit which allows the applicant to perform both services.
(Ord. 20-2009. Passed 3-16-09; Ord. Passed .)

751.03 BOND REQUIRED.

Each applicant for a permit for commercial snow removal and/or commercial landscaping service shall execute and file with the City a good and sufficient bond in the sum of ten thousand dollars ($10,000). The bond shall be in a form approved by the Director of Law and shall be conditioned upon faithful observance of all of the conditions of this chapter and shall indemnify the City from any and all damage or loss sustained by reason of snow removal and/or landscaping services performed by the applicant. (Ord. 20-2009. Passed 3-16-09.)

751.04 CONTINUOUS INSURANCE REQUIRED.

Each applicant for a new or renewal permit to provide commercial snow removal and/or commercial landscaping services shall deposit with the ~~City Manager~~Mayor a policy or certificate of liability insurance which is acceptable to and approved by the Director of Law in a minimum amount of one hundred thousand dollars ($100,000.00) for injury to one person, three hundred thousand dollars ($300,000.00) for injury to more than one person and fifty thousand dollars ($50,000.00) property damage for any one (1) accident. The policy shall contain a clause obligating the surety company or insurance company to give ten (10) days written notice to the ~~City Manager~~Mayor before the lapse, cancellation or voiding of such policy; and upon the lapse, cancellation or voiding of such policy, the permit shall immediately be revoked.
(Ord. 20-2009. Passed 3-16-09; Ord. Passed .)

751.05 SNOW REMOVAL VEHICLES, SAFETY EQUIPMENT.

Any vehicle used for commercial snow removal services in the City shall have a flashing amber safety light mounted on the roof of the vehicle which shall be in operation during such snow removal.
(Ord. 83-1987. Passed 10-19-87.)

751.06 PROHIBITED ACTS.

(a) No person shall deposit or cause to be deposited snow or ice which has been removed from private property onto the median strips or any streets, sidewalks or other paved portions of the public rights of way of the City, or onto any private property without the permission of the owner.

753.02 LICENSE AND REGISTRATION REQUIRED.

No Operator of an Automated Teller Machine shall install and/or maintain an ATM unless such Operator shall register with and obtain a license for ATM from the ~~City Manager~~Mayor or designee in accordance with the requirements of this Chapter. (Ord. 19-2017. Passed 3-20-17; Ord. Passed .)

753.03 REGISTRATION AND LICENSE APPLICATION; RENEWAL AND FEE.

(a) The ~~City Manager~~Mayor or designee shall not issue a license to any Operator who:

(1) Does not operate an ATM in accordance with the requirements of this Chapter; or

(2) Has been convicted of any form of theft.

(b) Before installing and/or maintaining an ATM, the Operator shall file a license application in accordance with the requirements of this Chapter upon forms to be prescribed by the ~~City Manager~~Mayor which shall contain the following information:

(1) The location and address where the ATM is or will be installed and maintained;

(2) The name, address, phone, and electronic contact information of the Operator, Store Owner, and property owner to be updated during the year if such information changes;

(3) The name, address, phone and electronic contact information of a person or persons primarily responsible for placing, servicing, and maintaining the ATM, to be updated during the year if such information changes;

(4) Contact information for the global positioning system ("GPS") provider and the particulars concerning the installed GPS so that law enforcement can get an immediate location of GPS in a stolen ATM twenty-four (24) hours a day; and

(5) Written authorization from the Store Owner where the ATM will be placed.

(c) A fee of One Hundred Fifty Dollars ($150) to defray the expenses of administering the provisions of this Chapter shall be submitted with each license application or renewal and shall not be prorated based upon the time of the term the application is filed.

(d) The term of all licenses shall be a calendar year. A renewal of a license is required for each subsequent calendar year.

(e) The Operator shall display the license on a conspicuous part of the ATM.

(f) All Operators who have installed and/or maintained an ATM prior to the enactment of this Chapter shall file the license application and comply with all the provision of this Chapter by June 30, 2017.

(g) The ~~City Manager~~Mayor may deny, suspend, or revoke any license granted under this Section on the basis of a violation of this Chapter.

(Ord. 19-2017. Passed 3-20-17; Ord. _____ Passed _____.)

753.04 REGULATION OF INSTALLATION.

An Operator of an Automated Teller Machine shall:

(a) Secure the Automated Teller Machine to the floor with reinforcing brackets or base plates;

(b) Secure the ATM to the wall from the outside to the inside with reinforcing brackets or base plates; and

(c) Place the ATM against a brick or concrete wall or another substantial surface, away from the front store entrance wall and not accessible from the parking lot; and

(d) Secure a GPS tracking device to the ATM that can locate the unit if it is stolen.

(Ord. 19-2017. Passed 3-20-17.)

753.05 SECURITY MEASURES.

A Store Owner shall maintain the following security measures at its ATM facilities:

(a) Strategic placement of bollards, planter boxes, or other physical barrier by the entrance(s) of the store, subject to approval by the Chief of Police and the Architectural Board of Review; and

(b) Lighting in the parking area and entrance(s) of the stores shall adhere to the following standards:

(1) A minimum of ten (10) Foot-candle at the front entrance of the store and extending in an unobstructed direction outward five (5) feet; and

(2) A minimum of two (2) Foot-candle in the parking area within sixty (60) feet of the front entrance of the store.

(c) Two (2) surveillance cameras for each ATM installed and maintained as follows:

(1) One camera shall view from the entrance of the store and record all persons and activity occurring within a minimum of six (6) feet outside the entrance; and

(2) One camera shall view and record all persons and activity occurring within a minimum of six (6) feet from the ATM located inside the store: and

(3) The recordings made by such cameras shall be preserved by the Store Owner for at least thirty (30) days.

(Ord. 19-2017. Passed 3-20-17.)

753.06 APPLICABILITY.

The provisions of this Chapter shall be applicable to all ATMs and ATM licenses, effective June 30, 2017. (Ord. 19-2017. Passed 3-20-17.)

753.07 APPEAL.

A determination made by the ~~City Manager~~Mayor or designee under the provisions of this Chapter shall be determined to constitute the issuance of a final order, adjudication, or decision, and may be appealed pursuant to Ohio Revised Code 2506.

(Ord. 19-2017. Passed 3-20-17; Ord. Passed .)

753.99 PENALTY.

(10) Removal of doors on viewing booths in sexually oriented businesses and requiring sufficient lighting on premises with viewing booths will advance the substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult arcades and theaters and will facilitate enforcement of the provisions of this chapter and other federal, state and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, and welfare.

(11) Requiring sufficient lighting in all sexually oriented businesses will advance the substantial governmental interest in curbing illegal sexual activity on the premises of sexually oriented businesses, and will facilitate enforcement of the provisions of this chapter and other federal, state and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, and welfare.

(12) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of sexually oriented businesses, and by employees of such businesses, will facilitate the enforcement of the provisions of this chapter and other federal, state and local laws, and will thereby further the substantial government interest in protecting the public health, safety, and welfare.

(13) A person who recently has been convicted of a sexually related crime is not an appropriate individual to operate or be employed in a sexually oriented business.

(14) Barring such individuals from the management of and employment in sexually oriented businesses for a period of years serves as a deterrent to and prevents the commission of sexually related criminal acts, including conduct which leads to the transmission of sexually transmitted diseases.

(Ord. 144-1999. Passed 8-16-99.)

755.02 DEFINITIONS.

For purposes of this chapter:

(a) "Adult Arcade" means any place to which the public is permitted or invited where either or both:

(1) Motion picture machines, projectors, video or laser disc players, or

(2) Other video or image-producing devices are available, run via coin, token, or any form of consideration, to show images to five or fewer persons at one time;

and where the images shown and/or live entertainment presented is characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(b) "Adult Bookstore," "Adult Novelty Store," or "Adult Video Store" means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one of more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, videodiscs, CD-ROM disks, or video reproductions, slides, or other visual representations that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or

B. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.

(3) The fact that a conviction is being appealed shall not prevent such conviction from constituting a specified criminal activity as defined in this Section.

(w) "Specified Sexual Activities" means any of the following:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(3) Excretory functions as a part of or in connection with any of the activities set forth in subsection (w)(1) or (2) hereof.

(x) "Video Booth" means any private or semiprivate booth or any viewing room of less than one hundred fifty (150) square feet of floor space or area to which the public may gain admittance, wherein a still or motion picture machine, projector, video monitor, or similar equipment is available for the purpose of showing still or motion pictures, videos, or similar images or photographic reproductions to five (5) or fewer persons at any one time.

(y) "Viewing Booth" means live viewing booth or video booth, and "Viewing Booths" means live viewing booths, video booths, or any combination thereof.

(z) "Transfer of Ownership or Control" of a sexually oriented business shall mean any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 144-1999. Passed 8-16-99; Ord. Passed .)

755.03 CLASSIFICATION.

Businesses subject to sexually oriented business licensing are classified as follows:

(a) Adult arcades;
(b) Adult bookstores, adult novelty stores, or adult video stores;
(c) Adult cabarets;
(d) Adult motion picture theaters;
(e) Adult theaters;
(f) Nude model studios;
(g) Sexual encounter centers; and
(h) Any combination of classifications set forth in subsections (a) through (g) hereof.

(Ord. 144-1999. Passed 8-16-99.)

755.04 SEXUALLY ORIENTED BUSINESS LICENSE REQUIRED.

(a) No person shall:

(1) Operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this chapter.

(2) In connection with operating a sexually oriented business, retain the services of a person as an employee, as defined in Section 755.02 of this chapter, who is not licensed as a sexually oriented business employee by the City pursuant to this chapter.

(b) Any person who violates subparagraph (a)(l) of this Section shall be guilty of a misdemeanor of the first degree.

(Ord. 144-1999. Passed 8-16-99.)

755.05 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE REQUIRED.

(a) No person shall act as an employee, as defined in Section 755.02 of this chapter, on the premises of a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.

(b) Any person who violates this Section shall be guilty of a misdemeanor of the third degree.

(Ord. 144-1999. Passed 8-16-99.)

755.06 SEXUALLY ORIENTED BUSINESS LICENSE APPLICATION.

(a) An application for a sexually oriented business license shall be submitted to the ~~City Manager~~Mayor on a form provided by the ~~City Manager~~Mayor. The application may request and the applicant shall provide such information as is reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established in this chapter.

(b) An application for a sexually oriented business license shall identify and be signed by the following persons:

(1) If the business entity is owned by an individual, that individual.

(2) If the business entity is owned by a corporation, each officer or director of the corporation and each individual with a ten percent (10%) or greater ownership interest in the corporation.

(3) If the business entity is owned by a partnership, each partner and each individual with a ten percent (10%) or greater ownership interest in the partnership.

(c) An application for a sexually oriented business license must designate one or more individuals who are to be principally responsible for the operation of the proposed sexually oriented business, if a license is granted. At least one person so designated must be involved in the day-to-day operation of the proposed sexually oriented business on a regular basis. Each person so designated, as well as the business entity itself, shall be considered a license applicant,

must qualify as a licensee under this chapter, and shall be considered a licensee if a license is granted.

(d) An application for a sexually oriented business license shall be completed according to the instructions of the application form, which shall require the following:

(1) If the applicant is:

A. An individual, state the legal name and any aliases of such individual;

B. A partnership, state the complete name of the partnership and all of its partners and whether the partnership is general or limited, and provide a copy of the partnership agreement, if any;

C. A corporation, state the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of incorporation, and state the names and capacity of all officers and directors, the name of the registered corporate agent, and the address of the registered office for service of process.

(2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, state the fictitious name to be used and submit copies of documentation evidencing the registration of the business name under applicable laws.

(3) State whether any applicant has been convicted of a specified criminal activity as defined in Section 755.02 of this chapter, and if so, the specified criminal activity involved and the date, place, and jurisdiction of each such conviction.

(4) State whether any applicant has had a previous license under this chapter or other similar regulation of another jurisdiction denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation; and state whether the applicant has been a partner in a partnership or an officer, director or ten percent or greater owner of a corporation licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the business for which the permit was denied, suspended or revoked, as well as the date of denial, suspension or revocation.

(5) State whether any applicant holds any other licenses under this chapter or other similar regulation from this or another jurisdiction and, if so, the names and locations of such other licensed businesses.

(6) State the classification of license for which the applicant is filing.

(7) State the location of the proposed sexually oriented business, including a legal description of the property (i.e., block and lot), street address, and telephone number(s), if any.

(8) State the mailing address and residential address of each applicant and each person signing the application.

(9) Submit a recent photograph of each applicant who is a natural person which clearly shows the applicant's face.

(10) Submit the fingerprints of each applicant who is a natural person, recorded by the Cleveland Heights Police Department.

(11) For any applicant who is a natural person, describe and identify the location of any tattoos on such person's face, arms, legs, or hands, or any other anatomical area that normally would be visible when such person is on the premises of the proposed sexually oriented business.

(12) State the driver's license number and Social Security number of each applicant who is a natural person and each person signing the application, or, for an applicant that is not a natural person, the applicant's federally issued tax identification number.

(13) Submit proof that each applicant who is a natural person is at least eighteen (18) years old.

(14) Submit a sketch or diagram showing the configuration of the premises of the sexually oriented business, including the location of all stages and customer seating and a statement of total floor space occupied by the business. The diagram shall also designate the place at which the sexually oriented business license will be conspicuously posted, if granted. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(15) If an applicant wishes to operate a sexually oriented business which shall exhibit on the premises, in a viewing booth, as defined in Section 755.02 of this chapter, films, video cassettes, slides, videodiscs, CD-ROM disks, other video or image reproduction, or live entertainment which depicts specified sexual activities or specified anatomical areas, then the applicant shall comply with the additional application requirements set forth in Section 755.18 of this chapter.

(Ord. 144-1999. Passed 8-16-99; Ord. Passed .)

755.07 ISSUANCE OF SEXUALLY ORIENTED BUSINESS LICENSE.

(a) Within five days of receipt of an application for a sexually oriented business license, the ~~City Manager~~Mayor shall notify the Police Chief, the Fire Chief, and the Cuyahoga County Board of Health (if appropriate) of such application. In making such notification, the ~~City Manager~~Mayor shall request that the Police Chief promptly investigate the information provided in the application concerning the criminal background of the applicant(s), and shall request that the Fire Chief and Cuyahoga County Board of Health (if appropriate) promptly inspect the premises for which the sexually oriented business license is sought to assess compliance with the regulations under their respective jurisdictions.

The Police Chief and the Fire Chief shall begin their respective investigations and inspection processes promptly upon receipt of notice of an application from the ~~City Manager~~Mayor. The Police Chief shall provide the results of his investigation to the ~~City Manager~~Mayor, in writing, within ten (10) days of receipt of notice of the application. The Fire Chief shall provide to the ~~City Manager~~Mayor a written certification of whether the premises are in compliance with the Fire Code within ten (10) days of receipt of notice of the application.

The ~~City Manager~~Mayor shall commence the inspection of the premises for which a sexually oriented business license is sought promptly upon receipt of the application, and shall complete a written certification of whether the premises are in compliance with the Building

Code, the Planning and Zoning Code, and the provisions of this chapter related to physical characteristics of the premises within fifteen days after receipt of the application.

(b) Within twenty-one (21) days after receipt of a completed sexually oriented business license application, the ~~City Manager~~Mayor shall approve or deny the issuance of the license. The ~~City Manager~~Mayor shall approve the issuance of a license to an applicant unless the ~~Manager~~Mayor determines that one or more of the following findings is true:

(1) An applicant who is a natural person is under eighteen (18) years of age.

(2) An applicant has failed to provide information reasonably necessary for issuance of the license as requested on the application form, or has falsely answered a question or request for information on the application form.

(3) An applicant has been denied a sexually oriented business license or has had a license to operate a sexually oriented business or adult motel revoked within the preceding twelve (12) months by any jurisdiction.

(4) An applicant has been convicted of a specified criminal activity as defined in Section 755.02 of this chapter.

(5) The proposed sexually oriented business would violate or fail to be in compliance with any provisions of the Planning and Zoning Code, the General Offenses Code of the City, or State statute or regulation.

(6) The application and investigation fee required by this chapter has not been paid.

(7) An applicant is in violation of or is not in compliance with any provision of this chapter, except as provided in Subparagraph (c)(l) of this Section.

(c) If the ~~City Manager~~Mayor determines that one or both of the following findings is true, the license issued pursuant to Subparagraph (b) of this Section shall contain a requirement that the
licensee correct all deficiencies specified within 120 days of the date the license is issued:

(1) The results of inspections of the premises by the Fire Chief, the Cuyahoga County Board of Health, and/or the ~~City Manager~~Mayor indicate that the premises are not in compliance with applicable laws and regulations under their respective jurisdictions, including the provisions of this chapter related to characteristics of the physical premises. This subparagraph shall not apply to premises that are in violation of any law or regulation that is identified or referenced in subparagraphs (b)(1) through (b)(7) above.

(2) An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to any business, which are not the subject of a pending appeal or other legal challenge.

(d) If the ~~City Manager~~Mayor determines that no other grounds for denial of a license exist
under Subparagraph (b) of this Section, the ~~City Manager~~Mayor shall not delay approval of the application past the end of the 21-day period provided in this Section solely because the Fire Chief or the Cuyahoga County Board of Health has not provided the ~~City Manager~~Mayor with the results of his inspection of the premises; the results of the ~~City Manager's~~Mayor's inspection

of the premises are not
available; and/or the Police Chief has not provided the results of his investigation of the criminal background of the applicant(s).

If, after approving the issuance of a license, the ~~City Manager~~Mayor receives information from the Police Chief concerning his investigation, which the ~~City Manager~~Mayor determines constitutes grounds for denial of a license under subsection (b) hereof, then the sexually oriented business license issued pursuant to this subsection (d) hereof shall be immediately revoked. If after approving the issuance of a license, the ~~City Manager~~Mayor receives information concerning the results of inspections of the premises by the Fire Chief or the Cuyahoga County Board of Health, or concerning the results of the ~~City Manager's~~Mayor's own inspection, which the ~~City Manager~~Mayor determines constitutes grounds for the issuance of a license subject to a requirement to correct deficiencies under subsection (c) hereof, then a requirement shall be added to the terms of the sexually oriented business licenses issued pursuant to this subsection (d) hereof to correct all deficiencies noted within 120 days of the date such requirement is added.

(e) A sexually oriented business license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the licensed sexually oriented business, and the classification for which the license is issued pursuant to Section 755.03 of this chapter. All sexually oriented business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.

(f) The ~~City Manager~~Mayor shall advise the applicant in writing of the reasons for any license denial.
(Ord. 144-1999. Passed 8-16-99; Ord. Passed .)

755.08 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE APPLICATION.

(a) An application for a sexually oriented employee license shall be submitted to the ~~City Manager~~Mayor on a form provided by the ~~City Manager's~~Mayor's Office. The application may request and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established in this chapter.

(b) An application for a sexually oriented business employee license shall be completed according to the instructions of the application form, which shall require the following:

(1) State the applicant's name and any other names (including "stage" names) or aliases used by the applicant.

(2) State the applicant's date and place of birth.

(3) State the applicant's height, weight, and hair and eye color.

(4) Submit a recent photograph of the applicant which clearly shows the applicant's face.

(5) Submit the applicant's fingerprints, recorded by the Cleveland Heights Police Department.

(6) Describe and identify the location of any tattoos on the applicant's face,

arms, legs, or hands, or any other anatomical area that normally would be visible when the applicant is on the premises of the proposed sexually oriented business.

(7) State the applicant's present residence address and telephone number.

(8) State the applicant's present or intended business address and telephone number.

(9) State the applicant's driver's license number and Social Security number.

(10) Submit proof that the applicant is at least eighteen (18) years old.

(11) Provide a statement detailing the sexually oriented business-related license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate a sexually oriented business in this or any other jurisdiction, and whether the applicant has ever had a sexually oriented business related license, permit, or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation, or suspension. Attach a copy of any order of denial, revocation, or suspension.

(12) State whether the applicant has been convicted of a specified criminal activity as defined in Section 755.02 of this chapter and, if so, the specified criminal activity involved and the date, place and jurisdiction of each such conviction.

(Ord. 144-1999. Passed 8-16-99; Ord. Passed .)

755.09 ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.

(a) Upon the filing of an application for a sexually oriented business employee license, the ~~City Manager~~Mayor shall issue a temporary license to said applicant immediately.

(b) Within five (5) days of receipt of an application for a sexually oriented business employee license, the ~~City Manager~~Mayor shall notify the Police Chief of such application. In making such notification, the ~~City Manager~~Mayor shall request that the Police Chief promptly investigate the information provided in the application concerning the criminal background of the applicant. The Police Chief shall begin his investigation promptly upon receipt of notice of an application from the ~~City Manager~~Mayor, and shall provide the results of his investigation to the ~~City Manager~~Mayor within ten (10) days of receipt of notice of the application.

(c) Within twenty-one (21) days after receipt of a completed sexually oriented employee license application, the ~~City Manager~~Mayor shall approve or deny the issuance of the license. The ~~City Manager~~Mayor shall approve the issuance of a license to an applicant unless the ~~City Manager~~Mayor determines that one or more of the following findings is true:

(1) The applicant has failed to provide information reasonably necessary for issuance of the license as requested on the application form, or has falsely answered a question or request for information on the application form.

(2) The applicant is under eighteen (18) years of age.

(3) The applicant has been convicted of a specified criminal activity as defined in Section 755.02 of this chapter.

(4) The sexually oriented business employee license is to be used for employment in a business prohibited by local, state, or federal law, statute, rule or regulation.

(5) The applicant has been denied a sexually oriented business employee license or has had a sexually oriented business employee license revoked within the preceding

twelve (12) months by any jurisdiction.

(d) If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. The ~~City Manager~~Mayor shall advise the applicant in writing of the reason(s) for any such denial.
(Ord. 144-1999. Passed 8-16-99; Ord. _____ Passed _____.)

755.10 FEES.

(a) Every application for a new sexually oriented business license shall be accompanied by a $500 nonrefundable application and investigation fee.

(b) Every application for renewal of a sexually oriented business license shall be accompanied by a five hundred dollar ($500.00) nonrefundable application and investigation fee.

(c) In addition to the application and investigation fee required in subsection (a) or (b) hereof, every applicant that is granted a sexually oriented business license (new or renewal) shall pay to the City an annual, nonrefundable license fee of two hundred fifty dollars ($250.00) within thirty (30) days of license issuance or renewal.

(d) Every application for a new sexually oriented business employee license shall be accompanied by an annual, nonrefundable application, investigation, and license fee of fifty dollars ($50.00).

(e) Every application for renewal of a sexually oriented business employee license shall be accompanied by an annual, nonrefundable application, investigation, and license fee of fifty dollars ($50.00).
(Ord. 144-1999. Passed 8-16-99.)

755.11 INSPECTION.

(a) The Police Department shall, from time to time and at least four times a year, inspect each sexually oriented business licensed under the provisions of this chapter in order to assess compliance with the provisions of this chapter.

(b) The ~~City Manager~~Mayor shall, from time to time request that the Cuyahoga County Board of Health inspect a sexually oriented business licensed under the provisions of this chapter in order to assess compliance with the provisions of this chapter.

(c) An applicant or licensee shall permit representatives of the Police Department, Fire Department, Cuyahoga County Board of Health, or other City departments or agencies, or the Cuyahoga County Health Commissioner, to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time that it is occupied or open for business.

(d) A person who operates a sexually oriented business or his agent or employee

commits a misdemeanor of the first degree if he refuses to permit such lawful inspection of the premises.

(Ord. 144-1999. Passed 8-16-99; Ord. _____ Passed _____.)

755.12 EXPIRATION AND RENEWAL OF LICENSE.

(a) Each license issued pursuant to this chapter shall expire one year from the date of issuance and may be renewed by making application as provided in this Section. Application for renewal shall be made no more than ninety (90) days and no less than thirty (30) days before the expiration date. If application is made less than thirty (30) days before the expiration date, the license will not be extended pending a decision on the application, but will expire on its normal expiration date.

(b) An application for renewal of a sexually oriented business license shall be submitted to the ~~City Manager~~Mayor on a form provided by the ~~City Manager's~~Mayor's Office. The renewal application may request and the applicant shall provide such information as reasonably necessary to enable the City to determine whether the applicant meets the qualifications established in this chapter. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to Section 755.06 of this chapter. The completed renewal application shall be accompanied by copies of any document or material submitted in connection with the initial license application that has been revised or requires revision to reflect any change in circumstances or conditions. Sketches or diagrams submitted with an initial sexually oriented business license application may be resubmitted with subsequent renewal applications, provided that the applicant certifies in writing that the sketch or diagram still depicts the premises accurately.

(c) The ~~City Manager~~Mayor shall make determinations concerning the approval of sexually oriented business license renewals based on the same criteria used to evaluate applications for new licenses under Section 755.07 of this chapter.

(d) The ~~City Manager~~Mayor shall advise the applicant in writing of the reason(s) for any denial of a sexually oriented business license renewal.

(e) An application for renewal of a sexually oriented business employee license shall be submitted to the ~~City Manager~~Mayor on a form provided by the ~~City Manager's~~Mayor's Office. The renewal application may request and the applicant shall provide such information as reasonably necessary to enable the City to determine whether the applicant meets the qualifications established in this chapter. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to Section 755.08 of this chapter. The completed renewal application shall be accompanied by copies of any document or material submitted in connection with the initial license application that has been revised or requires revision to reflect any change in circumstances or conditions.

(f) The ~~City Manager~~Mayor shall make determinations concerning the approval of

sexually oriented business employee license renewals based on the same criteria used to evaluate applications for new licenses under Section 755.09 of this chapter.

(g) The ~~City Manager~~Mayor shall advise the applicant in writing of the reason(s) for any denial of a sexually oriented business employee license renewal.

(h) When the City denies an application for renewal of either a sexually oriented business or employee license under this Section, the applicant shall not be issued another license for one year from the date of denial. If the City finds, subsequent to denial, that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the denial was issued.
(Ord. 144-1999. Passed 8-16-99; Ord. Passed .)

755.13 SUSPENSION.

(a) The City shall suspend a sexually oriented business license for a period not to exceed thirty (30) days if it determines that a licensee:

(1) Has violated or is not in compliance with any Section of this chapter; or

(2) Has knowingly allowed an employee to violate or fail to comply with any Section of this chapter.

(b) The City shall suspend a sexually oriented business license for a period not to exceed thirty (30) days if it determines that a licensee or his employee or agent has refused to allow an inspection of the licensed sexually oriented business premises as authorized by this chapter.

(c) The City shall suspend a sexually oriented business employee license for a period not to exceed thirty (30) days if it determines that a licensee has violated or is not in compliance with any Section of this chapter.

(d) The ~~City Manager~~Mayor shall advise the licensee in writing of the reason(s) for any suspension.
(Ord. 144-1999. Passed 8-16-99; Ord. Passed .)

755.14 REVOCATION.

(a) The City shall revoke a sexually oriented business license or sexually oriented business employee license if a cause of suspension under Section 755.13 of this chapter occurs and the license has been suspended two times within the preceding twelve (12) months.

(b) The City shall revoke a sexually oriented business license if it determines that:

(1) A licensee gave false or misleading information in the material submitted during the application process;

(2) The licensee(s) failed to comply with any requirement stated in the license, or pursuant to Section 755.07 of this chapter, to correct specified deficiencies within 120 days;

(3) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(4) A licensee has knowingly allowed prostitution, solicitation, or the commission of a felony on the premises;

(5) A licensee knowingly operated the sexually oriented business during a

period of time when the licensee's license was suspended;

(6) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;

(7) A licensee has been convicted of a specified criminal activity, as defined in Section 755.02 of this chapter, during the term of the license; or

(8) A licensee is delinquent in payment to the City, County, or State for any taxes or fees past due that were assessed or imposed in relation to any business.

(c) The City shall revoke a sexually oriented business employee license if it determines
that:

(1) The licensee gave false or misleading information in the material submitted during the application process;

(2) The licensee has knowingly acted as an employee on the premises of a sexually oriented business during a period of time when the licensee's license was suspended: or

(3) The licensee has been convicted of a specified criminal activity, as defined in Section 755.02 of this chapter, during the term of the license.

(d) The ~~City Manager~~Mayor shall advise the licensee in writing of the reason(s) for any revocation.

(e) When the City revokes a license, the licensee shall not be issued another license for one (1) year from the date the revocation became effective. If the City finds, subsequent to revocation, that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.
(Ord. 144-1999. Passed 8-16-99; Ord. Passed .)

755.15 APPEAL RIGHTS.

(a) Any denial, suspension, or revocation of a new or renewal license under this chapter may be appealed to the Health Code Board of Appeals, which shall act as the Board of Appeals ("Board") for purposes of this Section, by written notice to the Board within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the Board must hold a hearing on the appeal within fourteen (14) days of receipt of the notice at its office and must issue a decision affirming or reversing the denial, suspension, or revocation within five (5) days after the hearing.

(b) Any decision by the Board shall be a final appealable order, and the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(c) In the event that an applicant or licensee seeks judicial review of a decision issued pursuant to this chapter, the applicant or licensee shall file a notice of appeal with the Board, as well as with the court, and shall file a praecipe with the Board requesting that a complete transcript of all original papers, testimony, and evidence offered, heard, and taken into consideration in the Board's issuance of the final order appealed from be filed with the court. Within ten (10) days of receiving such written notice of appeal, or within such shorter time as may be ordered by the court, the Board shall transmit to the court in which the appeal was sought a copy of the full administrative record for the matter, including a complete transcript of all the original papers, testimony and evidence offered, heard, and taken into consideration in issuing the final order. The Board and all other departments or agencies of the City shall provide any further information, assistance, or cooperation requested by the reviewing court without delay.

(d) Subject to the provisions of (f) of this Section, any licensee lawfully operating a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to operate said business during the pendency of an appeal to the Board or to a court.

(e) Subject to the provisions of (f) of this Section, any licensee lawfully acting as an employee in a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to serve in such capacity during the pendency of an appeal to the Board or to a court.

(f) In the event that an applicant for a new sexually oriented business license or a new sexually oriented business employee license seeks judicial review of the denial of a new license, and such review does not result in a final judicial decision within sixty (60) days of the date the appeal was filed, the City will issue such applicant a provisional sexually oriented business license or sexually oriented business employee license upon request of the applicant. The provisional license:

(1) Will allow an applicant for a sexually oriented business license to operate the sexually oriented business named in the license application under the same terms as a normal sexually oriented business license issued pursuant to Section 755.07 of this chapter for the period of time specified in subsection (g) hereof; and

(2) Will allow an applicant for a sexually oriented business employee license to act as an employee on the premises of a sexually oriented business under the same terms as a normal sexually oriented business employee license issued pursuant to Section 755.09 of this chapter for the period of time specified in Subparagraph (g) of this Section; and

(3) Will be subject to the same requirements as a normal sexually oriented business license or sexually oriented business employee license issued under Section 755.07 or Section 755.09 of this chapter.

(g) A provisional license will expire on whichever of the following three dates is earliest:

(1) The date that a judicial decision is issued upholding the license denial;

(2) The date on which a non-provisional sexually oriented business license or sexually oriented business employee license is issued to the applicant pursuant to a judicial decision overturning the license denial; or

(3) The date one year from the issuance of the provisional license.

(h) In the event that judicial review of the denial of a new license application is still pending thirty (30) days before the expiration date of a provisional license, the provisional licensee may file a renewal license application with the ~~City Manager~~Mayor pursuant to Section 755.12(b) or (e) of this chapter. The ~~City Manager~~Mayor shall grant an application for renewal of a provisional license unless the ~~City Manager~~Mayor determines that new grounds exist for denial of a license application pursuant to Section 755.07 or Section 755.09 of this chapter, which did not exist at the time of the original license application. In the event that an application for renewal of a provisional license is denied and the applicant seeks judicial review of that denial, the City has the right to consolidate such review with the pending judicial appeal of the previous license denial.
(Ord. 144-1999. Passed 8-16-99; Ord. Passed .)

755.16 TRANSFER OF LICENSE.

(a) A sexually oriented business license is not transferable from one licensee to another or from one location to another. Any purported transfer of a sexually oriented business license shall automatically and immediately revoke that license.

(b) A sexually oriented business employee license is not transferable from one licensee to another, but the use of the license by the individual to whom it was issued may be transferred from one licensed sexually oriented business to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the ~~City Manager~~Mayor within fifteen (15) days of such transfer.
(Ord. 144-1999. Passed 8-16-99; Ord. Passed .)

755.17 PROHIBITION OF ADULT MOTELS.

(a) No person shall operate an adult motel within the City.

(b) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in Section 755.02 of this chapter.

(c) Evidence that a person in control of a sleeping room in a hotel, motel, or similar commercial establishment has rented or subrented a sleeping room to a person and, within ten (10) hours from the time the room was rented, has rented or subrented the same sleeping room

again, creates a rebuttable presumption that the establishment is an adult motel as that term is defined in Section 755.02 of this chapter.

(d) For purposes of subsection (b) hereof, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(e) Any person who operates a hotel, motel, or similar commercial establishment that is found to be an adult motel, as defined in Section 755.02 of this chapter, commits a misdemeanor of the first degree.
(Ord. 144-1999. Passed 8-16-99.)

755.18 REGULATIONS PERTAINING TO THE EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING BOOTHS.

(a) No person may operate or cause to be operated a sexually oriented business, which exhibits on the premises in a viewing booth, as defined in Section 755.02 of this chapter, films, video cassettes, other video or image reproduction, or live entertainment which depicts "specified sexual activities" or "specified anatomical areas," without complying with the following requirements:

(1) The sexually oriented business license application required under this chapter shall be accompanied by a diagram of the premises showing a plan thereof which specifies the location of one or more employee's stations and the location of all overhead lighting fixtures, and which designates any portion of the premises in which patrons will not be permitted. The diagram shall also designate the place at which the sexually oriented business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches.

(2) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an employee's station of every area of the premises to which any patron is permitted access for any purpose, including the interior of all viewing booths and excluding restrooms. Restrooms may not contain video reproduction equipment, and no entertainment of any kind may be offered in restrooms. If the premises has two or more employee's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the employee's stations. The view required in this subsection must be by direct line of sight from the employee's station.

(3) No alteration in the configuration or location of an employee's station shall be made without the prior approval of the ~~City Manager~~Mayor.

(4) At least one employee shall be on duty and situated in each employee's station at all times that any patron is present inside the premises.

(5) An employee's station shall not exceed thirty-two (32) square feet of floor area, and no single dimension of an employee's station shall exceed eight (8) feet.

(6) The view from the employee's station(s) shall remain unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials.

(7) No patron may at any time be permitted access to any area of the premises which has been designated in the license application filed pursuant to this chapter as an area in which patrons will not be permitted.

(8) No viewing booth may be occupied by more than one person at any time.

(9) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including both the interior of viewing booths and restrooms, at an illumination level of not less than five (5.0) footcandles as measured at floor level.

(10) The illumination described above shall be maintained at all times that any patron is present in the premises. In the event of a power failure, the business shall stop operating immediately and all patrons shall be cleared from the premises. The premises shall not be reopened until the minimum illumination level can be assured.

(11) No openings of any kind shall be permitted to exist between viewing booths or in any wall of a viewing booth.

(12) No person shall make or attempt to make an opening of any kind between viewing booths or in any wall of a viewing booth.

(13) The walls of each viewing booth shall be inspected regularly during each business day to determine if any openings or holes exist.

(14) All floor coverings in viewing booths shall be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(15) All wall surfaces, ceiling surfaces and seating surfaces in viewing booths shall be constructed of, or permanently covered by, nonporous, easily cleanable material.

(b) A person who operates a sexually oriented business or his agent or employee shall be guilty of a misdemeanor of the third degree if he operates a sexually oriented business in violation of subsection (a) hereof.

(Ord. 144-1999. Passed 8-16-99; Ord. Passed .)

755.19 ADDITIONAL REGULATIONS CONCERNING THE OPERATION OF SEXUALLY ORIENTED BUSINESSES.

(a) Nudity, Sexual Activity, Live Entertainment and Performances.

(1) No employee on the premises of a sexually oriented business may appear in a state of "nudity," as defined in Section 755.02 of this chapter, or engage in "specified sexual activities" in a state of "nudity," as those terms are defined in Section 755.02 of this chapter.

(2) Any employee appearing on the premises of a sexually oriented business in a state of seminudity, as defined in Section 755.02 of this chapter, must be on a stage that is at least forty-five (45) inches from the floor, and at a distance at least seventy-two (72) inches from all parts of a clearly designated area in which patrons will be present.

(3) All live entertainment and performances in a sexually oriented business must take place on a seventy-two (72) inches from all parts of a clearly designated area in which patrons will be present.

CHAPTER 759
Video Service Provider Fee

759.01 Established. 759.02 Notice.

759.01 ESTABLISHED.

In accordance with the requirements of Ohio R.C. 1332.32, and subject to its taking effect, all video service providers providing video service in the City pursuant to a video service authorization from the Director of the Ohio Department of Commerce shall pay Video Service Provider Fees ("VSP Fees") in the amount of five percent (5%) of gross revenues received from providing video service in the City, which gross revenue base shall include advertising revenues as permitted and defined by Ohio R.C. 1332.32(B)(2)(g). The VSP fee shall be paid quarterly, not sooner than forty-five (45) days nor later than sixty (60) days after the end of each calendar quarter. (Ord. 121-2007. Passed 9-4-07.)

759.02 NOTICE.

The ~~City Manager~~Mayor is hereby authorized and directed, upon receipt of notice from a video service provider that it will begin providing video service in the City pursuant to a state-issued video service authorization, to provide such video service provider with notice of the VSP fee as determined by this Council above, which notice may be given by overnight (return receipt), certified mail or other manner of delivery no later than ten (10) days from receipt of the provider's notice. (Ord. 121-2007. Passed 9-4-07; Ord. Passed .)

webcams, video game consoles or accessories, video game discs; cell phones, satellite phones, i-phones, i-pods, MP3 players, radio receivers or transmitters, pagers, chargers, GPS systems, radar detectors, electronic organizers, bluetooth devices, and dvd or cd burners.

(2) A person, firm or corporation meeting one or more of the following criteria shall not be considered a "secondhand dealer" under the terms of this chapter:

A. A not-for-profit entity recognized as tax exempt by the Internal Revenue Service and/or registered with the Ohio Secretary of State as a not-for-profit corporation; or

B. A person conducting a garage or yard sale meeting the criteria established in Section 1165.021; or

C. A retail business whose inventory consists primarily (ninety-five percent (95%) or more) of items which are at least thirty years old and which are considered "antiques" or "collectibles"; and

D. A retail business which would be classified as a "secondhand dealer" only by virtue of selling secondhand computers, electronic, audio, visual and/or entertainment equipment or devices as specified in subsection (c)(1)F. hereinabove when the proprietor is able to establish that all of the computers, electronic, audio, visual and/or entertainment equipment sold are at least twelve years old.

(Ord. 50-2010. Passed 5-17-10.)

(d) "Mayor" means Mayor or designee.
(Ord. Passed .)

A not-for-profit entity recognized as tax exempt by the Internal Revenue Service, and/or registered with the Ohio Secretary of State, as a not-for-profit corporation shall not be considered a "secondhand dealer" under this chapter. A person conducting a garage or yard sale meeting the criteria established in Section 1165.021 of the Codified Ordinances shall not be considered as a "secondhand dealer". (Ord. 119-2009. Passed 12-21-09.)

761.02 SECONDHAND DEALER'S LICENSE AND LICENSE FEE.

No person shall operate as a secondhand dealer in the City of Cleveland Heights without first obtaining a license from the Cleveland Heights Chief of Police. The annual license fee for each dealer in secondhand articles shall be one hundred twenty-five dollars ($125.00). All licenses shall expire on December 31st of the year of issuance. The fee for a first license issued after June 1st of any calendar year shall be sixty-two and 50/100 dollars ($62.50).
(Ord. 119-2009. Passed 12-21-09.)

761.03 SECONDHAND DEALER'S RECORDS; INSPECTION.

(a) Every dealer in secondhand articles shall keep a book in which shall be legibly written in English at the time of every purchase or sale, a description of every article so purchased or sold; the number or numbers and any monograms, inscriptions or other marks of identification that may appear on the article; a description of the articles or pieces comprising old gold, silver, platinum, or other metals, and any monogram, inscription or marks of identification

thereon; the name, residence and general description of the person from whom such purchase was made or to whom sold; and the day and hour of the purchase or sale. The holder of a Federal license to smelt precious metals shall not be held by reason thereof to be exempt from the provisions of this chapter.

(b) Every licensee under the provisions of this chapter, at the time of acquiring through purchase or exchange of any secondhand article, shall attach a tag with a designating number thereon, legibly printed in ink, in the English language, to each article, and shall make an entry of such number in the book.

(c) Such book shall at all reasonable times be open to the inspection of any police officer, the ~~City Manager~~Mayor, or any person designated by the ~~City Manager~~Mayor. Such book shall be substantially bound and of a size not less than six inches in length and breadth. In addition to such book, every person so licensed at the time of such purchase shall fill out on a blank form to be furnished by the Division of Police, such information as may be called for by the blank form, including the number of a driver's license, state I.D. card or other picture identification, and on the back of the blank form shall be written by the seller, in his own handwriting, his name, age and address. No entry in such book or on such card shall be erased, obliterated, altered or defaced.
(Ord. 119-2009. Passed 12-21-09; Ord. Passed .)

761.04 SECONDHAND DEALER'S WEEKLY REPORTS TO POLICE.

Every licensed secondhand dealer shall make out a weekly report on a blank form to be furnished by the Division of Police for that purpose a legible and correct copy of the record required to be kept, containing all the particulars of all purchases of such articles made during the preceding business week. He shall deliver such report to the Chief of Police or his authorized representatives, together with blank forms furnished by the Division properly filled out and signed by the seller, in accordance with the provisions of this chapter; or such report and filled out blank forms shall, if the Chief so elects, be mailed to such address as the Chief may in writing designate. (Ord. 119-2009. Passed 12-21-09.)

761.05 SECONDHAND DEALER'S MINIMUM HOLDING PERIOD.

No person licensed as a secondhand dealer shall sell or offer to sell or remove from his place of business any secondhand good, article or thing which has been purchased by him for a period of fourteen (14) days after the item has been reported to the Chief of Police as provided by Section 761.04 of this chapter.
(Ord. 119-2009. Passed 12-21-09.)

761.06 LIMITATIONS ON SECONDHAND DEALERS.

(a) No secondhand dealer shall carry on such business without a valid current license, or at any other place than the location designated in his license. Except as provided in Section 761.07 of this chapter, no dealer in secondhand articles shall continue to carry on business after his license is suspended, revoked or has expired.

(b) No secondhand dealer shall purchase any secondhand articles at any time from a minor. No secondhand dealer shall purchase any secondhand articles from an adult between the hours of 6:00 p.m. and 7:00 a.m.

(c) No secondhand dealer, not licensed as a pawnbroker, shall display any sign or other device, on or about the premises where such business is conducted, which in any way resembles the emblem or sign commonly used by pawnbrokers, or which is intended to give the appearance that the business conducted on such premises is, or is connected with, the business of

a pawnbroker and calculated to so mislead; nor shall there be any sign displayed which is calculated to deceive. (Ord. 119-2009. Passed 12-21-09.)

761.07 LICENSE REVOCATION; APPEALS.

(a) The ~~City Manager~~Mayor may at any time revoke or suspend any license granted under the authority of this chapter for failure to comply with the terms of this chapter or any law or ordinance applicable to the business so licensed.

(b) The ~~City Manager~~Mayor shall revoke any license granted under the authority of this chapter if the licensee has been convicted of receiving stolen property.

(c) In case of the refusal to issue or renew a license by the Chief of Police or the revocation or suspension of a license by the ~~City Manager~~Mayor, the applicant or licensee may appeal to a Board consisting of the Chairperson of Council Safety & Municipal Services Committee or his/her designee, the Finance Director or his/her designee and the Director of Law or his/her designee. Notice of such appeal shall be in writing, and shall be filed with the Law Director within ten (10) days from the date of the ~~City Manager's~~Mayor's action. Within ten (10) days after the filing of such notice, the Board shall proceed to hear such appeal, at which hearing all parties interested shall be afforded an opportunity to be heard. No notice of the hearing is required to be provided to adjoining property owners. The Board shall render a decision within ten (10) days of the conclusion of the hearing. The Board may sustain, disapprove or modify the action of the ~~City Manager~~Mayor or Chief of Police.

(d) In the absence of conditions posing an imminent threat to health, safety or property, as determined by the Director of Law, or unless a license has been revoked by the ~~City Manager~~Mayor because the licensee has been convicted of receiving stolen property as provided in subsection (b) of this section, a licensee who is lawfully operating but whose license is subject to revocation or suspension, or which the ~~City Manager~~Mayor has refused to renew, may continue operating during the pendency of an appeal under this section.
(Ord. 20-2018. Passed 3-19-18; Ord. Passed .)

761.08 RESPONSIBILITY OF THE LICENSEE.

Every act or omission of an agent or employee which constitutes a violation of any provision of this chapter shall be deemed the act or omission of the licensee if such act or omission occurs with the authorization, knowledge, or approval of the licensee, or as a result of the licensee's negligent failure to supervise the agent's or employee's conduct. The licensee shall also be punished for such act or omission in the same manner as if the licensee committed the act or caused the omission.
(Ord. 119-2009. Passed 12-21-09.)

761.99 PENALTY.

Whoever violates any of the provisions of this chapter shall be guilty of a misdemeanor of the first degree, and in addition to any other penalty provided by law shall be fined not less than one thousand dollars ($1,000). Each day during which noncompliance or a violation continues shall constitute a separate offense.
(Ord. 119-2009. Passed 12-21-09.)

CHAPTER 763
Solid Waste Collectors

763.01 License required; exceptions.
763.02 License registration and vehicle inspection fees; decal display on vehicle.
763.03 Collection and hauling to prevent scattering or spillage.

CROSS REFERENCES

Refuse collection and disposal - see Ohio R.C. 715.43
Vehicle loads dropping or leaking - see TRAF. 339.08; GEN. OFF. 527.07
Scavenging prohibited - see GEN. OFF. 527.15
Collection and disposal by City - see S.U & P.S. Ch. 935

763.01 LICENSE REQUIRED; EXCEPTIONS.

(a) No person shall engage in the business of collecting, hauling and/or disposing of any solid waste, rubbish, refuse or garbage within the City unless he first obtains a license from the ~~City Manager~~Mayor.

(b) This section shall not apply to any private individual hauling solid waste, garbage, rubbish or refuse from his own premises, or to the City or any person who has contracted with the City to provide such services.

(Ord. 8-2019. Passed 2-4-19; Ord. Passed .)

763.02 LICENSE REGISTRATION AND VEHICLE INSPECTION FEES; DECAL DISPLAY ON VEHICLE.

(a) The fee for a license to collect, haul and/or dispose of any solid waste within the City shall be ten dollars ($10.00) as a registration fee and five dollars ($5.00) per vehicle per year as an inspection fee. The vehicle inspection fee relates only to the vehicle inspected, is not transferable and shall expire on December 31 of the year of issue. The vehicle inspection fee may be renewed annually upon payment of a five dollar ($5.00) renewal fee. The decal issued by the City as evidence of vehicle inspection and registration shall be affixed to the windshield of the vehicle or otherwise prominently displayed on such vehicle.

(b) A condition of any license registration shall be that the licensee agrees to collect, transport and dispose of any solid waste, garbage, rubbish or refuse in a sanitary manner and subject to the provisions of this chapter and the rules and regulations of the ~~City Manager~~Mayor. (Ord. 8-2019. Passed 2-4-19; Ord. Passed .)

763.03 COLLECTION AND HAULING TO PREVENT SCATTERING OR SPILLAGE.

The collection and transportation of all solid waste, garbage, rubbish or refuse from premises within the City over the streets, alleys or other public places shall be conducted in such manner as not to create a nuisance. Any vehicle conveying or carrying such matter shall be so constructed and operated that its contents shall not spill, leak or scatter upon any public or private property. Any person hauling any garbage, refuse or rubbish in any open vehicle, such as a truck or trailer, shall provide that the load thereof shall be covered with an adequate tarpaulin or canvas so as to prevent any spillage or scattering of its contents.
(Ord. 8-2019. Passed 2-4-19.)

CODIFIED ORDINANCES OF CLEVELAND HEIGHTS

PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER 905
Street and Sidewalk Areas

905.01 Street light shields;
fee.

CROSS REFERENCES

Sidewalk or curb construction or repair at owner's expense - see Ohio R.C. 729.01 et seq.
Driving and parking upon sidewalks, street lawns or curbs - see TRAF. 331.37
Removing mud and other deposits - see TRAF. 339.08
Sidewalk obstructions; damage or injury; snow removal - see GEN. OFF. 521.04
Leaving articles or equipment on public property - see GEN. OFF. 521.06

905.01 STREET LIGHT SHIELDS; FEE.

(a) The ~~City Manager~~Mayor or designee is hereby authorized in his discretion to have placed on the globe of any street light in the City a shield or spot to divert the rays of such light from neighboring residences.
(Ord. 46-1948. Passed 6-21-48; Ord. Passed .)

(b) Any person applying to the ~~City Manager~~Mayor or designee to have a street light shielded or spotted shall pay ten dollars ($10.00) in advance which shall be deposited in the General Fund.
(A.O.; Ord. Passed .)

CHAPTER 911
Sewer Rates and Regulations

~~EDITOR'S NOTE: The City Manager acts as Director of Public Service in Cleveland Heights. Ohio R.C. 743.02 and 729.51 provide that a Director of Public Service may make such bylaws and regulations as he deems necessary for the safe, economical and efficient management and protection of the City water and sewerage systems, respectively, and connections thereto. Such bylaws and regulations shall have the same validity as ordinances when not repugnant thereto or to the Constitution or laws of the State of Ohio. The Director may assess and collect a water rent of sufficient amount and in such manner as he deems most equitable from all premises supplied with water, as provided by Ohio R.C. 743.04. The Director, pursuant to Ohio R.C. 729.50, shall collect such sewer rental rates as are established by ordinance of Council.~~

911.01 Local sewage charges established; computation and billing of local and sewer district charges.
911.02 Flushing clogged building sewer; service fee.
911.03 Construction of sewerage improvements.
911.04 Charges a lien; recovery of unpaid charges; notice.
911.05 Service of notices.
911.06 Utilities Review Board.
911.07 Hearing before the Utilities Review Board.

CROSS REFERENCES

Compulsory sewer connections - see Ohio R.C. 729.06
Compulsory water connections - see Ohio R.C. 729.06, 743.23
Sewerage rates - see Ohio R.C. 729.49, 729.52
Tampering with utility meters - see GEN. OFF. 545.19

911.01 LOCAL SEWAGE CHARGES ESTABLISHED; COMPUTATION AND BILLING OF LOCAL AND SEWER DISTRICT CHARGES.

To provide the necessary funds for the service and maintenance of the sanitary sewage and storm water drainage collection systems within the City, there is hereby levied against each

911.06 UTILITIES REVIEW BOARD.

(a) There is hereby created a Utilities Review Board consisting of the ~~City Manager~~Mayor or designee, the Director of Housing or designee, and the Director of Public Works or designee.

(b) The Utilities Review Board shall conduct hearings concerning liens issued pursuant to this Chapter. The Board shall have the power to approve, amend, modify, reverse or vary any liens issued pursuant to this Chapter.

(c) The presence of two (2) members shall constitute a quorum. Any action of the Board shall require two (2) affirmative votes.

(Ord. 65-2017. Passed 6-5-17; Ord. Passed .)

911.07 HEARING BEFORE THE UTILITIES REVIEW BOARD.

(a) Any person issued a lien notice pursuant to this Chapter may request a hearing before the Utilities Review Board.

(b) A hearing request must be made in writing and received by the Director of Law within fourteen (14) calendar days of the date of the service of the notice, except first-class mail class service must be received within seventeen (17) calendar days of the date of mailing.

(c) The hearing shall be held within a reasonable time from receipt of the request to appeal. The appellant shall been given at least fourteen (14) calendar days' notice of the date, time, and location of the hearing and shall have the opportunity to present evidence to the Board and cross examine any sworn witnesses presented by the City. The hearing shall proceed in a manner prescribed by the Board.

(d) After said hearing, the Board shall render a written decision affirming, modifying, or rejecting the lien and may include payment of costs. The Board shall notify the property owner of its decision by first-class mail. If the determination includes payment of costs, the decision should include an order to pay said costs within thirty (30) calendar days and statement that failure to timely pay will result in certification of the costs to the County Fiscal Officer for collection as other taxes and assessments are collected.

(e) If within thirty (30) calendar days after the mailing of the Board's order, costs are not paid, said costs shall be certified to the County Fiscal Officer for collection as other taxes and assessments are collected.

(Ord. 65-2017. Passed 6-5-17.)

CHAPTER 917
Trees

917.01 Definitions.
917.02 Powers of ~~City Manager~~Mayor.
917.03 Permit required to plant, prune or remove on public property.
917.04 Placing deleterious substances near trees.
917.05 Obstructing air and water access to tree roots.
917.06 Electric wires near trees.
917.07 Animals injuring trees.
917.08 Protecting trees during building operations.
917.09 Moving of trees on public property.
917.10 Trimming on public or private property to a nine feet clear branch height.
917.11 Certain trees as nuisances; removal on public or private property.
917.12 ~~Manager's p~~Power to trim or remove trees on public property.
917.13 City to treat or remove diseased trees on private property.
917.14 Notice to property owners; contents and service.
917.15 Billing property owner; determination of costs.
917.16 Failure to pay; assessing ordinance.
917.17 Suit to recover costs as alternate remedy.
917.18 Interference with work prohibited.
917.19 License required for forestry, tree surgery or tree removal.
917.20 License fee and term; revocation.
917.99 Penalty.

CROSS REFERENCES

Power to regulate shade trees and shrubbery - see Ohio R.C. 715.20
Assessments for tree planting or maintenance - see Ohio R.C. 727.011
Injury or destruction - see GEN. OFF. 541.06

917.01 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

(a) "Public place" means any public street or public park or any property owned by the City.

(b) "Tree" means any tree, bush, shrub or ornamental plant.

(c) "Forestry or tree surgery" includes treating, spraying, pruning and other related work intended for the strengthening of trees and removal and prevention of tree pests of all kinds and descriptions.

(1943 R.O., Ch. II, Art. J.)

(d) "Mayor" means Mayor or designee.

(Ord. Passed .)

917.02 POWERS OF ~~CITY MANAGER~~MAYOR.

The ~~City Manager~~Mayor is hereby given full jurisdiction, authority, control, supervision and direction over all trees which now or may hereafter exist upon any public place in the City and over all trees which exist upon any private property in the City when, in his opinion, they constitute a danger to persons or property, safety or welfare, and in the issuing of the permits hereinafter provided for in this chapter. ~~In the exercise of the power herein granted, the City Manager shall have the authority to delegate as he determines necessary all or part of his power and duties to his subordinates the employ of the City.~~

(1943 R.O., Ch. II, Art. J.; Ord. Passed .)

917.03 PERMIT REQUIRED TO PLANT, PRUNE OR REMOVE ON PUBLIC PROPERTY.

No person shall plant, remove, destroy, cut, prune, fertilize, treat, break, climb, injure, paint or spray any tree existing on any public place, or authorize or procure any person to do so or remove or tamper with any device placed for the protection of any such tree or attach any rope, wire, chain, sign or any other device either to such tree or to any device placed for the protection of such tree, without first obtaining a written permit to do so from the City.

(1943 R.O., Ch. II, Art. J.)

917.04 PLACING DELETERIOUS SUBSTANCES NEAR TREES.

No person shall permit any natural or artificial gas, salt, brine water, oil, liquid dye or any other substance deleterious to tree life to come in contact with the soil surrounding the roots of any tree upon any public place in such manner as to kill, injure or destroy such tree.

(1943 R.O., Ch. II, Art. J.)

917.05 OBSTRUCTING AIR AND WATER ACCESS TO TREE ROOTS.

No person shall place or maintain upon the ground in any public place any stone, concrete or other impervious material or substance in such manner as may obstruct the tree access of air and water upon the roots of any tree upon any public place without first obtaining a written permit from the City to do so. Unless otherwise provided for in such permit there shall be maintained about the base of the trunk of each tree at least nine (9) square feet of open ground for a tree three (3) inches in diameter and for every two (2) inches of increase of such diameter there shall be an increase of at least one (1) square foot of open ground.

(1943 R.O., Ch. II, Art. J.)

917.06 ELECTRIC WIRES NEAR TREES.

No person shall willfully cause or authorize or procure a wire or other conductor charged with electricity to come in contact with any tree upon any public place in such manner that the tree is thereby injured or destroyed. If the ~~City Manager~~Mayor determines it necessary to cut down or prune any tree on a public place, the owner of wires or conductors in close proximity thereto shall temporarily remove such wires or otherwise safeguard them, within twenty-four (24) hours after service of written notice to do so by the ~~City Manager~~Mayor.
(1943 R.O., Ch. II, Art. J.; Ord. Passed .)

917.07 ANIMALS INJURING TREES.

No person shall tie any animal to any tree in any public place or, having charge of any animal, shall allow or cause it to injure any tree or cause or allow such animal to stand unattended in a place where it can injure a tree.
(1943 R.O., Ch. II, Art. J.)

917.08 PROTECTING TREES DURING BUILDING OPERATIONS.

No person in charge of the erection, alteration or removal of any building or structure shall permit any tree upon any public place in the vicinity of such operation to stand without a good and sufficient guard or protection as to prevent injury to such tree arising out of or by reason of such operation.
(1943 R.O., Ch. II, Art. J.)

917.09 MOVING OF TREES ON PUBLIC PROPERTY.

All moving of trees upon any public place made necessary for the moving of a building or structure or any other private enterprise shall be done under the supervision of the City and at the expense of the applicant. The applicant, as one of the conditions to obtain a permit to remove any tree, shall deposit an amount of money with the City as the ~~City Manager~~Mayor may specify to cover the cost of moving and replacing such tree if the condition of such permit requires the replacement thereof. However, in lieu of such cash the ~~City Manager~~Mayor may accept a good and sufficient bond in like amount conditioned upon the payment of the cost of moving and replacing any tree.
(1943 R.O., Ch. II, Art. J.; Ord. Passed .)

917.10 TRIMMING ON PUBLIC OR PRIVATE PROPERTY TO A NINE FEET CLEAR BRANCH HEIGHT.

(a) The ~~City Manager~~Mayor shall keep all trees standing on any public place trimmed so that the branches of such trees projecting over any public sidewalk, private driveway or public street shall be not less than nine (9) feet from the ground.

(b) All trees standing on private property in the City and having branches projecting into public streets or other public places shall, under the supervision of the ~~City Manager~~Mayor, be kept trimmed by the owners or occupants of such private property to such an extent that the

lowest branches of such trees shall not come within nine (9) feet of the ground where they overhang any public property or driveway.

(c) If the owner of private property neglects or refuses to trim a tree to conform to subsection (b) hereof within the time specified by written notice from the ~~City Manager~~Mayor, he shall cause such trimming to be done at the expense of the owner. The entire cost and expense of the work involved shall be a lien on the premises and billed and collected as provided for in this chapter.
(1943 R.O., Ch. II, Art. J.; Ord. Passed .)

917.11 CERTAIN TREES AS NUISANCES; REMOVAL ON PUBLIC OR PRIVATE PROPERTY.

(a) No poplar, box elder, basswood or willow shall be permitted upon any tree lawn. The ~~City Manager~~Mayor is hereby directed to cause all such trees as are now existing to be forthwith removed.

(b) Any poplar, box elder, basswood or willow on any private property in the City in such close proximity to any public place as will permit the roots of the trees to penetrate through or under the surface of any public place is hereby declared to be a public nuisance.

(c) If the owner of private property neglects or refuses to remove a tree located on such property which tree is a public nuisance, within the time specified by written notice from the ~~City Manager~~Mayor, he shall cause such removal to be done at the expense of the owner. The entire cost and expense of the work involved shall be a lien on the premises and billed and collected as provided for in this chapter.
(1943 R.O., Ch. II, Art. J.; Ord. Passed .)

917.12 ~~MANAGER'S~~ POWER TO TRIM OR REMOVE TREES ON PUBLIC PROPERTY.

The ~~City Manager~~Mayor may trim any tree existing on any public place so as to insure the safety or to preserve the symmetry of the beauty of such public place and may remove any tree or any part thereof which is in an unsafe condition or which by reason of its location and nature is injurious to other public improvements or is infected with any injurious fungus, insect or other pest, which cannot otherwise be controlled.
(1943 R.O., Ch. II, Art. J.; Ord. Passed .)

917.13 CITY TO TREAT OR REMOVE DISEASED TREES ON PRIVATE PROPERTY.

Whenever the ~~City Manager~~Mayor determines that any tree located on private property has become infected with any parasite, insect, pest or fungus so as to threaten spreading to trees standing in any public place, or whenever the ~~City Manager~~Mayor determines that any tree on private property in the City because of decay or other condition is apt to fall in whole or in part across any public or private property, he shall cause written notice to be served upon the owner or occupant of such private property. The notice shall order the owner or occupant to spray or otherwise treat the tree or remove it in the manner and within the time provided in the written

notice. If the order is not complied with, the ~~City Manager~~Mayor is authorized to enter upon such private property and to spray or otherwise treat or remove such tree or infected or dangerous parts thereof at the expense of the owner. The entire cost and expense of the work involved shall be a lien on the premises and billed and collected in the manner provided for in this chapter. (1943 R.O., Ch. II, Art. J.; Ord. Passed .)

917.14 NOTICE TO PROPERTY OWNERS; CONTENTS AND SERVICE.

(a) When the ~~City Manager~~Mayor is required to give notice to the owner or occupant of any private property to perform any work as required by this chapter, the notice shall be in writing, shall state the particular thing which the ~~City Manager~~Mayor requires the owner to do, the time in which the work shall be performed and shall contain a statement notifying the owner that if the work ordered by such notice is not done within the time specified in the notice, then the work will be done by the City at the expense of the owner, and that the entire cost thereof shall be a lien upon the private property whereon such tree stands. The notice shall also contain a statement that when the cost has been ascertained the owner shall be billed therefor by the City and the amount of the bill shall be payable in cash to the Director of Finance within thirty (30) days from presentation to such owner. Upon failure to pay the bill, the amount thereof together with a penalty of five percent shall be certified by the Director of Finance to the County Auditor to be collected with other taxes for the ensuing tax year.

(b) Notice shall be served personally or by registered mail to the last known address of the owner, occupant or other person having charge of such property. If the addresses are unknown, it shall be sufficient to publish such notice once in a newspaper of general circulation in the City. (A.O.; Ord. Passed .)

917.15 BILLING PROPERTY OWNER; DETERMINATION OF COSTS.

(a) Upon completion of work by the City on any private property, when the owner has failed or neglected to perform as ordered by written notice of the ~~City Manager~~Mayor, the Director of Finance shall bill the property owner the total cost by mail to his last known address.

(b) If the work has been done by contract, fifteen percent shall be added to the contract price as a reasonable overhead charge to pay for the service of notice, inspection and other incidentals. If the work has been done by the City the cost shall consist of the time expended by City employees charged at the same hourly rate the City pays such employees plus the cost of the use of City equipment to which shall be added twenty-five percent as a reasonable overhead charge to pay for the service of notice, inspection, supervision and other incidentals. (A.O.; Ord. Passed .)

917.16 FAILURE TO PAY; ASSESSING ORDINANCE.

The Director of Finance may report to Council any bills for tree work done on private property by the City remaining unpaid after a thirty (30) day period, whereupon Council may by ordinance levy five percent as a special assessment against the parcel of land upon which the tree existed, making such work necessary. Such assessment shall be payable in cash within thirty (30) days of the passage of such ordinance, otherwise in one (1) year and shall be certified to the County Auditor and collected as other taxes. Such assessing ordinance shall be published for two (2) consecutive weeks in a newspaper of general circulation in the City, but no other notice need be given except as hereinbefore provided, and no other proceedings need be taken to make such levy valid assessment and lien against such parcel of land.

Assessments against more than one (1) parcel of land may be combined in one (1) assessing ordinance, provided that the assessment on any individual parcel shall be limited to the total cost of the work performed on that parcel.
(1943 R.O., Ch. II, Art. J.)

917.17 SUIT TO RECOVER COSTS AS ALTERNATE REMEDY.

In lieu of certifying unpaid costs to the County Auditor, the Director of Law may seek recovery of such costs by civil action against the property owner involved.

917.18 INTERFERENCE WITH WORK PROHIBITED.

No person shall interfere with ~~the City Manager or his subordinates while~~any person engaged in carrying out the provisions of this chapter or the doing of any of the work ordered to be done by the ~~City Manager~~Mayor.
(1943 R.O., Ch. II, Art. J.; Ord. Passed .)

917.19 LICENSE REQUIRED FOR FORESTRY, TREE SURGERY OR TREE REMOVAL.

No person shall solicit for or engage in any kind of forestry or tree surgery, or tree removal work within the City without first obtaining a written permit from the ~~City Manager~~Mayor. Written application shall be made to the ~~City Manager~~Mayor accompanied by evidence of adequate and acceptable liability insurance coverage and proof satisfactory to the ~~City Manager~~Mayor that the applicant is reasonably qualified by experience, training and reputation to engage in such work.
(A.O.; Ord. Passed .)

917.20 LICENSE FEE AND TERM; REVOCATION.

(a) A fee of ten dollars ($10.00) shall be charged for the issuance of a forestry or tree surgery license or a license to engage exclusively in tree removal.

(b) Licenses shall expire on December 31 of the year of issue and may be renewed for a calendar year upon payment of a renewal fee equal to that of the original fee. The ~~City Manager~~Mayor may revoke or suspend any license for violation of any provision of this chapter, misrepresentation or failure to perform work in a reasonably workmanlike manner.
(A.O.; Ord. Passed .)

917.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six (6) months, or both.

CHAPTER 923
Parks

EDITOR'S NOTE: Council annually enacts an ordinance establishing use regulations and admission rates for Cumberland and Denison Park swimming pools.

923.01 Park use generally; hours and permit issuance; rules and regulations.
923.02 Duties and responsibilities of permittees.
923.03 Picnicking.
923.04 Liquor or beer possession or consumption.
923.05 Prohibited activities.
923.06 Order of dispersal.
923.07 Obedience to no admittance signs.
923.08 Ice skating prohibited.
923.09 Parking vehicles.
923.99 Penalty.

CROSS REFERENCES

Operation of vehicles in parks - see TRAF. 331.38
Placing signs or obstructions on public property - see GEN. OFF. 503.06
Animals prohibited in parks - see GEN. OFF. 505.06
Disorderly conduct - see GEN. OFF. 509.03
Litter in parks - see GEN. OFF. 527.08
Handbill distribution restricted - see GEN. OFF. 527.09
Property destruction - see GEN. OFF. 541.04
Injury to trees and growing products - see GEN. OFF. 541.06; S.U. & P.S. 917.03

923.01 PARK USE GENERALLY; HOURS AND PERMIT ISSUANCE; RULES AND REGULATIONS.

(a) The City parks are constructed and maintained for the use of the public at large, and shall be open daily to all residents. No person shall be given special privileges therein nor be permitted to make use of any park for any purpose not in consonance with the proper use thereof. (Ord. 73-1978. Passed 7-3-78.)

(b) No person shall be or remain in or upon any portion of any public park or use or attempt to use any structure or any facility constituting a part thereof between the time period from sunset to 6:00 a.m. unless such person shall either be a participant in or a spectator at a City-authorized or sanctioned activity or event or is the bona fide holder of a written permit issued by the ~~City Manager~~Mayor permitting such person to remain in or use such public park or any structure or facility therein. If a person is a participant in or a spectator at a City-authorized or sanctioned activity or event continuing beyond sunset, such person shall not remain in such park after such activity or event has been closed or has been concluded.
(Ord. 136-2008. Passed 9-15-08; Ord. Passed .)

(c) In addition to individual permits issued to specific persons, the ~~City Manager~~Mayor may issue permits to groups of two (2) or more persons to make specific use of the parks or any part thereof, or any structure or facility therein. The ~~City Manager~~Mayor may also issue general permits for the holding of a particular event or function, which permit, when issued, shall constitute authorization for and to any person legitimately attending such event or function within the hours specified in such permit.

(d) The ~~City Manager~~Mayor is authorized to make and establish such additional rules and regulations, not otherwise provided and not inconsistent with the provisions of this chapter, as he may deem necessary to protect the public in the use of the public parks and their facilities or to protect and preserve such parks and facilities.
(Ord. 73-1978. Passed 7-3-78; Ord. Passed .)

(e) The use of basketball facilities within parks and playgrounds shall be limited to residents of the City of Cleveland Heights who are the authorized holders of a proper Recreation Identification Card issued by the City of Cleveland Heights and one (1) guest per cardholder. The use of such basketball facilities shall also be available to all persons holding duly authorized and currently valid identification cards issued to students by Heights High School. The ~~City Manager~~Mayor may further limit guest privileges if the use of a facility so warrants.
(Ord. 33-1983. Passed 3-7-83; Ord. Passed .)

(f) Except when available at the Recreation Pavilion, Denison Pool or Cumberland Pool, Recreation Identification Cards shall be available to be purchased at City Hall according to rules established by the ~~City Manager~~Mayor.
(Ord. 80-1979. Passed 7-16-79; Ord. Passed .)

923.02 DUTIES AND RESPONSIBILITIES OF PERMITTEES.

(a) It shall be the duty of every permittee to produce and exhibit the permit upon the request of any authorized person who desires to inspect such permit.

(b) All permits issued by the ~~City Manager~~Mayor shall be subject to the park rules and regulations and City ordinances. Permittees shall be bound by such rules, regulations and

ordinances as fully as though they were inserted in such permits. Permittees shall be liable for any loss, damage or injury sustained or any breach of rules, regulations and ordinances by any group member covered by such permit.
(1943 R.O., Ch. II, Art. J.; Ord. Passed .)

923.03 PICNICKING.

Picnicking is restricted to those sections of the park set aside for that purpose and any group of fifteen (15) or more persons shall make a reservation in advance. Groups shall be comprised of not less than fifty percent (50%) Cleveland Heights residents.
(Ord. 79-1979. Passed 7-16-79.)

923.04 LIQUOR OR BEER POSSESSION OR CONSUMPTION.

Except as otherwise provided herein, no person shall possess or consume any intoxicating liquor or beer in any park.

The ~~City Manager~~Mayor may issue a special permit to a responsible person, association or corporation possessing a proper permit from the State for the sale of intoxicating liquor or beer in a portion of a park, provided such permit is issued pursuant to regulations adopted by the ~~City Manager~~Mayor. The ~~City Manager~~Mayor shall adopt rules and regulations safeguarding the interests of the public, providing specific criteria for issuance of such permits.
(Ord. 27-1974. Passed 4-15-74; Ord. Passed .)

923.05 PROHIBITED ACTIVITIES.

(a) No person shall have or give any musical, theatrical or other entertainment, nor shall any military society or other parade, procession, public gathering or meeting of any kind take place in any of the parks. No person shall, in any park or in any facility or structure therein, make any harangue or demonstration, nor shall the speakers stand be used except with the written permission of the ~~City Manager~~Mayor.
(1943 R.O., Ch. II, Art. J.; Ord. Passed .)

(b) No person in any park shall sell, offer to sell or attempt to sell any article of value, without prior permission of the ~~City Manager~~Mayor.
(A.O.; Ord. Passed .)

923.06 ORDER OF DISPERSAL.

In case of emergency, or in any other case where life and property are endangered, all persons if requested to do so by a park guard or police officer, shall depart from the portion of the grounds specified by such officer and shall remain off the same until permission is given to return.
(1943 R.O., Ch. II, Art. J.)

923.07 OBEDIENCE TO NO ADMITTANCE SIGNS.

No person shall enter any building, enclosure or place within any of the parks, upon which the words "No Admittance" are displayed or posted by sign, placard or otherwise, without the consent of a park guard or police officer.
(1943 R.O., Ch. II, Art. J.)

923.08 ICE SKATING PROHIBITED.

No person shall skate or go upon the ice on any of the lakes, ponds or streams in the parks.
(1943 R.O., Ch. II, Art. J.)

923.09 PARKING VEHICLES.

Parking locations shall be indicated by proper signs, and no persons shall park any vehicle except in a posted location.
(1943 R.O., Ch. II, Art. J.)

923.99 PENALTY.

Whoever violates subsection 923.01(e) or any other ordinance or rule or regulation of the ~~City Manager~~Mayor prohibiting the use of City park facilities without a valid Recreation Identification Card or as an authorized guest of a permitted user shall be guilty of a minor misdemeanor. Whoever violates any other provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months or both.
(Ord. 38-2000. Passed 4-17-00; Ord. Passed .)

CHAPTER 929
Recreation Pavilion

EDITOR'S NOTE: Council annually enacts an ordinance establishing use regulations and admission rates for the ice rink.

929.01 Availability for public purposes other than recreation.
929.02 Application for use.
929.03 ~~A~~Permitting authority ~~of City Manager~~.
929.04 Establishing rental rates.
929.05 Regular group use rate.
929.06 Resolution of conflict in requests for use.
929.07 City identification card requirement may be waived.

929.01 AVAILABILITY FOR PUBLIC PURPOSES OTHER THAN RECREATION.

The Cleveland Heights recreation pavilion shall be made available on a rental basis, to responsible, reputable organizations, groups or individuals for use for other than general public recreation purposes and for activities, programs and purposes which will be generally beneficial to the residents and community of the City of Cleveland Heights.
(Ord. 23-1969. Passed 4-7-69.)

929.02 APPLICATION FOR USE.

(a) All applications for permission to use the recreation pavilion, shall be made to the ~~City Manager~~Mayor or his designee.

(b) Applications shall be in such form and shall furnish such information as shall be required by rules to be promulgated by the ~~City Manager~~Mayor. In specific cases the ~~City Manager~~Mayor may require the furnishing of such additional information, other than that specified in the written rules, as he may deem to be pertinent or necessary.
(Ord. 23-1969. Passed 4-7-69; Ord. Passed .)

929.03 PERMITTING AUTHORITY ~~OF CITY MANAGER~~.

The ~~City Manager~~Mayor or designee shall have the sole discretion and authority in granting or refusing permits for the rental use of the recreation pavilion or any of the facilities thereof, the use to be made or permitted, and the terms and conditions under which such use shall be permitted and conducted. ~~The City Manager may designate a suitable person to handle administrative details for this purpose.~~

(Ord. 23-1969. Passed 4-7-69; Ord. Passed .)

929.04 ESTABLISHING RENTAL RATES.

The ~~City Manager~~Mayor shall have the sole discretion and authority to fix and establish rentals or other forms of compensation which shall be paid to the City as a condition of granting any permit for use. Such rentals need not be uniform or consistent, may be varied and changed at any time, and may in specific instances be established, applied, varied or changed with respect to any individual request for permission to use dependent upon the nature and extent of public participation, use or benefit related to the proposed activity.

(Ord. 23-1969. Passed 4-7-69; Ord. Passed .)

929.05 REGULAR GROUP USE RATE.

Notwithstanding the specific individual fees and charges which are established by the ice rink admission ordinance or any future amendment thereto, the ~~City Manager~~Mayor shall have authority to establish group use rental charges for a particular group use of the recreation pavilion, or any of the facilities thereof, when such group use is to be conducted on an established regular schedule, for a continuing or specified period of time. Such group use rental charges need not be or amount to a mathematical multiplication of the rates established for individual single event group use by the ice rink admission ordinance or by any future amendment thereto.

(Ord. 23-1969. Passed 4-7-69; Ord. Passed .)

929.06 RESOLUTION OF CONFLICT IN REQUESTS FOR USE.

In case of conflict between requests for use permits with respect to either times or dates of use, the ~~City Manager~~Mayor, if he determines that either request should be granted, shall give preference to the proposed use which, in his sole discretion and judgment, will offer or produce the greatest public benefit, education or recreation within the City and to its residents.

(Ord. 23-1969. Passed 4-7-69; Ord. Passed .)

929.07 CITY IDENTIFICATION CARD REQUIREMENT MAY BE WAIVED.

Notwithstanding any provision of the ice rink admission ordinance requiring ownership of a Cleveland Heights recreation identification card or sponsorship of a group activity by the holder of such a card, in any rental permit issued by the ~~City Manager~~Mayor or designee pursuant to the provisions of this chapter, the ~~City Manager~~Mayor shall have authority to waive any such requirement and may issue such use permit without regard thereto.

(Ord. 23-1969. Passed 4-7-69; Ord. Passed .)

CHAPTER 935
Solid Waste Collection and Disposal

935.01 Rules and regulations ~~by~~.
~~City Manager.~~
935.02 Fees established.
935.99 Penalty.

CROSS REFERENCES
Collection and disposal of garbage - see Ohio R.C. 715.43, 717.01
Truck loads leaking, sifting, causing litter - see TRAF. 339.08; GEN. OFF. 527.07
Upsetting public or private receptacles - see GEN. OFF. 527.04
Private scavenging prohibited - see GEN. OFF. 527.15

935.01 RULES AND REGULATIONS ~~BY CITY MANAGER~~.

In the interests of the public health, safety and welfare, the ~~City Manager~~Mayor or designee is authorized complete control and supervision over the collection, conveyance and disposal of solid wastes within the City. He may make such rules and regulations as he deems necessary, proper or convenient to provide for the sanitary, economical and efficient method of solid waste collection, and the operation of the transfer station. He may deny or discontinue service whenever any person, firm or corporation receiving such service, whether free or otherwise, has violated or refused to obey any rule or regulation promulgated by the ~~City Manager~~Mayor or designee.
(Ord. 128-2020. Passed 11-16-20; Ord. Passed .)

935.02 FEES ESTABLISHED.

The City ~~Manager~~ shall charge fees relating to special services provided by the City in the collection and disposal of solid wastes within the City as follows:

(a) Ordinary Refuse and Recyclables. Ten dollars ($10.00) per collection if collected on a date other than scheduled day of collection.

(b) Domestic Appliances, Furniture, or other Bulk Waste. Charge on date other than scheduled day for bulk collection shall be ten dollars ($10.00) with an advance call, and twenty dollars ($20.00) without an advance call. Fees must be paid in advance.

(c) Specials. Charges for other special collections shall be twenty dollars ($20.00) a cubic yard on scheduled collection days; thirty dollars ($30.00) a cubic yard on dates other than scheduled collection days with an advance call.

(d) Acceptance at Transfer Station. Sixty dollars ($60.00) per ton or any portion thereof of solid wastes accepted by the City and delivered to the transfer station.

Those who call for a special pickup shall pay in advance. All charges herein are in addition to the regular collection fees set forth in subsection (e) hereof.

(e) Commencing April 1, 2021, the City shall assess against all owners of property receiving City solid waste disposal service a charge for the service in accordance with the following schedule:

	Non-Homestead Households	Homestead Households
Year 1	$16.17	
Year 2	$16.48	
Year 3	$16.83	
Year 4	$17.20	
Year 5	$17.60	
Year 6	$17.93	
Year 7	$18.27	
Year 8	$18.61	
Year 9	$18.96	
Year 10	$19.32	

$7.67
$7.98
$8.33
$8.70
$9.10
$9.43
$9.77
$10.11
$10.46
$10.82

Non-homestead households shall mean either a single family dwelling not receiving the homestead rate or each dwelling unit in a multiple dwelling.

Homestead eligibility is limited to owner-occupied, residential customers for each single family dwelling receiving the homestead rate for sewage maintenance service pursuant to Codified Ordinance Section 911.01.

The charge for the waste disposal service shall be billed to the owner of the property monthly and shall appear on the quarterly utility statement for local sewer charges.

(f) A charge of eighty cents ($0.80) per each unit per month shall be assessed to each property owner and reserved for future capital outlays related to Refuse and Recycling.

(Ord. 128-2020. Passed 11-16-20; Ord. Passed .)

935.99 PENALTY.

Whoever violates any provision of this chapter, or any rule or regulation promulgated by the Mayor or designee pursuant thereto, shall be guilty of a minor misdemeanor on a first offense, and of a misdemeanor of the fourth degree for a second or subsequent violation occurring within six (6) months of a prior conviction or plea of guilty or no contest for a similar offense. Penalty shall be as provided for in Section 501.99 of the Codified Ordinances. (Ord. 40-1978. Passed 4-17-78; Ord. Passed .)

(NOTE: The next printed page is page 25.)

CHAPTER 941
Use of Public Ways by Service Providers

941.01 Scope of chapter; definitions.
941.02 Consent to occupy or use the public right-of-way.
941.03 Initial and annual registration of service providers.
941.04 General public right-of-way use regulations.
941.05 Location, relocation and removal of facilities.
941.06 Notice of work, routine maintenance and emergency work.
941.07 Construction permit and standards.
941.08 Recovery of City costs in managing the public right-of-way.
941.09 Cable television franchise.
941.10 Private facilities in the public right-of-way.
941.11 Miscellaneous provisions.
941.99 Penalties and other remedies.

CROSS REFERENCES

Street and sidewalk area - see S.U. & P.S. Ch. 905
Small cell wireless facilities and support structures - see S.U. & P.S. Ch. 943

941.01 SCOPE OF CHAPTER; DEFINITIONS.

(a) The purpose and intent of this Chapter is to:

(1) Manage Occupancy or Use of the Public Right-of-Way.

(2) Encourage the provision of advanced, competitive utility and telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;

(3) Permit and manage reasonable access to the Public Right-of-Way of the City for utility and telecommunications service purposes on a competitively neutral basis.

(4) Conserve the limited physical capacity of the Public Right-of-Way held in trust by the City for the benefit of the public.

(5) Assure that the City receives cost recovery for the Occupancy and Use of the Public Right-of-Way in accordance with law.

(6) Assure that all Service Providers with Facilities in the Public Right-of-Way comply with the ordinances, rules and regulations of the City.

(7) Assure that the City fairly and responsibly protects the public health, safety and welfare.

(8) Enable the City to discharge its public trust consistent with rapidly evolving federal and State regulatory policies, industry competition and technological development.

(b) For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

(1) Affiliate means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.

(2) Cable Operator means a Person providing or offering to provide Cable Service within the City.

(3) Cable Service means "cable service" as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.

(4) Cable System means "cable system" as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.

(5) Capital Improvement means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including Construction, Reconstruction, installation, rehabilitation, renovation, improvement, enlargement and extension of Facilities, but not including ordinary or Routine Maintenance.

(6) City means the City of Cleveland Heights, Ohio.

(7) ~~City Manager~~Mayor means the ~~City Manager, or his~~ Mayor or ~~her~~ designee.

(8) City Property means and includes all real property owned by the City, other than Public Streets and Public Easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which is not subject to Public Right-of-Way consent and Permit requirements of this Chapter.

(9) Construct, Constructing, Construction, etc. means installing, repairing, replacing or removing any Public or Private Facility, regardless of the methods employed.

(10) Construction Permit or Permit means a permit issued pursuant to Section 941.07 of this Chapter.

(11) Emergency means an unforeseen occurrence or condition calling for immediate action.

(12) Excavate, Excavating or Excavation means cutting, sawing, breaking, drilling into, boring under, or otherwise altering any Public Street or sidewalk pavement, and/or digging, drilling into or boring under any unpaved portion of the Public Right-of-Way, including any other work or activity which disturbs the existing surface or subsurface structure, composition, or soil compaction, for the purpose of carrying on any Construction activity.

(13) Excess Capacity means the volume or capacity in any existing or future duct, conduit, manhole, or other Facility in the Public Right-of-Way that is or will be available for use for additional Facilities.

(38) Underground Facilities means that portion of a System located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

(39) Usable Space means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the PUCO.

(40) Utility Easement means any easement owned by a Service Provider and acquired, established, dedicated or devoted for the purpose of providing Service to the public.

(Ord. 75-2012. Passed 7-2-12; Ord. Passed .)

941.02 CONSENT TO OCCUPY OR USE THE PUBLIC RIGHT-OF-WAY.

(a) Consent Required to Occupy Public Right-of-Way. No Person shall Occupy or Use the Public Right-of-Way without obtaining prior consent from the City to do so.

(b) Initial Consent Presumed.

(1) A Person with existing Facilities in the Public Right-of-Way on the effective date of this Chapter, and who either:

A. Is subject to jurisdiction by the PUCO;

B. Has a valid franchise agreement with the City to provide Cable Services or other Services in the City, and/or

C. Is any other Person whose existing Facilities lawfully Occupy the Public Right-of-Way on the effective date of this Chapter

shall be presumed to have initial consent of the City for its existing Facilities to Occupy or Use the Public Right-of-Way.

(2) Initial presumed consent for Occupancy or Use of the Public Right-of-Way is limited to the Service or Private Service Provider's existing facilities.

(3) A Person with initial presumed consent is not relieved from compliance with this Chapter with respect to the ongoing Occupancy or Use of the Public Right-of-Way including, but not limited to, the Insurance, Indemnity, Performance Bond and Registration requirements pursuant to Sections 941.02(e), (f) and (g) and 941.03(a) and (b) of this Chapter.

(4) Any Person with presumed initial consent to Occupy or Use the Public Right-of-Way for existing Facilities shall comply with the Initial Registration requirements pursuant to Sections 941.02(c)(2) and 941.03(a) within ninety (90) days of the effective date of this Chapter.

(c) Application for Consent to Occupy or Use Public Right-of-Way.

(1) The following Persons shall apply to the City for consent to Occupy or Use the Public Right-of-Way on a form provided by the ~~City Manager~~Mayor; any Person who:

A. Does not currently have an existing System or Facilities in the City's Public Right-of-Way and desires to Construct a System, Facilities or Private Facilities in the Public Right-of-Way;

B. Has an existing System, Facilities or Private Facilities in the Public

H. Evidence that the applicant or Service Provider has complied, or will comply, with indemnification, Insurance, Performance Bond and Construction Bond requirements of this Chapter.

I. Information sufficient to determine that the applicant or Service Provider has received any certificate of authority required by the PUCO to operate a System and provide Services in the City.

J. Such other and further information as may reasonably be requested by the ~~City Manager~~Mayor.

(3) The City shall grant or deny, in writing, a Person's application for consent to Occupy or Use the Public Right-of-Way within sixty (60) days of the date on which the Person filed the application with the City.

A. The City may withhold, deny or delay its consent to a Person's application to Occupy or Use the Public Right-of-Way based on the Person's failure to possess the financial, technical and managerial resources necessary to protect the public health, safety and welfare, or for other reasons based on the health, safety and welfare of the City and in accordance with Ohio law.

B. If the City denies a Person's application to Occupy or Use the Public Right-of-Way, the City shall provide its reasons in writing for denying the application, and shall provide any information that the Person may reasonably request necessary for the Person to obtain the City's consent to Occupy or Use the Public Right-of-Way.

(4) The City's grant of consent for a Person to Occupy or Use the Public Right-of-Way shall be in the form of a Right-of-Way Occupancy Certificate which shall set forth the specific terms of the City's consent for such Person to Occupy or Use the Public Right-of-Way.

(5) Each Person submitting an application for Consent to Occupy or Use the Public Right-of-Way shall pay a fee as determined by the ~~City Manager~~Mayor to reimburse the City for its administrative costs related to the application as provided in Section 941.08.

(d) Application to Existing Franchise Ordinances and Agreements. For purposes of this Chapter, a franchise ordinance or agreement shall be deemed consent authorizing the Franchisee's Occupancy or Use of the Public Right-of-Way to the extent described in the franchise agreement or ordinance. The Franchisee's use of the Public Right-of-Way beyond that authorized by the franchise agreement or ordinance shall require additional consent for such additional Occupancy or Use. Franchisees shall comply with the Registration provisions and Construction Standards to the extent that the provisions of this Chapter do not directly conflict with the franchise agreement or ordinance. If there is a direct conflict between the franchise agreement or ordinance and the provisions of this Chapter, the franchise agreement or ordinance shall control.

(e) Service Provider Insurance. As a condition of the consent to Occupy or Use the Public Right-of-Way, a Service Provider must secure and maintain, at a minimum, the following liability insurance policies insuring both the Service Provider and the City, and its elected and

B. Five million dollars ($5,000,000) for property damage resulting from any one accident; and

C. Five million dollars ($5,000,000) for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a limit of three million dollars ($3,000,000) for each person and three million dollars ($3,000,000) for each accident.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars ($1,000,000).

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars ($3,000,000).

(5) The liability insurance policies required by this Section shall be maintained by the Service Provider throughout the period of time during which the Service Provider is Occupying or Using the Public Right-of-Way, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the ~~City Manager~~Mayor of such intent to cancel or not to renew."

(6) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Service Provider shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

(7) Upon written application to, and written approval by, the ~~City Manager~~Mayor, a Service Provider may be self-insured to provide all of the same coverages as listed in this Section; except that all coverages for Workers' Compensation shall be in compliance with State law. No approval for self-insurance shall be given until the ~~City Manager~~Mayor has made a complete review of the Service Provider's financial ability to provide such self-insurance. As part of the review process, the ~~City Manager~~Mayor may require, and the self-insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this Chapter.

(f) General Indemnification. Each application for consent to Occupy or Use the Public Right-of-Way, and each annual registration, shall include, to the extent permitted by law, the Service Provider's express undertaking to defend, indemnify and hold the City and its elected and appointed officers, officials, employees, agents, representatives and subcontractors harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Service Provider or its Affiliates, officers, employees, agents, contractors or subcontractors in the Construction, Reconstruction, installation, operation, maintenance, repair or removal of its System or Facilities, and in providing or offering Services over the Facilities or System, whether such acts or omissions are authorized, allowed or prohibited by this Chapter.

(g) Performance Bond. As a condition of consent to Occupy or Use the Public Right-of-Way, and to ensure the full and complete compliance with, and performance under this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Service Provider to comply with the codes, ordinances, rules, regulations or permits of the City, each Service Provider shall, in the amount of fifty thousand dollars ($50,000) or such lesser amount as the ~~City Manager~~Mayor may determine to be necessary provide an unconditional letter of credit, or other instrument acceptable to the City, or furnish and file with the City a Performance Bond running to the City in the required amount from a company licensed to do business in the State of Ohio; which performance bond or letter of credit or other instrument shall be maintained at the sole expense of the Service Provider so long as any of the Service Provider's Facilities are located within the Public Right-of-Way of the City.

(1) Before claims are made against the Performance Bond or letter of credit or other instrument, the City shall give written notice to the Service Provider:

A. Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the Service Provider's act or default;

B. Providing a reasonable opportunity for the Service Provider to first remedy the existing or ongoing default or failure, if applicable;

C. Providing a reasonable opportunity for the Service Provider to pay any monies due the City before the City makes a claim against the Performance Bond or letter of credit or other instrument;

D. That the Service Provider will be given an opportunity to review the act, default or failure described in the notice with the ~~City Manager~~Mayor.

(2) Service Providers shall maintain the full value of the Performance Bond or letter of credit or other instrument regardless of claims against the Performance Bond or letter of credit or other instrument made by, or paid to, the City. (Ord. 75-2012. Passed 7-2-12; Ord. ____ Passed _____.)

941.03 INITIAL AND ANNUAL REGISTRATION OF SERVICE PROVIDERS.

(a) Initial Registration. Any Service Provider with initial presumed consent to Occupy or Use the Public Rights-of-Way as provided in Section 941.02(b) shall file an initial registration with the City within ninety (90) days of the effective date of this Chapter, on a form provided by the ~~City Manager~~Mayor, which shall include the information in Section 941.02(c)(2) of this Chapter.

(b) Annual Registration Required. All Service Providers with consent to Occupy or Use the Public Right-of-Way as provided in Section 941.02 shall register with the City each calendar year between January 1 and January 31 on a form provided by the ~~City Manager~~Mayor. Service Providers who file an Initial Registration after July 1, 2006 but before January 1, 2007 need not file an Annual Registration for calendar year 2007.

(c) Purpose of Registration. The purpose of registration under this Section 941.03 is

to:

(1) Compile, update and supplement the City's database so that the City has accurate and current information concerning the Service Providers that own or operate Facilities, and/or provide Services, in the City's Public Right-of-Way;

(2) Assist the City in monitoring the usage of the Public Right-of-Way in order to ensure that the public receives the maximum possible benefit from that use and the use is consistent with the best management and care of the Public Right-of-Way;

(3) Assist the City in the collection and enforcement of any municipal taxes, franchise fees, compliance fees or charges that may be due the City;

(4) Assist the City in monitoring compliance with local, State and federal laws.

(d) Information Required for Registration. Registration forms will be provided by the City and shall require the following information:

(1) Any material changes to the information the Service Provider provided the City in the application for consent to Occupy or Use the Public Right-of-Way, including, but not limited to:

A. The identity, legal status, and federal tax identification number of the Service Provider, including any Affiliates.

B. The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the Service Provider's registration statement and available at all reasonable times to be notified in case of emergency.

(2) Evidence that the Service Provider is in compliance with the Insurance, Indemnity and Performance Bond requirements pursuant to Sections 941.02(e), (f) and (g) of this Chapter.

(3) Information regarding, and a preliminary Construction schedule and completion date for, any Capital Improvements the Service Provider plans in the City's Public Right-of-Way for the twelve (12) months following the date of registration, including:

A. A description clearly showing the location of all the proposed Capital Improvements, including horizontal and vertical information; Facility type, size, depth, and capacity; or such other information the ~~City Manager~~Mayor determines is necessary. In no event shall the description of the proposed Capital Improvement be less than by City quadrant and/or street name and Facility type. The Service Provider shall update all required information as soon as it becomes available.

B. If the Service Provider is Constructing a new System or Reconstructing all or a portion of its existing System, general description of the proposed System and the Facilities utilized to provide the Service that the Service Provider intends to offer or provide over the System within the City. Where a Service will be provided by a nonaffiliated provider, the Service Provider shall identify that provider.

C. Information sufficient to determine that the Service Provider has applied for and received any certificate of authority required by PUCO to provide Services or operate a System in the City.

D. Information sufficient to determine that the Service Provider has applied for and received any construction permit, operating license, certification, or other approvals required by the Federal Communications Commission to provide telecommunications or Cable Services over a System in the City.

(4) Such other information as the ~~City Manager~~Mayor may reasonably require.

(e) Facilities Maps. The City shall have the right to access and review all the Service

Provider's maps and/or as-built plans showing the location of its Facilities in the City's Rights-of-Way, upon ten (10) days notice to the Service Provider.

(f) Registration to be Kept Current. In addition to the annual registration requirement, each Service Provider shall keep all required registration information current at all times and shall provide the City with notice of changes to the required information within fifteen (15) days following the date on which the Service Provider has notice of such change.

(g) Registration Fee. Each Service Provider, except as provided in Section 941.09, shall pay an annual registration fee as determined by the ~~City Manager~~Mayor to reimburse the City for its administrative costs related to maintaining annual registration and as provided in Section 941.08. (Ord. 75-2012. Passed 7-2-12; Ord. Passed .)

941.04 GENERAL PUBLIC RIGHT-OF-WAY USE REGULATIONS.

(a) Public Right-of-Way Route. Consent granted to a Service Provider to Occupy or Use the Public Right-of-Way under Section 941.02 shall be limited to a grant to Occupy or Use the specific Public Right-of-Way and defined portions thereof including the specific Facilities and location along the Public Right-of-Way.

(b) Nonexclusive Consent to Occupy the Public Right-of-Way. No consent granted under Section 941.02 shall confer any exclusive right, privilege, license or franchise to Occupy or Use the Public Right-of-Way of the City to operate a System for delivery of Services or any other purposes.

(c) Rights Permitted. No consent granted under Section 941.02 shall convey any right, title or interest in the Public Right-of-Way, but shall be deemed a consent only to Occupy or Use the Public Right-of-Way for the limited purposes granted by the consent. Further, no consent shall be construed as any warranty of title.

(d) Nondiscrimination. A Public Service Provider providing Service to the public in the City shall make its Services available to any customer within the designated service area who shall request such Service, without discrimination as to the terms, conditions, rates or charges for the Public Service Provider's Services; provided, however, that nothing in this Section 941.04 shall prohibit a Public Service Provider from making any reasonable classifications among differently-situated customers.

(e) Maintenance of Facilities. Each Service Provider shall maintain its System or Facilities in good and safe condition and in a manner that complies with all applicable federal, State and local requirements.

(f) Safety Procedures. A Service Provider or other Person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as necessary and in accordance with applicable State and local requirements for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle or property by reason of such work in or affecting such Public Right-of-Way or property.

(g) Interference with the Public Rights-of-Way. No Service Provider may locate or maintain its Facilities so as to unreasonably interfere with the use of the Public Right-of-Way by the City, by the general public or by other Persons authorized to use or be present in or upon the Public Right-of-Way. All such Facilities shall be moved by the Service Provider, temporarily or permanently, as determined by the ~~City Manager~~Mayor.

(h) Damage to Public and Private Property. No Service Provider nor any Person acting on the Service Provider's behalf shall take any action or permit any action to be done which may impair or damage any City Property, Public Right-of-Way, Other Ways or other public or private property located in, on or adjacent thereto.

(i) Restoration of Public Right-of-Way, Other Ways and City Property.

(1) When a Service Provider, or any Person acting on its behalf, does any work in or affecting any Public Right-of-Way, Other Ways or City Property, it shall, after the work is completed and at its own expense, promptly remove any obstructions therefrom and restore such ways or property, within ten (10) to thirty (30) days, at the ~~City Manager's~~Mayor's discretion, to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(2) If weather or other conditions do not permit the complete restoration required by this Section, the Service Provider shall temporarily restore the affected ways or property as directed by the ~~City Manager~~Mayor. Such temporary restoration shall be at the Service Provider's sole expense and the Service Provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(j) Duty to Provide Information.

(1) Within ten (10) days of a written request from the ~~City Manager~~Mayor each Service Provider shall furnish the City with documentation sufficient to show that the Service Provider has complied with all requirements of this Chapter.

(2) In addition, within ten (10) days of a written request from the ~~City Manager~~Mayor, each Service Provider shall make available for inspection by the City at reasonable times all books, records, maps and other documents, maintained by the Service Provider with respect to its Facilities in the Public Right-of-Way.

(k) Leased Capacity. A Service Provider shall have the right, without prior City approval, to lease capacity or bandwidth to an unaffiliated Service Provider, provided:

(1) The Service Provider shall notify the City of the lease agreement within thirty (30) days of such lease agreement.

(2) The lessee has complied, to the extent applicable, with the requirements of this Chapter.

(l) Assignments or Transfers of Consent. Consent to Occupy or Use the Public Right-of-Way may be, directly or indirectly, transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Service Provider, by operation of law or otherwise, without consent of the City, so long as:

(1) The City is notified of the proposed transfer on or before the date of transfer; and

(2) The transferee shall fully comply with this Chapter within sixty (60) days

of the transfer, including, but not limited to:

A. All information required by the application for consent to Occupy or Use the Public Right-of-Way pursuant to Section 941.02, and/or Registration required by Section 941.03 of this Chapter; and

B. Any other information reasonably required by the ~~City Manager~~Mayor.

(m) Transactions Affecting Control of Consent. Any transactions that singularly or collectively result in a change of twenty-five percent (25%) or more of the ownership or ultimate working control of a Service Provider, of the ownership or working control of the Service Provider's Facility, or of control of the capacity or bandwidth of the Service Provider's System, Facilities or substantial parts thereof, shall be considered an assignment or transfer pursuant to Section 941.04(l) hereof. Transactions between Affiliated entities are not exempt from Section 941.04(l).

(n) Revocation of Consent. Consent granted by the City to Occupy or Use the Public Right-of-Way of the City may be revoked for any one of the following reasons:

(1) Construction, Reconstruction, installation, location, operation or Excavation at an unauthorized location.

(2) Construction, Reconstruction, installation, location, operation or Excavation in violation of City safety and/or Construction requirements.

(3) Material misrepresentation or lack of candor by or on behalf of a Service Provider in any Permit application or registration required by the City.

(4) Failure to relocate or remove Facilities, or failure to restore the Public Right-of-Way, as required by this Chapter.

(5) Failure to pay fees, costs, taxes or compensation when and as due the City.

(6) Insolvency or bankruptcy of the Service Provider.

(7) Violation of material provisions of this Chapter.

(o) Notice and Duty to Cure. In the event that the ~~City Manager~~Mayor believes that grounds exist for revocation of consent to Occupy or Use the Public Right-of-Way or Construction Permit, he shall give the Service Provider written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the Service Provider a reasonable period of time not exceeding thirty (30) days to furnish evidence:

(1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

(2) That rebuts the alleged violation or noncompliance; and/or

(3) That it would be in the public interest to impose some penalty or sanction less than revocation.

(p) Waiver of Requirements. It is within the ~~City Manager's~~Mayor's reasonable discretion to waive a portion or portions of this Chapter where such requirements, in the ~~City Manager's~~Mayor's judgment, are not necessary or appropriate to protect the City's interests and the purposes and intent of this Chapter. (Ord. 75-2012. Passed 7-2-12; Ord. Passed ____.)

941.05 LOCATION, RELOCATION AND REMOVAL OF FACILITIES.

(a) Location of Facilities. All Facilities shall be Constructed, Reconstructed, installed

and located in accordance with the following terms and conditions:

(1) Facilities shall be installed within an existing compatible underground duct or conduit whenever Excess Capacity exists within such Facility.

(2) A Service Provider with permission to install Overhead Facilities shall install its Facilities on pole attachments to existing utility poles only, and then only if Surplus Space is available.

(3) Whenever the existing electric, cable, telecommunications and other similar Facilities are located underground in a Public Right-of-Way, a Service Provider with permission to Occupy the same Public Right-of-Way with the electric, cable, telecommunications or other similar Facilities, must also locate its Facilities underground.

(4) Except for Overhead Facilities as provided herein, no Facilities shall be located above ground in a Public Right-of-Way without the express written permission of the ~~City Manager~~Mayor.

(5) The City reserves the right to require a Service Provider to provide Excess Capacity in the Public Right-of-Way at the time of Construction, Reconstruction, installation, location or relocation of Facilities.

(b) Excess Capacity. To reduce Excavation in the Public Right-of-Way, it is the City's goal to encourage Service Providers to share occupancy of underground conduit as well as to construct, whenever possible, excess conduit capacity for occupancy of future Facilities in the Public Right-of-Way. Therefore, if a Service Provider is constructing underground conduit in the Public Right-of-Way for its own Facilities, and the City reasonably determines such construction is in an area in which other Service Providers would likely construct Facilities in the future, the City may require the Service Provider to construct the conduit in the Public Right-of-Way with Excess Capacity in the Public Right-of-Way, provided the Service Provider shall be reimbursed for the use of the Excess Capacity by another Service Provider. The Service Provider may charge a reasonable market lease rate for occupancy of the additional conduit space as reimbursement.

(c) City Owned Conduit. If the City owns or leases conduit in the path of a Service Provider's proposed Facilities, and provided it is technologically feasible for the Service Provider's Facilities to Occupy the conduit owned or leased by the City, the Service Provider shall be required to Occupy the conduit owned or leased by the City in order to reduce the necessity to Excavate the Public Right-of-Way. The Service Provider shall pay to the City a fee for such Occupancy which shall be the cost the Service Provider would have expended to construct its own conduit, as certified by the Service Provider's engineer and approved by the City Engineer. The City and the Service Provider may agree to amortize the fee through annual payments to the City.

(d) Relocation or Removal of Facilities. Within thirty (30) days following written notice from the City, a Service Provider shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Facilities in the Public Right-of-Way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The Construction, Reconstruction, repair, maintenance or installation of any City or other public improvement in or upon the Public Right-of-Way.

(2) The operations of the City or other governmental entity in or upon the Public Right-of-Way.

Notwithstanding the above, no Service Provider shall be required to bear the expense of removal, relocation, change or alteration of position of any Facilities if such requirement would be prohibited by law.

(e) Removal of Unauthorized Facilities. Within thirty (30) days following written notice from the City, any Service Provider or other Person that owns, controls or maintains any unauthorized System, Facility or related appurtenances in the Public Right-of-Way shall, at its own expense, remove those Facilities or appurtenances from the Public Right-of-Way of the City or shall arrange to sell the System, Facilities or appurtenances to the City. After the thirty (30) days have expired, the City may remove the Facilities or appurtenances from the Public Right-of-Way at the other party's expense. A System or Facility is unauthorized and subject to removal in the following circumstances:

(1) Upon revocation of the Service Provider's consent to Occupy or Use the Public Right-of-Way;

(2) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained without the consent to do so, except as otherwise provided by this Chapter;

(3) Upon abandonment of a Facility in the Public Right-of-Way of the City, with the exception of underground facilities abandoned in a manner authorized and approved by the City;

(4) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, without prior issuance of a required Construction Permit, except as otherwise provided by this Chapter;

(5) If the System or Facility was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, at a location not permitted pursuant to the City's consent to Occupy or Use the Public Right-of-Way or Construction Permit;

(6) If the Service Provider fails to comply with the Registration requirements of Section 941.03 of this Chapter.

(f) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any Facilities, or stop work on any Construction, Reconstruction, installation, operation or Excavation, located in the Public Right-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any need to protect the public health, safety or welfare; except to the extent that the City's actions would cause a dangerous or potentially dangerous situation. (Ord. 75-2012. Passed 7-2-12; Ord. Passed .)

941.06 NOTICE OF WORK, ROUTINE MAINTENANCE AND EMERGENCY WORK.

(a) Notice of Work. Except in case of Emergency, as provided in Section 941.06(c), or for Routine Maintenance as provided in Section 941.06(b), no Service Provider, or any Person acting on the Service Provider's behalf, shall commence any work in the Public Right-of-Way of the City or Other Ways without twenty-four (24) hours advance notice to the City, obtaining a Construction Permit pursuant to Section 941.07, if required, and obtaining consent to Occupy or Use the Public Right-of-Way pursuant to Section 941.02, if required.

(b) Routine Maintenance and New Service Orders.

(1) A Service Provider need not obtain a Construction Permit or notify the City prior to or after commencing any Routine Maintenance or New Service Orders that do not include the Construction in, or Excavation or Lane Obstruction of, a Public Right-of-Way or closing of a Public Street.

(2) For Routine Maintenance and New Service Orders that require the Service Provider to cause a Lane Obstruction in a Public Street for more than four (4) hours, the Service Provider shall provide the City with forty-eight (48) hours advance notice prior to commencing the Routine Maintenance or New Service Order, and shall submit a drawing showing the planned

traffic maintenance and indicating how the Service Provider will meet all requirements of ODOT's Manual of Traffic Control Devices or other applicable ODOT regulations.

(c) Emergency Work. In the event of the need for any unexpected repair or Emergency work, a Service Provider may commence such Emergency response work as required under the circumstances, provided that for Emergency work that requires Excavation of a Public Right-of- Way or Lane Obstruction or closing of a Public Street, the Service Provider shall notify the City as promptly as possible before commencing such Emergency work, or as soon as possible thereafter if advance notice is not practicable. When notice is required, the Service Provider shall notify the ~~City Manager~~Mayor. (Ord. 75-2012. Passed 7-2-12; Ord. Passed .)

941.07 CONSTRUCTION PERMIT AND STANDARDS.

(a) Construction Permit.

(1) No Construction Permit is required for Routine Maintenance and New Service Orders that do not include Excavation in a Public Street.

(2) No Person shall commence or continue with the Construction, Reconstruction, installation, maintenance or repair of Facilities or Excavation in the Public Right-of-Way without obtaining a Construction Permit from the ~~City Manager~~Mayor as provided in this Section 941.07, including but not limited to the following circumstances:

A. The Construction of a new System;

B. The extension of a Service Provider's System in the Public Right-of-Way in an area of the City not currently serviced by that Service Provider. This does not include New Service Orders unless a Public Street will be Excavated;

C. The relocation or replacement of more than two hundred (200) lineal feet of a Service Provider's existing System or Facilities in the Public Right-of-Way;

D. Any Reconstruction or replacement of Facilities requiring more than one (1) working day to complete work in the Public Right-of-Way;

E. Any Construction, Reconstruction, installation, maintenance, repair or New Service Orders in the Public Right-of-Way requiring more than one (1) working day to complete; or

F. Any Construction, Reconstruction, installation, maintenance, repair or New Service Orders requiring the Excavation of a Public Street.

(3) No Construction Permit shall be issued for the Construction, Reconstruction, installation, maintenance or repair of Facilities, or Excavation, in the Public Right-of-Way unless the Service Provider has obtained consent from, and filed a current registration statement with, the City pursuant to Section 941.02 and Section 941.03, respectively, of this Chapter.

(4) The ~~City Manager~~Mayor may waive or modify the construction permit requirements for Service Providers with Underground Facilities whose routine maintenance of Facilities requires Excavation.

(b) Construction Permit Applications. Applications for permits to Construct, Reconstruct or install Facilities, or Excavate, shall be submitted upon forms provided by the City, provide the following information, if applicable, and be accompanied by drawings, plans and

specifications written in plain English and/or with a key to explain any acronyms or abbreviations, which drawings, plans and specifications shall provide sufficient detail to demonstrate:

(1) A preliminary construction schedule.

(2) That the Facilities will be Constructed, Reconstructed, installed, maintained or repaired, or the Public Right-of-Way Excavated, in accordance with all applicable codes, rules and regulations.

(3) If the applicant is proposing to Construct, Reconstruct, install, maintain, repair or locate Facilities above ground:

A. Evidence that Surplus Space is available for locating its Facilities on existing utility poles along the proposed route;

B. The location and route of all Facilities to be located or installed on existing utility poles.

(4) If the applicant is proposing an underground installation of new Facilities in existing ducts, pipes or conduits in the Public Right-of-Way, information in sufficient detail to identify:

A. The Excess Capacity currently available in such ducts or conduits before the installation of the applicant's Facilities.

B. The Excess Capacity, if any, that will exist in such ducts or conduits after installation of the applicant's Facilities.

(5) If the applicant is proposing an underground installation of new Facilities in new ducts or conduits to be Constructed in the Public Right-of-Way:

A. The location and depth proposed for the new ducts or conduits; and

B. The Excess Capacity that will exist in such ducts or conduits after installation of the applicant's Facilities.

(6) The location and route of all Facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are in the Public Right-of-Way. Included with the installation shall be magnetic and florescent tape placed at a minimum of one foot to a maximum of two (2) feet above the entire Facility as installed for the purpose of locating the Facility during future Construction activities or other such location device as approved by the ~~City Manager~~Mayor. The tape shall be marked with the type of Facility installed as approved by the City.

(7) The method of any underground installation (for example, open trenching or boring). If the method has not been determined at the time the application is filed, the Service Provider shall supplement the application before construction work begins.

(8) The location of all known existing underground utilities, conduits, ducts, pipes, mains and installations that are in the Public Right-of-Way along the underground route proposed by the applicant.

(9) The location(s), if any, for interconnection with the Facilities of other Service Providers.

(10) The construction methods to be employed for protection of existing structures, fixtures and Facilities in or adjacent to the Public Right-of-Way.

(11) The structures, improvements, Facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.

(12) The proposed storage locations for vehicles and materials to be utilized during Construction, to be field-verified with the City.

(13) The impact of Construction, Reconstruction, installation, maintenance or repair of Facilities on trees in or adjacent to the Public Right-of-Way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and

restoring any trees or areas disturbed during Construction.

(14) Information to establish that the applicant has obtained all other governmental approvals and permits to Construct and operate the Facilities and to offer or provide the Services.

(15) The identity of, and contact information for, each subcontractor of the Service Provider that will do work in connection with the Construction, Reconstruction, installation, maintenance or repair of Facilities, including restoration work. If the identity of any subcontractor is not known at the time that the application is filed, the Service Provider shall supplement the application as soon as possible after the information is available which shall in every case be at least forty-eight (48) hours prior to performance of any work by such subcontractor.

(c) Construction Codes. Facilities shall be Constructed, Reconstructed, installed, repaired, operated, Excavated and maintained in accordance with all applicable federal, State and local codes, rules, regulations and technical codes including, but not limited to, the National Electrical Safety Code.

(d) Traffic Control Plan. All Permit applications which involve a Lane Obstruction or work on, in, under, across or along any Public Right-of-Way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the ODOT's Uniform Manual of Traffic Control Devices and other applicable ODOT regulations, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The ~~City Manager~~Mayor may require the Service Provider to use and employ the City Police Force for Traffic Control.

(e) Issuance of Permit. Within ten (10) business days after submission of all plans and documents required of the applicant, the ~~City Manager~~Mayor, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a Construction Permit authorizing the Construction, Reconstruction, installation, maintenance or repair of the Facilities, or Excavation in the Public Right-of-Way, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the ~~City Manager~~Mayor may deem necessary or appropriate. Such ten (10) business day period shall begin after all submissions are deemed by the ~~City Manager~~Mayor to be in accordance with the requirements of, including information submitted in the form required by, this Chapter.

(f) Coordination of Construction Activities. All Service Providers are required to cooperate with the City, including its Service and Safety forces, and with each other. All Construction, Reconstruction, installation, Excavation, activities and schedules shall be coordinated, as ordered by the ~~City Manager~~Mayor, to minimize public inconvenience, disruption or damages. Owners of adjoining properties shall be notified by the Service Provider at least twenty-four (24) hours in advance of work that may affect their property.

(g) Modification of Construction Schedule. The Service Provider may modify the construction schedule at any time provided that forty-eight (48) hours advance notice is given to the ~~City Manager~~Mayor. The Service Provider shall further notify the ~~City Manager~~Mayor and

the Ohio Utility Protection Service (OUPS) not less than forty-eight (48) hours in advance of any Excavation or work in the Public Right-of-Way.

(h) Least Disruptive Technology. To the extent reasonably possible, all Facilities shall be Constructed, Reconstructed, installed, maintained or repaired in the manner resulting in the least amount of damage and disruption of the Public Right-of-Way. Unless otherwise authorized by the ~~City Manager~~Mayor for good cause, Service Providers Constructing, Reconstructing, installing, maintaining or repairing Underground Facilities shall utilize Trenchless Technology, including, but not limited to, horizontal drilling, directional boring, and microtunneling, if technically and/or technologically feasible.

(i) Compliance with Permit. All Construction practices and activities shall be in accordance with the Construction Permit and approved final plans and specifications for the Facilities. The ~~City Manager~~Mayor shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements. Field changes may be approved by the ~~City Manager~~Mayor if such changes are determined to be necessary due to site conditions or other changed circumstances.

(j) Display of Permit. The Service Provider shall maintain a copy of the Construction Permit and approved plans at the construction site, which shall be displayed and made available for inspection by the ~~City Manager~~Mayor at all times when construction work is occurring.

(k) Joint Applications. Any Service Provider planning a Capital Improvement may submit a joint application for (1) Consent to Occupy or Use the Public Right-of-Way pursuant to Section 941.02 and (2) a Construction Permit.

The City is not required to take action on the Construction Permit until ten (10) days after granting consent to Occupy or Use the Public Right-of-Way.

(l) Noncomplying Work. Upon order of the ~~City Manager~~Mayor, all work that does not comply with the Permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall immediately cease and shall be immediately removed and/or corrected by the Service Provider.

(m) Record Drawings. Within sixty (60) days after completion of Construction, the Service Provider shall furnish the City with two (2) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all Facilities Constructed pursuant to the Permit. At such time, the Service Provider shall submit the Record Drawings in a digital format compatible with the City's current computer software.

(n) Restoration of Improvements. Upon completion of any Construction work, the Service Provider shall promptly repair any and all Public Rights-of-Way and provide property improvements, fixtures, structures and Facilities which were damaged during the course of Construction, restoring the same as nearly as practicable to its condition before the start of Construction.

(o) Public Streets. Asphalt patches in Public Streets shall be constructed and installed so as to be as strong and resistant to heaving as the rest of the Public Street surface. During Construction work, dirt and debris resulting from Construction work shall be removed from Public Streets periodically during the day as well as at the end of each day. Further, the Public Streets shall be kept free of dust, dirt and unevenness of travel surfaces resulting from Construction work and other similar hazards to pedestrians, bicyclists and motorists.

(p) Sidewalk, Driveway Apron and Curb Restoration. In repairing and restoring sidewalks, driveway aprons and curbs located within the Public Right-of-Way that are disturbed or damaged during Construction work, the following shall apply:

(1) Sidewalks shall be designed to be durable and attractive and conform to best practices.

(2) Concrete work shall conform to current best practices for durability, including American Concrete Institute, National Ready Mixed Concrete Association or other nationally accepted standards governing cold weather and hot weather installations and durability. The standard utilized shall be specified in the plans and specifications provided to the City for sidewalk restoration.

(3) Sidewalks shall be protected from mars (such as footprints) and vandalism until the concrete has achieved hardness sufficient to resist such marring. Blemished or vandalized sidewalk blocks, and concrete displaying scaling, crazing or blistering, must be removed and re-poured.

(4) Curing compound shall be applied as per the manufacturer's instructions.

(5) Where less than an entire block (i.e., public street intersection to public street intersection) of sidewalk is to be replaced in connection with restoration under this Section, the proposed color of the new sidewalk to be installed and method of installation shall be reviewed with the ~~City Manager~~Mayor or the City Manager's designee at the preconstruction meeting. The ~~City Manager~~Mayor may require the replacement sidewalk to be installed in such a manner that the new sidewalk matches the color of the adjacent sidewalk blocks to the extent practicable.

(6) Stone sidewalks that are not already cracked shall be preserved for reinstallation if that is the preference of the owner of abutting property.

A. A contractor with expertise in setting stone walks shall reset stone on compacted finely crushed stone base.

B. Pronounced peaks and valleys within sidewalk must be avoided.

C. In the event that a stone sidewalk is damaged as a result of Construction work in the Public Right-of-Way, it shall be replaced with a stone sidewalk block if requested by the owner of abutting property.

(7) New commercial driveway aprons shall provide an 8-inch thick concrete slab. Repairs may match the depth of the existing apron.

(8) Truncated dome material on curb ramps shall be of a style and color that matches the original, unless a different style or color is requested by the City.

(q) Trees in Public Right-of-Way

(1) In performing any Construction work which may impact trees with roots, trunk or branches within the Public Right-of-Way, the Service Provider shall avoid soil compaction and impact by use of methods such as construction fencing.

(2) When tree roots must be affected by any Construction work within the Public Right-of-Way, the Service Provider shall submit specifications with the permit or construction plans listing construction best practices which minimize the impact to trees.

(3) Trees within the Public Right-of-Way may not be removed without notifying the City. Best practices shall be utilized when removing trees from the Public Right-of-Way. Compensation for trees removed in connection with Construction work performed by a Service provider, based upon cost of replacement analysis as provided in the Guide for Plant Appraisals or similar publication shall be paid to the City prior to completion of Construction Work.

(r) Landscape Restoration.

(1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the Construction, Reconstruction, installation, maintenance, repair or replacement of

Facilities must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work,

except to the extent that tree trimming is necessary to prevent the interference of tree branches with Overhead Facilities. Trees that were to have been preserved in accordance with the requirements of this Section that die as a result of Service Provider's construction in the Public Right-of-Way as determined by the City Forester within one year following completion of Construction shall require compensation to be paid to the City for purposes of replacement, based upon cost of replacement analysis as provided in the Guide for Plant Appraisals or similar publication.

(2) Grass or lawn areas within the Public Right-of-Way that are disturbed or damaged during Construction work shall be restored to a grassy condition.

A. Topsoil shall be stockpiled separately from poorer-quality clay and subsurface soils. In grass or lawn restoration, soils shall be returned to their respective layers.

B. When existing soil has been disturbed to such an extent that it will not support the establishment of viable grass, topsoil shall be added in quantities sufficient to support grass. Clay soils shall not be used for the top twelve inches of a grass or lawn area to be restored.

C. A Service Provider shall follow accepted best practices for ensuring grass that is thick and green in connection with such restoration work.

(3) All restoration work within the Public Right-of-Way shall be done in accordance with landscape plans approved by the ~~City Manager~~Mayor.

(s) Construction and Completion Bond. Prior to issuance of a Construction Permit the Service Provider shall provide the City with a Construction Bond written by a corporate surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of Constructing, Reconstructing, installing or repairing the Service Provider's Facilities or Excavation in the Public Right-of-Way of the City, or such lesser amount as the ~~City Manager~~Mayor may determine to adequately protect the City's interest. The Construction Bond shall be deposited with the City prior to commencing Construction.

(1) The Construction Bond shall remain in force until eighteen (18) months after substantial completion of the work, as determined by the ~~City Manager~~Mayor, including restoration of Public Right-of-Way and other property affected by the Construction.

(2) The Construction Bond shall guarantee, to the satisfaction of the City:

A. Timely completion of Construction;

B. Construction in compliance with applicable plans, permits, technical codes and standards;

C. Proper location of the Facilities as specified by the City;

D. Restoration of the Public Right-of-Way and other property affected by the Construction;

E. The submission of Record Drawings, in both written and digital format, after completion of the work as required by this Chapter; and

F. Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

(3) In lieu of filing a Construction Bond with the City for each Construction

Permit, a Service Provider with the approval of the ~~City Manager~~Mayor may file an Annual Construction Bond (or Annual Bond) in the form described above in an amount that the ~~City Manager~~Mayor may determine will adequately protect the City's interests as described above.

(t) Responsibility of Owner. The owner of the Facilities to be Constructed, Reconstructed, installed, located, operated, maintained or repaired and, if different, the Service Provider, are responsible for performance of and compliance with all provisions of this Section.

(u) Recovery of Costs. The ~~City Manager~~Mayor may recover the City's costs related to issuance and enforcement of any construction permits issued under this Section 941.07 in the manner prescribed in Section 941.08. This provision shall supersede any other provisions in the City's codes or regulations relating to construction fees or construction permit fees for Service Providers' facilities within the City's rights-of-way including, but not limited to Section 1311.04, "Construction Deposits" or Section 1311.08, "Street Excavation Permit Fee; Backfill and Restoration; Utility Inspector Fee."
(Ord. 75-2012. Passed 7-2-12; Ord. Passed .)

941.08 RECOVERY OF CITY COSTS IN MANAGING THE PUBLIC RIGHT-OF-WAY.

(a) Purpose. It is the purpose of this Section 941.08 to provide for the recovery of all direct and indirect costs and expenses actually incurred by the City and associated with a Public or Private Service Provider's Occupancy or Use of the Public Right-of-Way and related to the enforcement and administration of this Chapter. All fees related to the Occupancy or Use of the Public Right-of-Way shall be considered to be Public Way Fees as that term is defined in this Chapter 941 and shall be assessed by the ~~City Manager~~Mayor in a manner which is in accordance with Chapter 4939 of the Ohio Revised Code and any other applicable law.

(b) Regulatory Fees and Compensation Not a Tax. The regulatory fees and costs provided for in this Chapter are separate from, and additional to, any and all federal, State, local and City taxes as may be levied, imposed or due from a Service Provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of Services.
(Ord. 75-2012. Passed 7-2-12; Ord. Passed .)

941.09 CABLE TELEVISION FRANCHISE.

(a) Cable Television Franchise. Any Person who desires to Construct, Reconstruct, install, operate, maintain or locate Facilities in any Public Right-of-Way of the City for the purpose of providing Cable Service to Persons in the City shall first obtain a non-exclusive franchise to provide Cable Services from the City.

(b) Compliance with Chapter Required. All Cable Operators providing Cable Service within the City pursuant to a valid franchise shall comply with the registration and Construction Permit requirements of this Chapter.

(c) Cable Television Franchise Expiration.

(1) In the event a franchise expires by its terms, the franchise shall be automatically renewed on a month-to-month basis until the parties enter into a renewal franchise

(d) Cable System Capacity. No Cable Operator shall provide Service other than Cable Service without obtaining consent from the City, pursuant to Section 941.02 of this Chapter, which consent shall not be unreasonably withheld.

(e) Credit for Payment of Franchise Fee. Any Cable Operator paying a franchise fee or providing free service or other non-monetary compensation to the City pursuant to a franchise agreement shall be entitled to a credit, offset or deduction against any reimbursement of City costs assessed under this Chapter for all such franchise fees and the retail value of the free service or other non-monetary compensation. (Ord. 75-2012. Passed 7-2-12.)

941.10 PRIVATE FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

(a) Private Facilities. Persons who wish to use the Public Right-of-Way of the City for Private Facilities shall obtain a consent from the City pursuant to Section 941.02, register pursuant to Section 941.03, obtain a Construction Permit (if applicable) pursuant to Section 941.07 and comply with all provisions of this Chapter.
(Ord. 75-2012. Passed 7-2-12.)

941.11 MISCELLANEOUS PROVISIONS.

(a) Preemption by State and Federal Law. Except as may be preempted by applicable State or Federal laws, rates, regulations, and orders, this Chapter shall apply and be controlling over each Service Provider engaged in the business of transmitting, supplying or furnishing of Services originating, passing through, or terminating in the City.

(b) Exemption for City-Owned or Operated Facilities. Nothing in this Chapter shall be construed to apply the provisions of this Chapter to Facilities owned or operated by the City or any of its operations.

(c) Application to Existing Code Provisions. In the event of a direct conflict between any provision of this Chapter and any other section of the City's Codified Ordinances, the provisions of this Chapter shall apply.

(d) Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any Person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof. (Ord. 75-2012. Passed 7-2-12.)

941.99 PENALTIES AND OTHER REMEDIES.

(a) Criminal Penalties. Any Person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(b) Civil Violations and Forfeiture.

(1) In lieu of the criminal penalties set forth above, the ~~City Manager~~Mayor may make an initial finding of a civil violation by the Service Provider for violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter.

(2) The Civil Forfeiture shall be in an amount payable to the City of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(3) An action for civil forfeiture shall be commenced by providing the Service Provider with written notice describing in reasonable detail the Service Provider's alleged violation of one or more provisions of this Chapter and the amount of the penalty that will be assessed against it.

(4) The Service Provider shall have fifteen (15) days subsequent to receipt of the notice of violation in which to correct the violation before the City may assess penalties against the Service Provider. The time in which to cure the violation may be extended by the City if additional time is required to correct the violation; provided that the Service Provider commences corrective action within seven (7) days of the notice of violation and proceeds with reasonable diligence.

(5) The Service Provider may dispute the alleged violation by providing the City with written notice within five (5) days of receipt of the notice of violation, setting forth in reasonable detail the reasons for its dispute. The City shall set a date for hearing of the alleged violation no sooner than thirty (30) days and no later than sixty (60) days from receipt of the notice of dispute.

(6) The City shall issue a written decision on the Service Provider's alleged violation within thirty (30) days of the hearing, which decision shall be final and subject to the administrative appeal procedures under Ohio law. If the City finds after hearing that the alleged violation(s) did occur, the penalty shall be assessed starting fifteen (15) days from the notice of violation and shall continue until the violation has been corrected.

(c) Other Remedies. Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter. (Ord. 75-2012. Passed 7-2-12; Ord. Passed .)

(13) "Small Cell Facility" means a wireless facility:

A. That meets both of the following requirements:

1. Each antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than six (6) cubic feet in volume; and

2. All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services; and

B. That includes a "Small Wireless Facility," which is a type of Small Cell Facility (i) in which each antenna is located within an enclosure of not more than three (3) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than three (3) cubic feet in volume, (ii) where such antenna is associated with a structure (a) 50 feet or less in height, including the antenna, or (b) that is not more than ten percent (10%) taller than adjacent structures, or (c) is not extended by more than ten percent (10%) or to a height exceeding 50 feet, whichever is greater, and (iii) that also otherwise satisfies the definition of "Small Wireless Facilities" found in the Federal Communication Commission's September 26, 2018 Small Cell Order, FCC 18-133.

(14) "Small Cell Equipment" means a Small Cell Facility and all Accessory Equipment.

(15) "Small Cell Use Permit" means the permit granted by the City authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.

(16) "Underground Area" means an area in the Right-of-Way where existing electric utilities, cable facilities, telecommunications facilities and other facilities, other than structures and facilities owned by the City or a transit authority, are located underground.

(17) "Wireless Support Structure" means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen (15) feet or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this Chapter, "Wireless Support Structure" excludes the following except in connection with a Small Wireless Facility, in which case the following are not excluded:

A. A utility pole or other facility owned or operated by a municipal electric utility; and

B. A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

(Ord. 54-2020. Passed 7-6-20.)

(18) "Mayor" means Mayor or designee.

(Ord. Passed .)

943.02 CONSENT REQUIRED.

(a) Any person or entity seeking to Collocate a Small Cell Facility in the Right-of-Way, or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way, shall first file a written Application for a Small Cell Use Permit with the ~~City Manager~~Mayor or designee in accordance with the requirements in this Chapter, including, but not limited to the Design Guidelines set forth in Sections 943.21 et seq. herein, Ohio R.C. Chapter 4939, and all applicable state and federal laws and regulations.

(b) Applicants are strongly encouraged to contact the ~~City Manager~~Mayor or designee and request a pre-Application conference. This meeting will provide an opportunity for early coordination regarding proposed Facilities, locations, design, Application submittal, and the approval process in order to avoid any potential delays in the processing of an Application and deployment of Facilities in the City.

(c) A Small Cell Use Permit granted under this Chapter shall not convey any right, title or interest in the Right-of-Way, but shall be deemed a permit only to use and occupy the Public Ways for the limited purposes and term stated in the permit, this Chapter, and the Design Guidelines set forth in Sections 943.21 et seq. herein. Further, no Small Cell Use Permit shall be construed as any warranty of title.
(Ord. 54-2020. Passed 7-6-20; Ord. Passed .)

943.03 PERMIT APPLICATION TYPES.

Applicants shall classify their Application as one of the following types:

(a) Type 1: Eligible Facilities Requests.

(b) Type 2: Application for Collocation of Small Cell Equipment on a Wireless Support Structure that is not an Eligible Facilities Request.

(c) Type 3: New Wireless Support Structure. Such applications will address construction, modification, replacement, or removal of a Wireless Support Structure within the Right-of-Way. At the time of Application, Applicants shall certify that Small Cell Equipment will be placed on the Wireless Support Structure within 180 days from the date the Small Cell Use Permit is issued.

(d) For Type 2 and Type 3 Applications, Applicants shall indicate whether the Application does or does not include or relate to a Small Wireless Facility.

(1) If an application involves a Small Wireless Facility, any related required permits will be issued within the designated review period set forth below, if complete applications for such permits are filed no later than the application for the Small Cell Facilities Use Permit.

(Ord. 54-2020. Passed 7-6-20.)

(1) The manufacturer's name and model number;

(2) Physical dimensions, including, without limitation, height, width, depth and weight with mounts and other necessary hardware; and

(3) The noise level generated by the equipment, if any.

(m) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by a wireless service provider who will be the end-user of the Facilities.

(Ord. 54-2020. Passed 7-6-20.)

943.08 APPLICATION REVIEW.

(a) Applications shall be evaluated in the timeframes as follows:

(1) Type 1 Applications: Sixty (60) days

(2) Type 2 Applications: Ninety (90) days, except that for Small Wireless Facilities, that are not to be collocated upon a new Wireless Support Structure, the timeframe for a Type 2 Application shall be sixty (60) days.

(3) Type 3 Applications: 120 days, except that for new Wireless Support Structures upon which a Small Wireless Facility is to be mounted, the timeframe for a Type 3 Application shall be ninety (90) days.

(b) Applications shall be reviewed for completeness. If the Application is incomplete, then the Applicant shall be notified of the insufficiency, and the timeframes set forth in subsection (a) shall be tolled until the Application is made complete, as described below:

(1) To toll the time period for incompleteness, the City must provide written notice to the Applicant, specifically identifying all missing documents or information, within thirty (30) days after receiving the Application; except that where an Applicant has indicated that the Application is for a Small Wireless Facility, or a Wireless Support Structure upon which a Small Wireless Facility is to be mounted, the written notice shall be provided within ten (10) days after receiving the Application.

A. In the case of a proper and timely initial written notice of incompleteness provided concerning an Application involving a Small Wireless Facility pursuant to subsection (b)(1), the time period set forth in subsection (a) shall be deemed never to have started running at all until the Applicant provides a supplemental submission.

(2) The time period set forth in subsection (a) will begin to run again when the Applicant provides a supplemental submission in response to the City's notice of incompleteness pursuant to subsection (b)(1), but may be tolled again if the City notifies the Applicant in writing, within ten (10) days of receiving a supplemental submission, that the Application remains incomplete and identifies which items specified in the original notice of incompleteness are still missing. Timely notice by the City of the deficiencies in a supplemental submission tolls the time period set forth in subsection (a) until the Applicant supplies the specified information

(c) The timeframes set out in subsection (a) may be tolled by mutual agreement between the Applicant and the City. The timeframes in subsections (a)(2) and (a)(3) may also be

tolled as follows, except that where an Applicant has indicated that the Application is for a Small Wireless Facility, the provisions of subsections (c)(1) and (c)(2) below do not apply:

(1) If the City receives between twenty-five (25) and forty (40) applications in a thirty (30) day period, then the City may toll for an additional twenty-one (21) days beginning with the twenty-sixth (26th) application.

(2) If the City receives more than forty (40) applications in a thirty (30) day period, then the City may toll for an additional fifteen (15) days for every additional fifteen (15) applications received, up to a maximum tolling period of ninety (90) days, as indicated below:

A. Applications 41-55: 36 additional days
B. Applications 56-70: 51 additional days
C. Applications 71-85: 66 additional days
D. Applications 86-100: 81 additional days
E. Applications 101+: 90 additional days.

(3) When an Applicant submits an underground area waiver pursuant to Section 943.32(d) herein, in which case the City may toll for an additional fourteen (14) days.

(d) If two Applicants request to Collocate on the same Wireless Support Structure or two Wireless Support Structures are proposed within a distance that would violate the spacing requirements set forth in Section 943.16 here, then the ~~City Manager~~Mayor or designee may resolve the conflict in any reasonable and nondiscriminatory manner.

(e) If a request for Small Cell Use Permit is denied, the City shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence. The denial of consent shall not unreasonably discriminate against the Applicant. Grounds for denying an Application may include, but are not limited to:

(1) Failure to provide information required under Section 943.07;
(2) Failure to comply with Design Guidelines set forth in set forth in Sections 943.21 et seq. herein;
(3) Failure to provide financial surety pursuant to Section 943.15;
(4) Failure to remove abandoned Facilities as required under Section 943.12;
(5) Conflict with the historic nature or character of the surrounding area;
(6) Conflict with planned future improvements in the Right-of-Way; and
(7) Failure to comply with generally applicable health, safety, and welfare requirements.

(Ord. 54-2020. Passed 7-6-20; Ord. Passed .)

943.09 PERMITTING PROCESS, DURATION, AND TERMINATION.

(a) Upon approval of its Application, an Applicant shall receive a Small Cell Use Permit indicating that the City has granted the Applicant consent to occupy the Right-of-Way.

(b) A Small Cell Use Permit issued to an Operator shall have duration of ten (10) years. Permits may be renewed for five (5) year terms.

943.15 FINANCIAL SURETY.

(a) Each Facilities Operator must procure and provide to the City a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this Chapter and Ohio R.C. Chapter 4939. The financial surety shall be in compliance with Subsection 941.02(g) or as otherwise determined reasonable by the ~~City Manager~~Mayor or designee, such as being an amount sufficient to cover the cost of removal of all Facilities owned or operated by Facilities Operator.

(b) The City may, in its sole discretion, draw on the financial surety to remove abandoned, unused, or unsafe Facilities, remove or repair damaged Facilities, or to repair damage to any City property caused by the Facilities Operator or its agent. In such event, the Facilities Operator shall cause the financial surety be replenished to its prior amount within ten (10) business days after City notifies the Facilities Operator that it has drawn on the financial surety. (Ord. 54-2020. Passed 7-6-20; Ord. Passed .)

943.16 RESERVED SPACE.

The City reserves the right to install, and permit others to install, Facilities in the Right-of-Way. The City may reserve space in the Right-of-Way and on Wireless Support Structures for future utility, safety, or transportation uses. Such space may be reserved in an ordinance or plan approved by the ~~City Manager~~Mayor, City Council, Building Commissioner, or Planning Commission. (Ord. 54-2020. Passed 7-6-20; Ord. Passed .)

943.17 REMOVAL OR RELOCATION OF FACILITIES.

(a) Consistent with R.C. 4939.08, the City may require a Facilities Operator to remove or relocate Facilities to accomplish construction and maintenance activities. The Facilities Operator shall remove or relocate the Facilities at no cost to the City. If the Facilities Operator fails to remove or relocate the Facilities within ninety (90) days of receiving a request to do so from the City, then the City may remove the Facilities at Facilities Operator's sole cost and expense, without further notice to the Facilities Operator.

(b) If the Facilities are placed in a location other than the location approved by the City, the Facilities Operator shall relocate the Facilities within thirty (30) days of receiving notice that the Facilities are located improperly.
(Ord. 54-2020. Passed 7-6-20.)

943.18 NOTICE OF WORK.

A Facilities Operator shall notify the ~~City Manager or designee~~Mayor of all nonemergency work within ten (10) calendar days prior to performing any upgrades or maintenance on any Facilities, regardless of whether the work requires any permit or consent from the City.
(Ord. 54-2020. Passed 7-6-20; Ord. Passed .)

943.19 CONSTRUCTION PERMIT.

(a) Facilities Operators are required to obtain a construction permit pursuant to Section 941.07 including, but not limited, to the construction bond set forth in Subsection 941.07(g), prior to commencing any of the following activities:

(1) Collocation of small cell equipment on a Wireless Support Structure;

(2) Replacement, modification, repair, or maintenance of small cell equipment;

(3) Construction, replacement, modification, repair, or maintenance of a

(b) Excess cables and wiring shall not be spooled, coiled or otherwise stored on the exterior of the Wireless Support Structure unless within an enclosure. Cables shall not be externally visible. (Ord. 54-2020. Passed 7-6-20.)

943.27 DESIGN SPECIFICATIONS FOR ELECTRICAL METERS.

(a) Facilities Operators shall use flat-rate electric service when available in order to eliminate the need for a meter.

(b) If a meter is required, then Facilities Operators shall use the smallest and least intrusive electric meter available. Whenever permitted by the electric service provider, the electric meter shall be painted to match the Wireless Support Structure.
(Ord. 54-2020. Passed 7-6-20.)

943.28 DESIGN SPECIFICATIONS FOR UTILITY LINES.

Service lines shall be underground to avoid additional overhead lines. The underground cables and wires must transition directly into the Wireless Support Structure base without any external junction box. (Ord. 54-2020. Passed 7-6-20.)

943.29 DESIGN SPECIFICATIONS FOR REPLACEMENT OF WIRELESS SUPPORT STRUCTURES.

(a) Unless otherwise determined by ~~City Manager or designee~~Mayor, a Facilities Operator shall be required to replace an existing Wireless Support Structure in the following circumstances:

(1) The Wireless Support Structure upon which the Applicant has proposed to Collocate Small Cell Equipment is deemed incapable of bearing the added weight of the Small Cell Equipment; or

(2) An existing Wireless Support Structure is located within one hundred (100) feet of the proposed site of a new Wireless Support Structure but the existing Wireless Support Structure is incapable of bearing the additional weight of the Small Cell Equipment.

(b) Designs for replacement of Wireless Support Structures shall be as architecturally similar as possible to the existing Wireless Support Structure to be replaced unless otherwise approved by the City.

(1) All luminaire mast arms shall be the same length, arch, and style as the original luminaire arm, unless otherwise specified by the City.

(2) The City may require the Facilities Operator to install a new metal Wireless Support Structure rather than a new wood support structure.

(c) Except in AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts, the overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level; provided, however, that the height

of a Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 943.01(b)(13). The overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed replacement Wireless Support Structure. Unless technologically infeasible, all Small Cell Equipment, except for antennas and radios, shall be encapsulated within the Wireless Support Structure.

(d) All existing signs, traffic signals, emergency signal detection units, video detection cameras, video cameras, crosswalk service buttons, crosswalk signals, and any other pedestrian or traffic devices shall be reinstalled or replaced with new units by the Facilities Operator at no cost to the City.

(e) The concrete Wireless Support Structure foundation for the original Wireless Support Structure shall be removed either partially or completely by the Facilities Operator as instructed by the City.

(1) If partially removed, the original Wireless Support Structure foundation shall be removed to a level that is twelve (12) inches below the existing grade and covered with four (4) inches of one-half (½) inch to three-quarter (¾) inch rocks. The remaining eight (8) inches shall be topsoil.

(2) If the entire original Wireless Support Structure foundation must be removed, then all foundation materials (concrete, rebar, metals, bolts, etc.) shall be removed. The Director of Planning shall determine the appropriate type of backfill material and compaction required in landscaped areas.

(Ord. 54-2020. Passed 7-6-20; Ord. Passed .)

943.30 DESIGN SPECIFICATIONS FOR NEW WIRELESS SUPPORT STRUCTURES.

(a) New Wireless Support Structures shall be designed and constructed to accommodate at least two (2) sets of Small Cell Equipment on the same Wireless Support Structure.

(b) New Wireless Support Structures shall maintain a distance of three hundred (300) feet from existing monopoles, or utility poles unless otherwise determined by the ~~City Manager or designee~~Mayor.

(c) Unless technologically infeasible, all Small Cell Equipment, except for antennas and radios, shall be encapsulated within the Wireless Support Structure.

(d) In residential zoning districts, new Wireless Support Structures shall be located at the shared property line between two (2) residential parcels near where the parcels intersect the Right-of-Way when available.

(e) In commercial zoning districts, new Wireless Support Structures shall be located between tenant spaces, storefront bays, or adjoining properties at the shared property lines near where the parcels intersect the Right-of-Way.

(f) In park zoning districts, new Wireless Support Structures shall be located in the least visible location practicable, as determined by the ~~City Manager or designee~~Mayor.

(g) New Wireless Support Structures shall not interfere with any metered parking space.

(h) A new Wireless Support Structure shall not be located in front of a building entrance or exit.

(i) Except in the AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts, the overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level; provided, however, that the height of a Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 943.01(b)(13). The overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in the AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed new Wireless Support Structure.

(j) The City may require the Facilities Operator to install a metal Wireless Support Structure rather than a wood Wireless Support Structure. Unless otherwise specified by the City, new wood Wireless Support Structures are prohibited in the following zoning districts:

(1) All residential zoning districts; and

(2) All commercial zoning districts.

(k) Facilities Operators shall be discouraged from installing a new Wireless Support Structure within one hundred (100) feet of a building designated to be of historic importance under local, state or federal laws. (Ord. 54-2020. Passed 7-6-20; Ord. Passed .)

943.31 HISTORIC DISTRICT DESIGN GUIDELINE REGULATIONS.

Except antennas, all Small Cell Equipment to be located in the Right-of-Way in a Historic District including, but not limited to, Ambler Heights Historic District, Euclid Golf Historic District, Euclid Heights Historic District, Fairhill Road Village Historic District, Fairmount Boulevard Historic District, Forest Hill Historic District, Herrick Mews (Overlook Road Carriage House) Historic District, Inglewood Historic District, Mayfield Heights Historic District, Shaker Farm Historic District, and Shaker Village Historic District, Nela Park Historic District, shall be located in an underground vault or shall be subject to such reasonable, technologically feasible, and non-discriminatory design or concealment measures as the City may specify, as long as such measures do not have the effect of prohibiting or materially inhibiting the Facilities Operator's provision of service. Such measures are not considered part of the small cell facility for purposes of facility size restrictions in this Chapter. A waiver submitted pursuant to Section 943.32(d) will be considered if such measures are shown to be technologically infeasible. (Ord. 54-2020. Passed 7-6-20.)

943.32 UNDERGROUND AREA DESIGN GUIDELINE REGULATIONS.

(a) Subject to subsection (b), a Facilities Operator shall locate its Facilities underground in an Underground Area.

(b) A Facilities Operator may replace an existing Wireless Support Structure or

Collocate Small Cell Facilities on an Existing Wireless Support Structure even if the Wireless Support Structure is located in an Underground Area.

(c) A Facilities Operator shall not install a new Wireless Support Structure in an Underground Area.

(d) An Operator may apply to the ~~City Manager or designee~~Mayor for a waiver of the underground placement requirement if the Operator is unable to achieve its service objective under the following circumstances:

(1) From a location in the public Right-of-Way where the prohibition does not apply;

(2) From a utility easement the service provider has the right to access; and

(3) From other suitable locations or structures made available by the City at reasonable rates, fees, and terms.

(e) Submission of a waiver pursuant to subsection (d) herein is subject to the Facilities Operator's agreement to toll the timeframes set forth in Subsection 943.08(a) of the Codified Ordinances by fourteen (14) days.

(Ord. 54-2020. Passed 7-6-20; Ord. Passed .)

943.33 DISCRETIONARY WAIVER.

It is within the ~~City Manager's~~Mayor's reasonable discretion to waive a portion or portions of this Chapter, as permitted or warranted under state and federal law, where such requirements, in the ~~City Manager's~~Mayor's judgment, are not necessary and/or appropriate to protect the City's interests and/or not consistent with the purposes and intent of this Chapter.

(Ord. 54-2020. Passed 7-6-20; Ord. Passed .)

943.99 PENALTIES; EQUITABLE REMEDIES.

(a) Criminal Penalties. Any Applicant of Operator or other Person acting as the agent of an Applicant or Operator who is found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(b) Civil Violations and Forfeiture.

(1) In lieu of the criminal penalties set forth above, the ~~City Manager~~Mayor may make an initial finding of a civil violation by the Service Provider for violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter.

(2) The Civil Forfeiture shall be in an amount payable to the City of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(3) An action for civil forfeiture shall be commenced by providing the Service Provider with written notice describing in reasonable detail the Service Provider's alleged violation of one or more provisions of this Chapter and the amount of the penalty that will be assessed against it.

(4) The Service Provider shall have fifteen (15) days subsequent to receipt of

the notice of violation in which to correct the violation before the City may assess penalties against the Service Provider. The time in which to cure the violation may be extended by the City if additional time is required to correct the violation; provided that the Service Provider commences corrective action within seven (7) days of the notice of violation and proceeds with reasonable diligence.

(5) The Service Provider may dispute the alleged violation by providing the City with written notice within five (5) days of receipt of the notice of violation, setting forth in reasonable detail the reasons for its dispute. The City shall set a date for hearing of the alleged violation no sooner than thirty (30) days and no later than sixty (60) days from receipt of the notice of dispute.

(6) The City shall issue a written decision on the Service Provider's alleged violation within thirty (30) days of the hearing, which decision shall be final and subject to the administrative appeal procedures under Ohio law. If the City finds after hearing that the alleged violation(s) did occur, the penalty shall be assessed starting fifteen (15) days from the notice of violation and shall continue until the violation has been corrected.

(c) Other Remedies. Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter. (Ord. 54-2020. Passed 7-6-20; Ord. Passed .)

CROSS REFERENCES

Planned Development (PD) defined - see P. & Z. 1141.02
Landscaping and screening definitions - see P. & Z. 1165.05(a)
Regional Dwelling House Code definitions - see BLDG. 1301.02 (RDH Ch. 17)
Housing Code definitions - see BLDG. Ch. 1341
Business Maintenance Code definitions - see BLDG. Ch. 1361

1103.01 USE OF CODE SECTION REFERENCES.

Throughout this Zoning Code, reference to section numbers means the numbered sections of this Zoning Code. Reference to section numbers separated by the word "to" (such as Sections 1101.85 to 1101.87) is to be taken as equivalent to the words "to and including".
(Ord. 20-2012. Passed 5-21-12.)

1103.02 SPECIAL MEANINGS.

Words used in the present tense include the future. The masculine, feminine or neuter gender includes either of the others. The singular number includes the plural and the plural the singular. The word "shall" is mandatory; the word "may" is permissive. The word "lot" includes the word "plot". The word "erected" includes the word "used" and the word "altered". The phrase "used for" includes "occupied for", "intended for", "designed for" or "arranged for". The word "build" includes to "erect", "convert", "enlarge", "reconstruct" or "structurally alter" a building or structure or part thereof.
(Ord. 20-2012. Passed 5-21-12.)

1103.03 DEFINITIONS OF GENERAL TERMS.

Words used in this Zoning Code are used in their ordinary English usage. However, for the purpose of this Zoning Code, certain words used herein are defined and whenever used in this Code shall have the meaning indicated in this section, whether or not capitalized or otherwise highlighted, except where the context clearly indicates a different meaning.

(a) The following are general terms of reference:

(1) "Board" means the Board of Zoning Appeals of Cleveland Heights, Ohio. (See Chapter 1109.)

(2) "City" means the City of Cleveland Heights, Ohio.

~~(3) "City Manager" means the chief administrative officer of the City.~~

(~~4~~3) "Commission" means the City Planning Commission of Cleveland Heights, Ohio. (See Chapter 1111.)

(~~5~~4) "Commissioner of Building" means the individual designated by the ~~City Manager~~Mayor as being in charge of the Division of Building in the Department of Public Service, and is synonymous with "Building Commissioner".

(~~6~~5) "Council" means the City Council of Cleveland Heights, Ohio.

(~~7~~6) "Date of passage" means the date upon which this Zoning Code was passed by Council.

(~~8~~7) "District" means a part of the City wherein regulations of this Zoning Code are uniform as classified by the provisions of Chapter 1105.

(8) "Mayor" means the Chief Executive Officer of the City.

(9) "Municipal" means anything of or pertaining to the City.

(10) "Public notice" means advance notice of a hearing or proceeding as prescribed in this Zoning Code which states the subject matter to be heard and the time and place of the hearing or proceeding, printed once in a newspaper of general circulation in the Municipality.

(11) "Zoning Administrator" means the Planning and Development Director or the Director's designee. (See Chapter 1107.)

(b) Certain general terms are hereby defined as follows:

(1) "Abutting" means having a common border with, or being separated from such a common border by a right of way, alley or easement.

(2) "Accessory building" means a subordinate building which is incidental to or customarily in connection with the principal building or use and which is detached from the principal building but located on the same lot with such principal building or use.

(3) "Accessory use or structure" means a use, object or structure constructed or installed on, above or below grade which is incidental to or customarily in connection with, or subordinate to, the principal building or use and is located on the same lot with such principal building or use.

(4) "Alley" means a public or private way permanently reserved as a secondary means of access to abutting property.

(5) "Animal clinic" or "veterinary office" means a place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the clinic use, unless longer-term animal day care or overnight boarding of animals has been approved under the terms of Section 1153.05(bb).

(6) "Animal day-care facility" means a facility that cares for pet animals during the day at the request of the pets' owners. An animal day-care facility shall not include overnight boarding unless explicitly approved by the Planning Commission in the conditional use permit.

(7) "Automobile service station, major repair" means a building or portion of a building in which structural repair, rebuilding or reconditioning of motor vehicles, or parts thereof, is conducted, including collision service; spray painting; body, fender, clutch, transmission, differential, axle, spring, and frame repairs; major overhauling of engines requiring

(120) "Yard, front" means a yard across the full width of the lot extending from the front of the principal building to the front lot line. On a residential corner lot in a residential district, the front yard shall face the shorter street dimension of the lot except that if the lot is square or almost square; i.e., has depth to width dimensions in a ratio of from 3:2 to 3:3, then the front yard may face either street. On a corner lot of a nonresidential use or in a nonresidential district, the front yard shall face the major street.

(121) "Yard line". (See building line.)

(122) "Yard, rear" means a yard extending the full width of the lot between the principal building and the rear lot line. On a corner lot, the rear yard shall be the area between the rear lot line and the principal building, extending from the side lot line abutting an interior lot to the side yard abutting a street.

(123) "Yard, required" (See also setback line) means the open space between a lot line and a setback line that is the minimum area required to comply with the regulations of the district in which the lot is located, and within which no structure shall be located except as expressly permitted in this Zoning Code.

(124) "Yard, side" means a yard between the principal building and the side lot line and extending from the front yard to the rear yard on an interior lot.

(125) "Yard, width or depth" means the horizontal distance from a lot line to the principal building measured perpendicular to the building.

(126) "Zoning lot". (See lot.)

(Ord. 105-2017. Passed 1-16-18; Ord. Passed .)

1103.04 DETERMINATION OF HOUSEHOLD STATUS.

For the purposes of enforcement of this Zoning Code, as well as any other references within the Cleveland Heights Codified Ordinances, the following standards shall be used by the Zoning Administrator in order to make a determination of whether a specified group of persons constitutes a household by virtue of being the functional equivalent of a family. A group of three (3) or fewer unrelated persons shall be deemed the functional equivalent of a family regardless of the presence or absence of any factors described herein.

(a) Responsibilities. It shall be the responsibility of the property owner to provide information / evidence as may be required by the Zoning Administrator as defined herein to document that a household meets the functional equivalency test as a family. The Zoning Administrator through the powers and duties set forth in Section 1107.02 shall have the final determination in deciding whether the functional equivalency test is met.

(b) Factors. The determination of whether a group of four (4) or more unrelated persons living together are the functional equivalent of a family shall be based on the following factors. The presence or absence of any single factor is not necessarily determinative of whether the unit constitutes a family.

(1) The same group of persons, or a majority of them, has resided together at a different location for a period of no fewer than six (6) months, or resided together at the present location for at least twelve (12) months shall be considered evidence in support of the proposition that the group is a household.

CROSS REFERENCES

Department of Planning and Development - see ADM. Ch. 127
Zoning Administrator defined - see P. & Z. 1103.03(a)(11)
Record of zoning approval and certificates of compliance - see P. & Z. 1115.05
Enforcement of Zoning Code - see P. & Z. 1117.01
Review of S-1 District proposal - see P. & Z. 1143.10(b)

1107.01 ESTABLISHMENT.

The Planning and Development Director, appointed by the ~~City Manager~~Mayor, may designate a person known as the Zoning Administrator to administer and enforce this Zoning Code. The Zoning Administrator may be provided with the assistance of such other persons as the Planning and Development Director may direct.
(Ord. 20-2012. Passed 5-21-12; Ord. _____ Passed _____.)

1107.02 POWERS AND DUTIES.

For the purpose of this Zoning Code, the Zoning Administrator shall have the following duties:

(a) Enforce the provisions of this Zoning Code and interpret the meaning and application of its provisions.

(b) Issue zoning approval as provided by this Zoning Code and keep a record of same with a notation of any special conditions involved.

(c) Accept and review for completeness all applications upon which the Zoning Administrator is authorized to review by the provisions of this Code. The Zoning Administrator shall promptly review each application submitted to determine compliance with applicable district regulations and submission requirements. If the application is deemed insufficient, the Zoning Administrator shall promptly notify the applicant of necessary changes. If the application is deemed sufficient and the application fee has been paid, the Zoning Administrator shall officially accept the application on that date from consideration of the action(s) requested.

(d) Respond to questions concerning applications for amendments to the Zoning Code text and the official Zoning Map.

(e) Maintain in current status the official Zoning Map which shall be kept on permanent display in the City offices.

CROSS REFERENCES

Establishment and powers - see CHTR. Art. XI
Conditional use review - see P. & Z. 1115.08(e), (f)
Determination of similar uses - see P. & Z. 1115.10
Annual Zoning Code review - see P. & Z. 1119.08
Review of S-1 District proposed - see P. & Z. 1143.10(d)
Preparation of S-2 District Development Plan - see P. & Z. 1145.08

1111.01 ESTABLISHMENT AND DUTIES; RULES AND REGULATIONS.

The Planning Commission is hereby established in accordance with Article XI of the City Charter and shall perform the duties prescribed in this Zoning Code. The Commission shall establish such rules and regulations as it determines to be necessary to perform the duties prescribed in this Zoning Code.
(Ord. 20-2012. Passed 5-21-12.)

1111.02 MEMBERSHIP; TERMS OF OFFICE; CHAIRMAN.

(a) The Planning Commission shall consist of seven (7) voting members, all of whom shall be residents of the City of Cleveland Heights, appointed by the Council, and not employed by the City of Cleveland Heights.

(b) The terms of all members shall be for a period of six (6) years. A vacancy occurring during the term of any member shall be filled for the unexpired term in the manner authorized for an original appointment. Council may remove any member for cause.

(c) There shall be the following nonvoting members of the Planning Commission: the Chairman of the Council Planning and Development Committee, and the ~~City Manager~~Mayor.

(d) The Commission shall annually choose a Chairman from its members, who shall serve until his or her successor is chosen.
(Ord. 20-2012. Passed 5-21-12; Ord. Passed .)

1111.03 COMPENSATION OF MEMBERS; PAYMENT OF EXPENSES.

The Chairman and other citizen members of the Planning Commission each shall receive such compensation, and the expenses of the Planning Commission shall be paid, as Council may provide by ordinance.
(Ord. 20-2012. Passed 5-21-12.)

1111.04 SECRETARY; DUTIES AND RECORDS.

A Secretary of the Planning Commission shall be provided by the Planning and Development Director. The Secretary shall keep a permanent record of the attendance of the members and of the proceedings of the Planning Commission, showing its action and the votes of the several members upon all resolutions, decisions and proceedings of the Planning Commission. The Secretary shall prepare all notices, conduct all correspondence and perform such other duties as shall be required by the Planning Commission. All files and records shall be kept in the City Hall and shall be public records.
(Ord. 20-2012. Passed 5-21-12.)

1111.05 MEETINGS AND QUORUM.

Subject to the provisions of Chapter 107 of the Codified Ordinances, all meetings of the Planning Commission shall be public and shall be held in the City Hall at such times as the Commission determines. Attendance by Commission members shall be in person. The presence of four (4) or more members shall constitute a quorum for the transaction of all business and action by the Commission on any matter shall be effected by the concurring votes of at least four (4) members.
(Ord. 20-2012. Passed 5-21-12.)

1111.06 POWERS AND DUTIES OF THE COMMISSION.

For the purpose of this Zoning Code, the Planning Commission has the following powers and duties:

(a) Pursuant to Article XI, Section 2 of the City Charter, the Planning Commission may make recommendations to Council and the ~~City Manager~~Mayor on all matters affecting the physical development of the City. These may include, without limitation:

(1) To make recommendations on plans and maps of the whole or any portion of the City and make recommendations on changes in such plans or maps when it deems it advisable;

(2) To investigate and propose on its own initiative recommendations for such amendments to the Zoning Code as it may deem wise and proper;

(3) To investigate and prepare on its own initiative recommendations for the location and design of public parks, parkways, playgrounds, recreational facilities and other park

areas;

(b) In addition to the powers conferred by Charter, the Planning Commission shall have the following powers and duties:

(1) To review and approve or disapprove an application for a conditional use for a particular zoning lot;

(2) To determine that a proposed use that is not listed or provided for in this Zoning Code is substantially similar to a principal or conditionally permitted use that is listed and provided for in this Code;

(3) To review development plans and/or conditional uses as required by this Zoning Code;

(4) To hear any unresolved complaints concerning any conditional use permits, including those issued by the Zoning Administrator. Planning Commission shall have the power to revoke, modify, or affirm any issued conditional use permits that are the subject of unresolved complaints;

(5) To review any substantial changes to public parks.

(6) To review ordinances submitted to it by Council, including ordinances to amend the Zoning Code and Map and to submit to Council the Commission's recommendations with respect to such ordinances;

(7) To review and approve or disapprove plats for the resubdivision of any lots or parcels of land. As used in this chapter, resubdivision includes either dividing or joining of lots or parcels;

(8) To recommend to the Landmark Commission for its consideration such places, buildings, structures, works of art and other suitable objects as the Planning Commission shall believe may be eligible for a designation as a landmark, in accordance with Chapter 143 of the Codified Ordinances;

(9) At the request of Council to investigate and make recommendations to Council with respect to:

A. The general design and development plan for the location, relocation or removal (elimination or demolition) of, or major alterations in or with respect to, public buildings or other public structures, including landscaping with respect to any new or relocated facility referred to in this subsection.

B. The establishment, location, relocation or vacation of streets, highways or other public places.

C. Any proposed ordinance or regulation proposing or dealing with or related to any feasibility study with respect to the use and/or development of land within the City, including transportation plans or proposals, capital improvements, land acquisitions, land use and any and all other programs for the development and/or improvement of the City or a portion thereof.

(10) To adopt rules and bylaws for the holding of regular and special meetings, for the transaction and disposition of its business and the exercise of its powers.

(11) To otherwise fulfill responsibilities which may be conferred upon the Planning Commission by action of Council.

(Ord. 105-2017. Passed 1-16-18; Ord. Passed .)

CROSS REFERENCES
Board of Control review of S-1 District proposal - see P. & Z. 1143.10(c)

1113.01 ESTABLISHMENT; POWERS AND DUTIES.

The Board of Control is established to administer the provisions of Chapter 1143 governing the S-1 Mixed Use District. The Board shall have full power and authority to do and perform any and all acts provided for herein and necessary or incident to the successful administration and execution of the powers provided for in this Zoning Code. Such powers so granted are subject to the powers reserved to Council by Section 1143.10.
(Ord. 20-2012. Passed 5-21-12.)

1113.02 MEMBERSHIP.

The Board of Control shall consist of five (5) members: the ~~Mayor~~President of Council; the Chairman of the Planning and Development Committee of Council; the ~~City Manager~~Mayor; the Chairman of the Planning Commission; and the Chairman of the Board of Zoning Appeals; by virtue of their respective offices or positions. All members shall serve without compensation.
(Ord. 20-2012. Passed 5-21-12; Ord. Passed .)

1113.03 MEETINGS AND QUORUM.

Subject to the provisions of Chapter 107 of the Codified Ordinances, all meetings of the Board of Control shall be public and shall be held in the City Hall, at such times as the Board determines. Except as otherwise provided by the Charter or Codified Ordinances, attendance by Board members shall be in person. The presence of three (3) or more members shall constitute a quorum for the transaction of all business. The transaction of all business and action by the Board of Control shall be effected by the concurring votes of at least three (3) members.
(Ord. 20-2012. Passed 5-21-12.)

(2) The Fire Division shall determine that the floor plan submitted by the applicant as a part of the application for the permit would not violate any provision of any statute, ordinance or Fire Safety Code adopted by the State of Ohio or the City, and would not otherwise endanger the fire safety of persons using the premises;

(3) The Police Division shall determine that the supervision and security plan submitted by the applicant as a part of the application for the permit is adequate to maintain security and lawful order within the game room premises, in its required parking areas, and upon the public right of way abutting upon the premises;

(4) The Planning Commission shall determine that the sound control plan submitted by the applicant as a part of the application for the permit is adequately designed, in order that the sounds produced within the premises shall not be heard by persons outside of the premises;

(5) If the game room premises, or its required parking areas, are within 200 feet of the property line of any single, double or multiple-family residence, then the game room shall cease its operation not later than midnight on Friday and Saturday nights, and no later than 10:00 p.m. on all other nights, and shall not commence operation before 8:00 a.m. on any day. However, if such residence is located in a commercial use district, or in a special use district, then the Commission shall have the authority, based upon the evidence, to modify the requirements of this subsection;

(6) The applicant is in compliance with the applicable off-street parking ordinances and regulations of the City;

(7) Any conditional use permit issued pursuant to the provisions of this subsection shall be subject to the applicant's obtaining of the appropriate license from the City. The conditional use permit shall remain in effect only so long as the applicant possesses such a license and such license has not been suspended or revoked. The issuance of a conditional use permit is not intended to be, and shall not serve to modify in any way, the requirements for the obtaining of a license for a billiard room, bowling lane or amusement device, or with the jurisdiction of the ~~City Manager~~Mayor relating thereto.

(w) Satellite Dish Receiving Antenna. In any district, an antenna may be conditionally permitted by the Zoning Administrator subject to the following regulations:

(1) No satellite dish receiving antenna shall be located in the front or side yard of a dwelling or other building;

(2) A satellite dish receiving antenna may be located on the roof of a building in a residential district only if it is not technically feasible to locate the dish in the rear yard and if the dish is located in such a manner that it is not visible from the public streets or any neighboring premises. A satellite dish receiving antenna may be located on the roof of a building in a commercial district only if it is located or screened so that it is not visible from the public streets, or, its visibility will not adversely impact the overall character and orderly appearance of the neighborhood in which it is located.

(3) No sign shall be permitted on a satellite dish receiving antenna;

G. The chieken coop and run shall be designed to ensure the health and well-being of the animal is not endangered by the manner of keeping or confinement and to protect the chickens from animals and to prevent unauthorized access to the chickens by general members of the public.

H. The chicken coop and run shall be adequately lighted and ventilated.

I. The coop and run enclosures shall be of uniform and sturdy design and shall be constructed and maintained in good condition to protect the safety of the chickens and the aesthetics of the neighborhood.

J. Chicken coop and run fencing material shall be securely fastened to posts of reasonable strength firmly set into the ground and, if used, chicken wire or other woven wire shall be stretched tightly between support posts.

K. No storage of chicken manure shall be permitted within twenty (20) feet of the property line.

L. Chickens shall be kept in coops from dusk to dawn.

M. Slaughtering of the chickens is prohibited.

(2) Zoning Administrator shall verify general compliance with City Codes before issuing conditional use permit.

(3) Written notice of approved conditional use permits shall be mailed by the Zoning Administrator by first class mail to adjoining properties to the attention of the owners of such properties. Such notice shall reference this subsection and provide contact information for any questions or complaints relating to the approved use.

(4) Any unresolved complaints concerning the above listed conditions shall be sent by the Zoning Administrator to be heard by the Planning Commission who shall have the power to revoke, modify, or affirm the conditional use permit.

(hh) Hotel. In a C-1, C-2, C-2X or C-3 district, a hotel may be conditionally permitted in compliance with the following:

(1) Patron drop-off area(s) shall be located and/or screened to minimize negative effect on adjacent residential properties. The design and operation of the drop-off shall cause minimal disturbance to the flow of vehicles on public streets and safety of pedestrians on public sidewalks.

(2) All delivery, refuse, HVAC equipment, emergency power equipment areas, drop-off areas, and loading berths shall be located and oriented to minimize negative effect on adjacent properties and screened in accordance with Code Section 1166.10.

(3) Hotel staff shall be on-site 24 hours each day.

(4) Overnight parking of trucks with more than 2 axles or recreational vehicles shall be only in areas as designated on Planning Commission approved site plan. (Ord. 105-2017. Passed 1-16-18; Ord. Passed .)

B. Window sign(s) may be aggregated onto one (1) window panel provided such sign does not cover more than thirty percent (30%) of the window panel on which it is affixed.

C. In total, temporary window signs and permanent window signs shall be no greater than twenty percent (20%) of the total window area, provided further that the sign(s) shall not cover more than thirty percent (30%) of any one (1) window panel.

D. No window sign for a first floor tenant shall be located or placed in a window at a height greater than fifteen (15) feet above grade.

E. Any sign placed inside a display window and which is visible from the exterior of the window shall be subject to the maximum area regulations set forth in subsection (5)C. hereof.

F. No sign shall be painted on a window and no window shall be otherwise painted unless approved by the Architectural Board of Review.

(6) Awning signs. A permitted identification sign may be placed on an awning, applied to the face of the awning, in compliance with the following:

A. In addition to the permitted sign area, address numerals may be located on an awning provided they do not exceed one and one-half (1.5) square feet in area.

B. Awnings may be back-lit.

C. All awning signs shall be subject to the review and approval of the Architectural Board of Review.

(7) Marquee signs. In addition to the allowable commercial identification sign area, a marquee sign (including permanent identification and changeable copy) may be permitted as a conditional use for an auditorium used for the regular showing of movies, concerts, plays and other similar productions in compliance with the following:

A. The size and shape of the marquee and the area of the marquee sign shall be determined by the Planning Commission during its review of the conditional use application.

B. The marquee sign shall be subject to the review and approval of the Architectural Board of Review.

C. Flashing or animated lights may be permitted as an integral part of a marquee sign with approval of both the Planning Commission and the Architectural Board of Review. Permission shall be granted only after a specific finding by the Planning Commission that the lights will not adversely impact residential properties or the general character of the commercial neighborhood in which the sign is located and a specific finding by the Architectural Board of Review that the lights will enhance the architectural qualities of the marquee and the building to which the marquee sign is attached. In the event flashing or animated lights are permitted, they may be activated or displayed only from 12:00 p.m. until 10:30 p.m. Sunday through Thursday and from 12:00 p.m. until Midnight on Friday and Saturday. The ~~City Manager~~Mayor or designee may issue a special temporary permit for an extended or different period of time during which the flashing or animated lights may be activated for a special event.

D. These regulations shall apply to an auditorium which is a legal prior nonconforming use in a C-2 District or a permitted use in a C-3 District.

(7) Religious and other holiday lights and decorations containing no commercial message are exempt from the above regulations and shall be permitted during the appropriate time of year.

(8) Freestanding temporary signs may be approved by the Planning Commission for a conditionally permitted use in a Park District.

(9) Freestanding temporary signs for institutional uses in a residential, commercial or special district for the purpose of announcing and identifying a special event may be approved by the Planning Commission. Such signs shall be displayed for a maximum of three (3) days. Subsequent approval of such temporary sign may be approved by the Zoning Administrator provided the size and placement of the sign are the same as previously approved.

(10) If, due to the topography, existing foliage, or other similar condition existing as to a particular property, conformance with the setback, size and height restrictions set forth in this chapter would impair the visibility of a temporary sign as observed from the street, then the Zoning Administrator may grant exceptions to the size and/or location regulations. In determining whether to grant an exception, the sole standard to be used by the Zoning Administrator is the visibility of the sign and no sign shall exceed the height, location or distance which is reasonably necessary to render the sign visible when observed from the street. In no event shall the Zoning Administrator waive the maximum sign area.

(11) Freestanding temporary signs shall not be permitted in commercial districts.

(12) Temporary sponsorship signs at an event taking place at an athletic field and temporary sponsorship signage plans for all sport seasons and events taking place on an athletic field may be conditionally approved by the Planning Commission. Such signs or signage plans shall meet the following conditions:

A. The sign(s) shall be displayed on a fence.

B. The sign(s) shall identify a sponsor of the event.

C. The sign(s) shall be placed so as to be directed toward the persons in attendance at the event.

D. The sign(s) shall be no larger than 24 square feet.

E. Approved signs may be erected and displayed for an entire sporting season or length of the event as determined by the Planning Commission.

F. Sponsorship identification signs may be displayed on a scoreboard or backstop and may include the field name.

G. Team identification signs no larger than 12 square feet may be displayed on dugouts.

H. All sponsorship signage must be maintained in good condition.

(Ord. 53-2013. Passed 8-5-13; Ord. Passed .)

(g) Construction Signs. A construction sign shall be permitted only in compliance with the following:

(1) There shall be not more than one (1) construction sign per zoning lot.

(2) A construction sign for an institutional use in a residential district shall identify only the name of the organization, name of the building and street address, and shall be

(a)	Process and Fuel-Burning Equipment for Each Unit Fee (Rated Input Capacity in BTU or Equivalent)		
	Up to 50,000	$ 50.00	
	50,000 up to 250,000	75.00	
	250,001 up to 500,000		100.00
	500,001 up to 2,500,000		125.00
	2,500,001 up to 10,000,000		175.00
	10,000,001 up to 100,000,000		225.00
	Over 100,000,000		325.00
(b)	Ventilation Ducts		
	For first 100 square feet or fraction thereof		50.00
	For each additional 100 square feet of floor area served		5.00
(c)	Refuse Burning Equipment For Each Unit (Primary furnace volume in cubic feet)		
	Less than 6		50.00
	6 to 49		100.00
	50 or more		125.00
(d)	Process Equipment		
	Each installation, liquid or gas (See ventilation duct for exhaust facilities.)		100.00
(e)	Factory Built Fireplaces and Stoves		
	For each installation		50.00
(f)	Air Handler		50.00
(g)	Gas Logs		50.00
(h)	Wood Burning Unit		50.00

(Ord. 9-2014. Passed 2-3-14.)

1311.12 PENALTY DOES NOT PRECLUDE OTHER REMEDIAL ACTION.

The imposition of any penalty for violation of this Part Thirteen - Building Code or the adopted Regional Dwelling House Code or Ohio Building Code shall not preclude the Director of Law from instituting an appropriate action or proceeding in a court of proper jurisdiction to prevent an unlawful repair or maintenance; to restrain, correct or abate a violation; to prevent the occupancy of a building, structure or premises; or to require compliance with the provisions of this Part Thirteen - Building Code, or the adopted Regional Dwelling House Code or Ohio Building Code, or other applicable laws, ordinances, rules or regulations, or orders or

determinations of the Building Commissioner, ~~City Manager~~Mayor or designee or Board of Building Code Appeals. (A.O.; Ord. Passed .)

1311.13 FLOOD HAZARD AREA; PERMIT REVIEW.

(a) The Commissioner of Building shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites shall be reasonably safe from flooding. If a proposed building site is in a location that has a flood hazard, any proposed new construction or substantial improvement, including prefabricated and mobile homes, shall:

1313.07 MEETINGS; NOTICE.

(a) The Board shall hold at least one meeting per month as may be provided by its rules. A meeting may be canceled if there are no items for agenda or a lack of a quorum.

(b) Before conducting the meeting, notice shall be given pursuant to Codified Ordinances Section 107.02. Additionally, written notice of the meeting shall be mailed or caused to be mailed by the Board Secretary at least four (4) days before the meeting to the applicant and to all owners and tenant occupants of all properties any part of which abuts the parcel of land upon which the subject Building or Structure is situated.

(c) In the case of an apartment Building or multiple use Building, in lieu of notice by mail to each tenant in the Building, notice may be posted in a general public use area of the Building. (Ord. 108-2015. Passed 9-21-15.)

1313.08 ORDER OF REVIEW; DECISIONS; BUILDING PERMIT APPROVAL.

(a) The Board shall receive and promptly review and pass upon all drawings, data, reports and complaints in the order filed under published rules, guidelines, and regulations which may be adopted by the Board and are consistent with the purposes of the Board. When appropriate, the Board may adopt rules, guidelines, or regulations to create an administrative approval process, in lieu of the application being heard at a Board meeting, with such rules, guidelines, or regulations being subject to approval of Council. The ~~City Manager~~Mayor shall determine the administrative approval process, which shall permit any denied application to be heard by the Board if so requested by the applicant.

(b) In all instances where matters are submitted to the Board for review or other action, the Board or administrator shall, within a reasonable time, make its decision thereon and notify the Building Commissioner, in writing, of action taken in each instance. The Board Secretary shall then notify or cause to be notified the Building Commissioner, the applicant, and any objectors who testified at the Board's meeting of the decision of the Board. No building permit shall be issued unless the required plans and specifications therefor have been approved in writing by the Board or administrator. Approval may include conditions.
(Ord. 108-2015. Passed 9-21-15; Ord. Passed .)

1313.09 ORGANIZATION AND OFFICERS.

(a) The three (3) members of the Board annually shall choose one (1) of its members to serve as chairperson for a period of one (1) year or until his or her successor has been chosen.

(b) The ~~City Manager~~Mayor shall appoint a City employee to serve as Secretary to the Board. Such Secretary shall keep, or cause to be kept, a complete record of all meetings of the Board and a detailed record of all transactions dealt with by the Board and administrator. In addition, the Secretary shall issue notice and perform such other functions as described in this Chapter and as the Board may direct. (Ord. 108-2015. Passed 9-21-15; Ord. Passed .)

1325.04 TENTS.

(a) Exceptions. The provisions of this section, except as to safety and location, do not apply to temporary tents erected for the purpose of providing shelter at a cemetery for a funeral.

(b) Location. No tent shall be erected or maintained within the Inner Fire Districts except with approval of the ~~City Manager~~Mayor or designee. No tent shall be erected nearer than six (6) feet to a property line nor nearer than ten (10) feet to any building or structure, nor nearer to the street line than the building line as established by the Zoning Code.

(c) Authorization. Except as provided in subsection (a) hereof, no tent shall be erected or used unless approved by the Fire Chief or the Building Commissioner.

(d) Safety. Tents shall not be treated with any substance or preparation which would increase the rate of combustibility of the fabric. Tents shall not be erected or used when subject to overloading by sleet or snow.

(e) Fire Hazards. The ground occupied by a tent and the area within ten (10) feet of the tent shall be cleared and maintained free of all flammable or highly combustible material or vegetation. The provisions of this section shall not, subject to the approval and control of the Fire Chief, preclude the use of necessary food or other materials incident to the purpose of the tent.

(Ord. 141-1989. Passed 1-16-90; Ord. Passed .)

(e) If, under the terms of the contract of sale, the seller has either not agreed to correct all violations as provided in subsection (c) hereof, or the purchaser's obligation is not limited to payment of a stated sum of money or to correction of specific violations as provided in subsection (d) hereof, then the contract of sale between the seller and the purchaser shall be conditional upon the seller and purchaser agreeing in writing after the certificate of inspection has been exhibited to the purchaser, as to their respective obligations for correction of the remaining uncorrected violations listed on such certificate. The seller and purchaser shall thereafter deposit in escrow, before transfer of title to purchaser, their written agreement as to each party's respective responsibility for correction of violations listed on the certificate of inspection remaining uncorrected, and such agreement may have attached thereto a compliance document described in Section 1329.03(b) evidencing seller's correction of those violations for which he is responsible, and/or an agreed sum of money that is sufficient to cover the cost of correcting those violations remaining uncorrected for which the seller is responsible.

(f) This chapter sets forth requirements and procedures applicable to relationships between the seller and purchaser at the time of sale of real estate, as to Code violations. Nothing contained in this chapter shall be construed as limiting the City, at any time, from proceeding against the owner of property to require correction of Code violations, as the owner of property is defined in the Codified Ordinances.

(g) This chapter shall not apply to the individual transfer of property through inheritance or gift where no bona fide sale is intended or completed.
(Ord. 51-1981. Passed 5-4-81.)

1329.051 CLASS "A" VIOLATIONS.

(a) The following types of violations are of particular concern to the City's vital interest in maintaining property values:

Exterior
Roof - chimney
Paint - all related carpentry repairs (house and/or garage)
Major porch and step repair
Downspouts to storms sewers
Replacement of deteriorated windows and/or doors
Concrete replacement or major repair
Garage replacement or major repair
Dead tree removal
Fences

Interior
Major electrical repair (panel replacement, rewire of basement, etc.)
Major plumbing repair (replacement of stacks, fixtures, supply lines, etc.)

HVAC
Foundation - support post, block wall bowed or collapsed
Major breach of ceilings, walls or floors

The aforementioned types of violations are considered to be Class "A" violations and shall be designated as such by the Building Commissioner on all inspection reports.

(b) Title to any property in the City shall not be transferred unless an escrow account with an amount of money equal to at least one hundred twenty-five percent (125%) of the estimated cost of correction of all outstanding Class "A" violations has been established and approved in writing by the Building Commissioner. In lieu of establishment of an escrow account hereunder, a purchaser may present proof of a commitment for a 203K or other rehabilitation loan from a recognized lending institution in an amount adequate to correct all Class "A" violations as approved by the Building Commissioner.

(c) No monies shall be released from the aforesaid escrow account without the written approval of the Building Commissioner.

(d) Subsections (c), (d) and (e) of Section 1329.05 shall not be applicable to Class "A" violations which shall instead be governed by the provisions of this Section 1329.051.

(e) This section shall apply to all applications for certificate of inspections submitted on or after November 5, 2001. (Ord. 146-2001. Passed 10-15-01.)

(f) The requirement for depositing funds in an escrow account may be varied in whole or in part in particular instances by the ~~City Manager~~Mayor, subject to and upon written recommendation by the Director of Housing, if the applicant for the variances is able to demonstrate to the ~~City Manager~~Mayor that:
(Ord. Passed .)

(1) Special circumstances exist necessitating the variance from the requirements in order to make the sale and repair of the property financially practicable; and

(2) The purchaser has the financial capability to correct the violations listed on the City Certificate of Inspection within a reasonable period of time; and

(3) The variance is in the best interest of the City and its residents.

(Ord. 116-2010. Passed 9-7-10.)

1329.06 ESCROW AGENT OBLIGATIONS.

No person, firm or corporation acting in the capacity of an escrow agent in any real estate transaction involving the bona fide sale or conveyance of any interest in a dwelling structure, commercial building structure or other building or land upon which such buildings are located in the City, shall file for record an instrument to transfer title thereto or disburse any funds from such sale unless the provisions of this chapter have been satisfied, including but not limited to the specific provisions of Section 1329.05.
(Ord. 128-1980. Passed 4-6-81.)

1329.07 RELIANCE ON CERTIFICATE OF INSPECTION AND COMPLIANCE DOCUMENT.

(a) In issuing a certificate of inspection, the City does not thereby insure, warrant or guarantee to the holder thereof, to his assignees or any other interested party that such certificate

(d) This regulation does not apply to activities regulated by, and in compliance with, the Ohio Agricultural Sediment Pollution Abatement Rules.
(Ord. 33-2019. Passed 5-6-19.)

1334.02 DEFINITIONS.

For purpose of this regulation, the following terms shall have the meaning herein indicated:

(a) ABBREVIATED STORMWATER POLLUTION PREVENTION PLAN (ABBREVIATED SWP3): The written document that sets forth the plans and practices to be used to meet the requirements of this regulation.

(b) ACRE: A measurement of area equaling 43,560 square feet.

(c) ADMINISTRATOR: The person or entity having the responsibility and duty of administering and ensuring compliance with this regulation. The Administrator shall be the city engineer or other person designated by the ~~City Manager~~Mayor.

(d) BEST MANAGEMENT PRACTICES (BMPs): Also STORMWATER CONTROL MEASURE (SCM). Schedule of activities, prohibitions of practices, maintenance procedures, and other management practices (both structural and non-structural) to prevent or reduce the pollution of water resources. BMPs also include treatment requirements, operating procedures, and practices to control facility and/or construction site runoff, spillage or leaks, sludge or waste disposal; or drainage from raw material storage.

(e) CITY: The City of Cleveland Heights, its designated representatives, boards, or commissions.

(f) COMMENCEMENT OF CONSTRUCTION: The initial disturbance of soils associated with clearing, grubbing, grading, placement of fill, or excavating activities or other construction activities.

(g) CONCENTRATED STORMWATER RUNOFF: Any stormwater runoff that flows through a drainage pipe, ditch, diversion, or other discrete conveyance channel.

(h) CONSTRUCTION ENTRANCE: The permitted points of ingress and egress to development areas regulated under this regulation.

(i) DEVELOPMENT AREA: A parcel or contiguous parcels owned by one person or persons, or operated as one development unit, and used or being developed for commercial, industrial, residential, institutional, or other construction or alteration that changes runoff characteristics.

(j) DEWATERING VOLUME: See current Ohio Rainwater and Land Development Manual or other standard acceptable to the Administrator.

(k) DISCHARGE: The addition of any pollutant to surface waters of the state from a point source.

(l) DISTURBANCE: Any clearing, grading, excavating, filling, or other alteration of land surface where natural or man-made cover is destroyed in a manner that exposes the underlying soils.

(m) DISTURBED AREA: An area of land subject to erosion due to the removal of vegetative cover and/or soil disturbing activities such as grading, excavating, or filling.

(lll) WATER RESOURCE Also SURFACE WATER OF THE STATE: Any stream, lake, reservoir, pond, marsh, wetland, or waterway situated wholly or partly within the boundaries of the state, except those private waters which do not combine or affect a junction with surface water. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the Ohio Revised Code are not included.

(mmm) WATERSHED: The total drainage area contributing runoff to a single point.

(nnn) WETLAND: Those areas, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas (40 CFR 232, as amended).

(Ord. 33-2019. Passed 5-6-19; Ord. Passed .)

1334.03 DISCLAIMER OF LIABILITY.

Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property. (Ord. 33-2019. Passed 5-6-19.)

1334.04 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.

(a) Where this regulation is in conflict with other provisions of law, ordinance, regulation, or judicial order, the Administrator shall determine within the Administrator's reasonable discretion which provision shall prevail, provided that the Administrator's determination shall be consistent with the purposes of this regulation.

(b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.

(c) This regulation shall not be construed as authorizing any person to maintain a private or public nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.

(d) Failure of the City to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting therefrom, and shall not result in the City, its officers, employees, or agents being responsible for any condition or damage resulting therefrom.
(Ord. 33-2019. Passed 5-6-19.)

1334.05 DEVELOPMENT OF STORMWATER POLLUTION PREVENTION PLANS.

(a) This regulation requires that a Stormwater Pollution Prevention Plan (SWP3) be

(h) The City shall not issue building permits for projects regulated under this code that have not received approval for an SWP3 for said project(s).

(i) Administrative Hearing: Any person receiving a Notice of Violation may request an administrative hearing by hand delivery or sending by certified mail with return receipt and first class mail a request for hearing to the Administrator with a copy to the Director of Law. Said request must be received within ten (10) calendar days of the date of the Notice of Violation. The City shall schedule an administrative hearing. Notice of the administrative hearing shall be hand delivered and/or sent certified mail and first class mail. The hearing shall be held before the Nuisance Abatement Review Board ("NARB") pursuant to Chapter 553 of the Codified Ordinances. The decision of the NARB shall be final without further appeal within the City, and the Administrator or other authorized City official shall proceed according to the NARB's decision.

(j) Injunctive Relief: It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this regulation. If a person has violated or continues to violate the provisions of this regulation, the City may, pursuant to federal, state, or local laws and regulations, petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.
(Ord. 33-2019. Passed 5-6-19.)

1334.14 APPEALS.

After exhaustion of the administrative steps herein, including Section 1334.13 (i), a person aggrieved by any final order, requirement, determination, or any other final action by the City in relation to this regulation may appeal to the court of common pleas. Such an appeal shall be made in conformity with Ohio Rev. Code Ch. 2506. Written notice of appeal shall be served on the City to the attention of the ~~City Manager~~Mayor and the Director of Law and a copy shall be provided to the SWCD. (Ord. 33-2019. Passed 5-6-19; Ord. Passed .)

1334.15 REMEDIES NOT EXCLUSIVE.

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the City to seek cumulative remedies. (Ord. 33-2019. Passed 5-6-19.)

1334.99 PENALTY.

(a) No person shall violate, or cause, or knowingly permit to be violated, any of the provisions of this chapter, or fail to comply with any such provisions or with any lawful requirements of any public authority made pursuant to this chapter, or knowingly use or cause or permit the use of any lands in violation of this chapter or in violation of any permit granted under this chapter.

1335.02 DEFINITIONS.

For the purpose of this regulation, the following terms shall have the meaning herein indicated:

(a) ACRE: A measurement of area equaling 43,560 square feet.

(b) ADMINISTRATOR: The person or entity having the responsibility and duty of administering and ensuring compliance with this regulation. The Administrator shall be the city engineer or other person designated by the ~~City Manager~~Mayor.

(c) AS-BUILT SURVEY: A survey shown on a plan or drawing prepared by a registered professional surveyor indicating the actual dimensions, elevations, and locations of any structures, underground utilities, swales, detention facilities, and sewage treatment facilities after construction has been completed.

(d) BEST MANAGEMENT PRACTICES (BMP): Also STORMWATER CONTROL MEASURE (SCMs). Schedule of activities, prohibitions of practices, operation and maintenance procedures, treatment requirements, and other management practices (both structural and non-structural) to prevent or reduce the pollution of water resources and to control stormwater volume and rate. This includes practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. For guidance, please see U.S. EPA's National Menu of BMPs at http://water.epa.gov/polwaste/npdes/swbmp/index.cfm.

(e) CITY: The City of Cleveland Heights, its designated representatives, boards, and commissions.

(f) CLEAN WATER ACT: Pub. L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4, 33 U.S.C. 1251 et. seq. Referred to as the Federal Water Pollution Control Act or the Federal Water Pollution Control Act Amendments of 1972.

(g) COMPREHENSIVE STORMWATER MANAGEMENT PLAN: The written document and plans meeting the requirements of this regulation that sets forth the plans and practices to minimize stormwater runoff from a development area, to safely convey or temporarily store and release post-development runoff at an allowable rate to minimize flooding and stream bank erosion, and to protect or improve stormwater quality and stream channels.

(h) CRITICAL STORM: A storm that is determined by calculating the percentage increase in volume of runoff by a proposed development area for the 1 year 24 hour event. The critical storm is used to calculate the maximum allowable stormwater discharge rate from a developed site.

(i) DEVELOPMENT AREA: A parcel or contiguous parcels owned by one person or persons, or operated as one development unit, and used or being developed for commercial, industrial, residential, institutional, or other construction or alteration that changes runoff characteristics.

(j) DEVELOPMENT DRAINAGE AREA: A combination of each hydraulically unique watershed with individual outlet points on the development area.

(k) DISTURBED AREA: An area of land subject to erosion due to the removal of vegetative cover and/or soil disturbing activities.

(l) DRAINAGE: The removal of excess surface water or groundwater from land by surface or subsurface drains.

(m) EROSION: The process by which the land surface is worn away by the action of wind, water, ice, gravity, or any combination of those forces.

(n) EXTENDED DETENTION FACILITY: A stormwater control measure that

(ww) WATER RESOURCE: Also SURFACE WATER OF THE STATE. Any stream, lake, reservoir, pond, marsh, wetland, or waterway situated wholly or partly within the boundaries of the state, except those private waters which do not combine or affect a junction with surface water. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the Ohio Revised Code are not included.

(xx) WATER RESOURCE CROSSING: Any bridge, box, arch, culvert, truss, or other type of structure intended to convey people, animals, vehicles, or materials from one side of a watercourse to another. This does not include private, non-commercial footbridges or pole mounted aerial electric or telecommunication lines, nor does it include below grade utility lines.

(yy) WATERSHED: The total drainage area contributing stormwater runoff to a single point.

(zz) WETLAND: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas (40 CFR 232, as amended).

(Ord. 34-2019. Passed 5-6-19; Ord. Passed .)

1335.03 DISCLAIMER OF LIABILITY.

(a) Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or any particular parcel of property.

(b) By approving a Comprehensive Stormwater Management Plan under this regulation, the City does not accept responsibility for the design, installation, and operation and maintenance of SCMs. (Ord. 34-2019. Passed 5-6-19.)

1335.04 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.

(a) Where this regulation is in conflict with other provisions of law, ordinance, regulation, or judicial order, the most restrictive provisions, as determined by the Administrator within the Administrator's reasonable discretion consistent with the purposes of this regulation, shall prevail.

(b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.

(c) This regulation shall not be construed as authorizing any person to maintain a nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.

(d) Failure of the City to observe or recognize hazardous or unsightly conditions or to

1335.19 APPEALS.

After exhaustion of the administrative steps herein, including Section 1335.18 (d), a person aggrieved by any final order, requirement, determination, or any other final action by the City in relation to this regulation may appeal to the court of common pleas. Such an appeal shall be made in conformity with Ohio R.C. Chapter 2506. Written notice of appeal shall be served on the ~~City Manager~~Mayor and the Director of Law.
(Ord. 34-2019. Passed 5-6-19; Ord. Passed .)

1335.20 REMEDIES NOT EXCLUSIVE.

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the City to seek cumulative remedies.
(Ord. 34-2019. Passed 5-6-19.)

1335.99 PENALTY.

(a) No person shall violate, or cause, or knowingly permit to be violated, any of the provisions of this chapter, or fail to comply with any such provisions or with any lawful requirements of any public authority made pursuant to this chapter, or knowingly use or cause or permit the use of any lands in violation of this chapter or in violation of any permit granted under this chapter.

(b) Whoever violates or fails to comply with any provision of this regulation is guilty of a misdemeanor of the first degree and shall be fined no more than one thousand dollars ($1,000.00) or imprisoned for no more than one hundred eighty (180) days, or both, for each offense.

(c) A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.
(Ord. 34-2019. Passed 5-6-19.)

1336.03 DEFINITIONS.

The words and terms used in this regulation, unless otherwise expressly stated, shall have the following meaning:

(a) Administrator: The person or entity having the responsibility and duty of administering and ensuring compliance with this regulation. The Administrator shall be the person designated by the ~~City Manager~~Mayor.

(b) Best Management Practices (BMPs): means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to storm water. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(c) City means the City of Cleveland Heights, its designated representatives, boards, or commissions.

(d) Floatable Material: in general this term means any foreign matter that may float or remain suspended in the water column, and includes but is not limited to, plastic, aluminum cans, wood products, bottles, and paper products.

(e) Hazardous Material: means any material including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(f) Illicit Discharge: as defined at 40 C.F.R. 122.26 (b)(2) means any discharge to an MS4 that is not composed entirely of storm water, except for those discharges to an MS4 pursuant to a NPDES permit or noted in Section 1336.08 of this regulation.

(g) Illegal Connection: means any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the MS4.

(h) Municipal Separate Storm Sewer System (MS4): as defined at 40 C.F.R. 122.26 (b)(8), municipal separate storm sewer system means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(1) Owned or operated by a State, city, town, borough, county, parish, district, municipality, township, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over sewage, industrial wastes, including special districts under State law such as a sewer district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States;

(2) Designed or used for collecting or conveying storm water;

(3) Which is not a combined sewer; and

(4) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. 122.2.

(i) National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area wide basis.

(j) Off-Lot Discharging Household Sewage Treatment System: means a system designed to treat household sewage on-site and discharges treated wastewater effluent off the property into a storm water or surface water conveyance or system.

(k) Owner/Operator: means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or on the owner's behalf.

(l) Pollutant: means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects, floatable materials, pesticides, herbicides, fertilizers, hazardous materials, wastes, sewage, dissolved and particulate metals, animal wastes, residues that result from constructing a structure, and noxious or offensive matter of any kind.

(m) Soil and Water Conservancy District: An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Cuyahoga County Soil and Water Conservancy District Board or its designated employee(s). Hereafter referred to as SWCD.

(n) Storm Water: any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(o) Wastewater: Spent water, including but not limited to the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions.

(Ord. 35-2019. Passed 5-6-19; Ord. Passed .)

1336.04 DISCLAIMER OF LIABILITY.

Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property. (Ord. 35-2019. Passed 5-6-19.)

1336.05 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.

(a) Where this regulation is in conflict with other provisions of law, ordinance, regulation, or judicial order, the most restrictive provisions, as determined by the City.

(b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.

(c) This regulation shall not be construed as authorizing any person to maintain a nuisance on their property, and compliance with the provisions of this regulation shall not be a

B. It is the responsibility of the applicant to have technical data, required in accordance with Section 1337.03(j)(1), prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.

C. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:

1. Proposed floodway encroachments that increase the base flood elevation; and

2. Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

D. Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to Section 1337.03(j)(1).

(2) Right to Submit New Technical Data. The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the ~~City Manager~~Mayor or designee of City of Cleveland Heights, and may be submitted at any time.

(3) Annexation/Detachment. Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Cleveland Heights have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the City of Cleveland Heights Flood Insurance Rate Map accurately represent the City of Cleveland Heights boundaries, include within such notification a copy of a map of the City of Cleveland Heights suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Cleveland Heights has assumed or relinquished floodplain management regulatory authority.

(k) Data Use and Flood Map Interpretation. The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:

(1) In areas where FEMA has not identified special flood hazard areas, or in FEMA identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.

(2) Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the Floodplain Administrator.

(3) When Preliminary Flood Insurance Rate Maps and/or Flood Insurance Study have been provided by FEMA:

A. Upon the issuance of a Letter of Final Determination by the FEMA, the preliminary flood hazard data shall be used and replace all previously existing flood hazard data provided from FEMA for the purposes of administering these regulations.

B. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall only be required where no base flood elevations and/or floodway areas exist or where the preliminary base flood elevations or floodway area exceeds the base flood elevations and/or floodway widths in existing flood hazard data provided from FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

(4) The Floodplain Administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 1337.05, Appeals and Variances.

(5) Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations or flood protection elevations (as found on an elevation profile, floodway data table, established high water marks, etc.) shall prevail.

(l) Substantial Damage Determinations. Damages to structures may result from a variety of causes including flood, tornado, wind, heavy snow, fire, etc. After such a damage event, the Floodplain Administrator shall:

(1) Determine whether damaged structures are located in special flood hazard areas;

(2) Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and

(3) Make reasonable attempt to notify owners of substantially damaged structures of the need to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.

Additionally, the Floodplain Administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assist owners of substantially damaged structures with Increased Cost of Compliance insurance claims.

(Ord. 98-2010. Passed 8-16-10; Ord. Passed .)

1337.04 USE AND DEVELOPMENT STANDARDS FOR FLOOD HAZARD REDUCTION.

The following use and development standards apply to development wholly within, partially within, or in contact with any special flood hazard area as established in Section

3. Certification that no structures are located in areas that would be impacted by the increased base flood elevation;

4. Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and

5. Concurrence of the ~~City Manager~~Mayor of the City of Cleveland Heights and the Chief Executive Officer of any other communities impacted by the proposed actions.

(2) Development in Riverine Areas with Base Flood Elevations but No Floodways.

A. In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than 1.0 (one) foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or,

B. Development in riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one foot increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:

1. An evaluation of alternatives which would result in an increase of one foot or less of the base flood elevation and an explanation why these alternatives are not feasible;

2. Section 1337.04(i)(1)B., items 1. and 3.-5.

(3) Alterations of a Watercourse. For the purpose of these regulations, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the "bankfull stage." The field determination of "bankfull stage" shall be based on methods presented in Chapter 7 of the USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique or other applicable publication available from a Federal, State, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:

A. The bankfull flood carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and certification by a registered professional engineer that the bankfull flood carrying capacity of the watercourse will not be diminished.

B. Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be submitted to the Federal Emergency Management Agency.

C. The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with City of Cleveland Heights specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.

D. The applicant shall meet the requirements to submit technical data in Section 1337.03(j)(1)A.3. when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.

(Ord. 98-2010. Passed 8-16-10; Ord. Passed .)

1337.05 APPEALS AND VARIANCES.

(a) Appeals Board Established.

(1) The City of Cleveland Heights Board of Building Code Appeals is hereby appointed to serve as the Appeals Board for these regulations as established by City Code.

(2) Records of the Appeals Board shall be kept and filed in City Hall at 40 Severance Circle, Cleveland Heights, Ohio.

(b) Powers and Duties.

(1) The Appeals Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.

(2) Authorize variances in accordance with subsection (d) hereof.

(c) Appeals. Any person affected by any notice and order, or other official action of the Floodplain Administrator may request and shall be granted a hearing on the matter before the Appeals Board provided that such person shall file, within 30 days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the Floodplain Administrator's decision. Such appeal shall be in writing, signed by the applicant, and be filed with the Floodplain Administrator. Upon receipt of the appeal, the Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Appeals Board.

Upon receipt of the notice of appeal, the Appeals Board shall fix a reasonable time for the appeal, give notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.

(d) Variances. Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The Appeals Board shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement

1341.03 BOARD.

"Board" means the Board of Building Code Appeals, as created and existing under the provisions of Chapter 1315 of the Building Code, and the Board of Zoning Appeals, as created and existing under the provisions of Chapter 1109 of the Zoning Code.
(Ord. 97-1983. Passed 12-19-83.)

1341.04 BASEMENT.

"Basement" means a portion of a building partly or entirely underground whose ceiling or under part of the floor above is four (4) feet or less above the average finished ground elevation. The "average finished ground elevation" is the mean elevation of the finished grade around all of the exterior of the building.
(Ord. 58-1972. Passed 9-18-72.)

1341.041 BATHROOM.

"Bathroom" means a separate room which contains toilet and lavatory facilities and contains tub and/or shower facilities.
(Ord. 97-1983. Passed 12-19-83.)

1341.05 BUILDING COMMISSIONER.

"Building Commissioner" (or "Commissioner of Buildings") means the individual, designated by the ~~City Manager~~Mayor as being in charge of the Division of Building in the Department of Public Safety, including the authorized agent of such Building Commissioner, the Commissioner of Inspectional Services and any other person or board authorized to give approval under this Housing Code.
(Ord. 97-1983. Passed 12-19-83; Ord. Passed .)

1341.06 CITY.

"City" means the City of Cleveland Heights, Ohio.
(Ord. 11-1962. Passed 5-7-62.)

1341.07 CODE.

"Code" means this Housing Code as contained in Title Five, Chapter 1341 et seq., of this Part Thirteen, Building Code, and all other related sections of the Codified Ordinances, referred to herein.
(Ord. 97-1983. Passed 12-19-83.)

1341.08 COMMUNAL KITCHEN.

"Communal kitchen" means a kitchen which is used by the residents of more than one (1) dwelling unit or by the residents of a lodging house or cooperative dwelling house, as such terms are defined in the Zoning Code.
(Ord. 97-1983. Passed 12-19-83.)

(b) To allow or permit variations where there is practical difficulty or unnecessary hardship in the way of carrying out the strict letter of the provisions of this Housing Code, so long as the varying or modification of a requirement of this Code will be in harmony with the general purpose and intent of the Code, and the public health, safety and general welfare will be safeguarded and substantial justice done.

(Ord. 58-1972. Passed 9-18-72.)

1345.11 PENALTY DOES NOT PRECLUDE OTHER REMEDIAL ACTION.

The imposition of any penalty shall not preclude the Director of Law from instituting an appropriate action or proceeding in a court of proper jurisdiction to prevent an unlawful repair or maintenance; to restrain, correct or abate a violation; to prevent the occupancy of a building, structure or premises; or to require compliance with the provisions of this Housing Code or other applicable laws, ordinances, rules or regulations, or orders or determinations of the Building Commissioner, ~~City Manager~~Mayor or designee or Board of Zoning Appeals.
(Ord. 58-1972. Passed 9-18-72; Ord. Passed .)

1345.99 PENALTY.

(a) A violation of Sections 1351.14, 1347.01, or 1347.04(a) or (b) is hereby classified as a minor misdemeanor. Every day such violation occurs or continues shall constitute a separate offense.

(b) Whoever violates any other provision of this Housing Code, except Sections 1351.33 or 1351.34, or as described in subsection (a) hereof, or any rule or regulation promulgated thereunder, or fails to comply therewith or with any written notice or written order issued thereunder, or whoever refuses to permit entry by the Building Commissioner or other City department heads or their representatives at a reasonable hour, or whoever interferes with, obstructs or hinders the Building Commissioner or his authorized representatives while attempting to make inspections, shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than six (6) months, or both. Each day such violation occurs or continues shall constitute a separate offense.
(Ord. 124-2020. Passed 12-7-20.)

1351.01 CODE COMPLIANCE REQUIRED FOR LEASED RESIDENTIAL PREMISES.

No owner, operator or agent shall rent or lease, or offer for rental or lease, any dwelling units, dwelling structures or any parts thereof which do not comply with the provisions of this Housing Code.
(Ord. 11-1962. Passed 5-7-62.)

1351.02 HABITABLE FLOOR AREA DEFINED.

"Habitable floor area" means the floor area in any habitable room in any dwelling structure or multiple dwelling, which floor area is required to be contained within such dwelling structure or multiple dwelling, or part thereof, in order to meet the minimum standards as found in Section 1351.03.
(Ord. 102-1983. Passed 12-19-83.)

1351.03 HABITABLE FLOOR AREA STANDARDS.

(a) In a one (1) floor single-family dwelling or in the first floor of any other dwelling, clear ceiling height shall be seven (7) feet six (6) inches; provided, however, that if such dwelling or part thereof shall have been constructed prior to September 18, 1972, and the height of the first floor as constructed was no less than seven (7) feet two (2) inches, then such variation from seven (7) feet six (6) inches may be approved by the ~~City Manager~~Mayor or ~~his~~ designee, so long as a valid building permit was issued for such construction, and the lesser height requirement is consistent with protection of the public health and safety of any occupants of such dwelling.

(b) In the second floor area of any dwelling, a clear ceiling height shall be seven (7) feet six (6) inches in at least two-thirds (2/3) of such floor area and a clear ceiling height of not less than five (5) feet in the remaining one-third (1/3) of such floor area, or if the dwelling structure was constructed prior to September 18, 1972, and the clear ceiling height is not less than seven (7) feet two (2) inches, and a valid permit was issued for such construction, the ~~City Manager~~Mayor or ~~his~~ designee may approve the lesser height requirement consistent with the protection of the public health and safety of any occupants of such dwelling.

(c) In the third floor of any dwelling a clear ceiling height shall be required of not less than seven (7) feet in at least two-thirds (2/3) of such floor area and not less than five (5) feet in the remaining one-third (1/3) of such floor area.
(Ord. 7-1982. Passed 2-1-82; Ord. Passed .)

(d) No room which is less than seven (7) feet in width shall be included in determining habitable floor area unless otherwise permitted by provisions of the Codified Ordinances.
(Ord. 102-1983. Passed 12-19-83.)

owner of the dwelling structure now resides in Cuyahoga County.

(c) A violation of this Section 1351.34 is hereby classified as a misdemeanor of the first degree, punishable by a fine of not more than one thousand dollars ($1,000), imprisonment not more than six (6) months, or both. Every day such violation occurs or continues shall constitute a separate offense. Nothing in this section shall limit the court in fashioning a remedy other than those set forth herein that shall maintain the building to prevent it from harming the neighborhood in which it stands.
(Ord. 124-2020. Passed 12-7-20.)

1351.991 CIVIL PENALTY FOR DEBRIS ON PUBLIC PROPERTY IN FRONT OF PREMISES.

(a) In addition to all other provisions of the Cleveland Heights Codified Ordinances relating to the disposal of rubbish and garbage by residents of the City and the requirement that property owners keep the sidewalk, tree lawn, and other public areas in front of their premises free of litter, the ~~City Manager~~Mayor, through the Housing Commissioner or the Housing Commissioner's designee, may assess a civil penalty against the owner of property if trash, yard waste, rubbish, garbage or other debris or litter are left on the tree lawn, gutter, street, tree well or planter or sidewalk in front of the owner's premises at times other than those permitted by Section 1351.14 "Rubbish and Garbage Disposal".

(b) The penalty shall be assessed by a notice of violation and assessment in a form approved by the Director of Law delivered by the Housing Commissioner or his designee either in person to an adult residing at the premises or by leaving the notice in a conspicuous place on the premise or by mailing the notice to the owner. The notice shall inform the owner of the amount of the civil penalty, the permissible method of payment and the right of the owner to appeal the assessment to the City's Nuisance Abatement Board of Review within fourteen days of delivery of the notice.

(c) The civil penalty shall be as follows: fifty dollars ($50.00) per occurrence if paid within thirty days of the notice being issued, and one hundred dollars ($100.00) if paid more than thirty days after the notice is issued. The charge for a repeat offense within thirty days of a prior offense shall be one hundred dollars ($100.00) if paid within thirty days of notice being issued and one hundred fifty dollars ($150.00) if paid more than thirty days after the notice is issued. Each day of violation shall be considered a separate offense.
(Ord. 89-2009. Passed 9-21-09; Ord. Passed .)

1361.08 CODE.

"Code" means this Business Maintenance Code as contained in Title Seven (Chapter 1361 et seq.) of this Part Thirteen - Building Code.

1361.09 COMMISSIONER OF BUILDING.

"Building Commissioner" means the individual designated by the ~~City Manager~~Mayor as being in charge of the Division of Buildings in the Department of Public Service and is synonymous with "Commissioner of Building".
(A.O.; Ord. Passed .)

1361.10 OCCUPANT.

"Occupant" means the person who leases or rents a building, structure or any portion thereof. The words tenant and occupant shall be considered synonymous.

1361.11 OPERATOR.

"Operator" means a person who has charge, care or control of a business structure.

1361.12 OWNER.

"Owner" means the owner of the premises, or one (1) of the owners of the premises if owned by more than one (1) person, including the holder of title thereto subject to contract of purchase, a vendee in possession, a mortgagee or receiver in possession, a lessee or joint lessees of the whole thereof, or an agent or any other person, firm, corporation or fiduciary directly in control of the premises.

1361.13 PERSON.

"Person" means any person, firm, partnership, association, corporation, company or organization or association of persons of any kind.

1501.14 RESERVED.

1501.15 APPEALS.

(a) Whenever the Fire Warden disapproves an application and/or refuses to grant a permit applied for, or when it is claimed that the provisions of this adopted Fire Code do not apply, or that the true intent or meaning of such Code has been misconstrued or wrongly interpreted, or when any person refuses to comply with any order issued to enforce this Code, such person may appeal from the decision of the Fire Warden within ten days from the date the person is notified of such Fire Warden's order or decision. An appeal shall be filed with the Fire Chief and referred to the Fire Appeals Board. Notice of such appeal shall be in writing and shall set forth the ruling or decision from which appeal is taken.

(b) The Fire Appeals Board shall consist of the ~~City Manager~~Mayor and Director of Law, or their designated representatives, and the Chairperson Council Safety & Municipal Services Committee, or a member of that Committee. Such Board serving in any Fire Code appeal capacity shall hear all interested parties to such appeal and the Board may by majority vote of those present sustain, reverse or modify any decision or order of the Fire Warden.

(c) A quorum to hear any appeal shall consist of not less than two members of the Board.

(Ord. 20-2018. Passed 3-19-18; Ord. Passed .)

1501.16 FIRE DAMAGED STRUCTURES; REMOVAL OR REPAIR SECURING FUND.

The City hereby authorizes the procedure described in Ohio R.C. 3929.86(C) and (D), which provides for the deposit of insurance proceeds with the City, to be implemented whereby any insurance company doing business in the State shall comply with the applicable provisions of Ohio R.C. 3929.86 prior to paying a claim to a named insured for fire damage. The Fire Chief is hereby designated as the officer authorized to carry out the duties of Ohio R.C. 3929.86. The Fire Chief shall file a certified copy of this section with the State Superintendent of Insurance.
(Ord. 108-2014. Passed 9-15-14.)

1501.17 SEPARABILITY.

All sections, subsections, parts and provisions of this chapter and the adopted Ohio Fire Code are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any section, subsection, part or provision thereof to be unconstitutional, void or ineffective for any cause shall not affect nor render invalid any other section, subsection, part or provision thereof.
(Ord. 108-2014. Passed 9-15-14.)

1501.99 PENALTY.

Whoever violates any provision of this Chapter 1501 is guilty of a misdemeanor and shall

1511.03 PERMIT APPLICATION, ISSUANCE, TERM, RENEWAL AND FEE.

(a) Every person who operates or desires to establish a child day-care home shall apply to the ~~City Manager~~Mayor or his representative for a permit on such form as he prescribes. The permit shall be renewed annually and a fee of forty dollars ($40.00) shall be paid for each permit or renewal thereof. Fees collected under this section shall be paid into the General Fund.

(b) Upon filing, the application shall be forwarded to the Zoning Administrator for review and to the Fire Department for inspection of the premises under applicable codes of the Cleveland Heights Codified Ordinances, including this Chapter 1511. When, after examination, the ~~City Manager~~Mayor or his representative is satisfied that all requirements are complied with, a permit shall be issued in such form and manner as he prescribes but including at least the name of the property owner, and the name of the provider. The permit shall be valid only for the provider at the address designated on the permit and the permit shall be posted in a conspicuous place at the subject premises. The permit shall not be transferable.
(Ord. 108-2014. Passed 9-15-14; Ord. Passed .)

1511.04 PERMIT REFUSAL, SUSPENSION OR REVOCATION.

The ~~City Manager~~Mayor or designee shall have the power to refuse issuance or suspend or revoke any permit granted under the provisions of this chapter if any of the following conditions exist:

(a) If any false statement has been made by the permittee in connection with the application for the permit or in the operation.

(b) If the permittee fails or refuses to comply with any provision of this chapter or with any other City ordinances or State laws applicable thereto.

(c) If the building or premises for which the permit has been issued does not comply with all provisions of this chapter and all other City ordinances and State laws applicable thereto.

(Ord. 108-2014. Passed 9-15-14; Ord. Passed .)

1511.05 GENERAL STANDARDS.

(a) The provider shall be at least eighteen (18) years of age and have a minimum of six (6) months experience in caring for children, either as a parent or in other context including previous employment, center observations, volunteer service, in-service training, etc.

(b) The provider shall take preventative steps to ensure the safety of the children in care. These steps shall include: providing flashlights or other emergency lighting, repair of loose floor boards, removal of peeling and/or accessible lead paint, placing all toxic and dangerous substances out of reach of children, and removing sharp and dangerous objects.
(Ord. 108-2014. Passed 9-15-14.)

1511.06 EMERGENCY EXITS.

Each child day-care home shall have emergency exit capacity as outlined below:

(a) All floors used for child day-care shall have a primary escape route which provides a safe path for travel to the outside of the building. When the floor is above or below ground level, the primary escape route shall be an interior stairway or an exterior stairway.

(b) In addition to the primary escape route, each floor used for child day-care shall have an alternate means of escape. This includes either of the following:

(1) A door or stairway providing a means of unobstructed travel to the outside of the building at ground level; or,

(2) An outside window operable a minimum clear opening of twenty (20) inches in width, twenty-four (24) inches in height and five and seven-tenths (5.7) square feet in area. (The lower edge of the window shall not be more than forty-four (44) inches above the floor or a platform which is permanently attached to the floor or wall under the escape window).

(c) If the floor used for child day-care is used for napping or sleeping purposes, the alternate means of escape shall include either of the following:

(1) A door or stairway providing a means of unobstructed travel to the outside of the building at ground level; or,

(2) An exterior window operable without the use of tools which provides a minimum clear opening of twenty (20) inches in width, twenty-four (24) inches in height and five and seven-tenths (5.7) square feet in area. The lower edge of the window shall not be more than forty-four (44) inches above the floor or a platform which is permanently attached to the floor or wall under the escape window.

(d) No room or space that is accessible only by a ladder, folding stairs, or through a trap door shall be used for child day-care.

(e) All stairs shall be lighted so that each step can be clearly seen while going up and down stairs.

(f) All hallways, corridors, ramps and passageways leading to an exit shall be adequately lighted by natural or artificial light. When artificial light is used, lighting shall be provided with at least a sixty (60) watt bulb.

(g) Doorways, corridors, and stairways which are part of the primary or alternate escape route shall be kept clear of obstructions such as, but not limited to, toys, clothing, snow, ice, accumulated trash and assorted debris.

(Ord. 108-2014. Passed 9-15-14.)

1511.07 FIRE EVACUATION REQUIREMENTS.

Each child day-care home shall meet the following fire evacuation requirements:

(a) The provider shall have a written fire evacuation plan which consists of a floor plan marked with a primary escape route and an alternate escape route to a designated meeting place outside the home.

(b) The provider shall practice the fire evacuation plan at least once each month at different times of the day. The date and time of day of each practice drill shall be kept in a written log.

(c) The written fire evacuation plan and log of practice fire drills shall be available for review by the Fire Warden or other City official designated by the ~~City Manager~~Mayor.

(Ord. 108-2014. Passed 9-15-14; Ord. Passed .)

1511.08 STORAGE OF FLAMMABLE AND COMBUSTIBLE MATERIALS.

Storage of flammable and combustible materials and substances, such as, but not limited to, gasoline, kerosene, fuels, rubbing alcohol, furniture polish and wax, rubber and contact cements, paints, thinners, and strippers, shall be as follows:

(a) No gasoline, kerosene or fuel shall be stored in the home.

(b) Flammable and combustible materials and substances shall be:

(1) Stored in their original containers;

(2) Kept in closed storage;

(3) Stored out of the reach of children; and

Proposed: 11/22/2021

RESOLUTION NO. 154-2021 (PD), *Third Reading*

By Council Member Ungar

A Resolution authorizing the City Manager to enter into a Development Agreement with F&C Development, Inc. concerning the "Cedar-Lee Meadowbrook" development; and declaring an emergency.

WHEREAS, the City has identified the opportunity to develop the site known as "Cedar-Lee Meadowbrook," located on land situated north of Meadowbrook Boulevard, east of Lee Road and south of Cedar Road, utilizing vacant land as well as parking facilities, specifically PPN 687-06-009, 678-06-010, 687-06-013, 687-06-088, 687-06-089, 687-06-090, 687-06-091, 687-06-092, 687-06-093, 687-06-094, 687-06-095, 687-06-096, 687-06-159, and 687-08-00; and

WHEREAS, pursuant to Resolution No. 99-2021, this Council authorized the City Manager to enter into a Memorandum of Understanding with F&C Development, Inc. and move forward with negotiation of a Development Agreement consistent therewith; and

WHEREAS, the terms of the original Memorandum of Understanding, which was executed on July 12, 2021, provided for a period of 60 days for the completion of certain due diligence and for the parties to enter into a Development Agreement; and

WHEREAS, on August 30, 2021, this Council adopted Resolution 118-2021, authorizing an amendment to the Memorandum of Understanding to allow an additional 60 days to enter into a Development Agreement; and

WHEREAS, on November 8, 2021, this Council adopted Resolution 137-2021, authorizing a second amendment to the Memorandum of Understanding to allow a further extension of 30 days, until December 9, 2021, for the parties to enter into a Development Agreement; and

WHEREAS, after extensive negotiations, the parties have reached a tentative agreement on the specific terms and conditions of a Development Agreement; and

WHEREAS, this Council has determined that it is in the best interest of the City and its residents to move forward with the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. It is hereby determined that the property owned by the City located on land situated north of Meadowbrook Boulevard, east of Lee Road and south of Cedar Road, PPN 687-06-009, 678-06-010, 687-06-013, 687-06-088, 687-06-089, 687-06-090, 687-06-091, 687-06-092,

687-06-093, 687-06-094, 687-06-095, 687-06-096, 687-06-159, and 687-08-00, commonly known and hereafter referred to as "Cedar-Lee Meadowbrook," need not be retained by the City any longer for a public purpose.

SECTION 2. This Council hereby authorizes the City Manager to enter into a Development Agreement with F&C Development, Inc., and to sign any other related documents, concerning the development of Cedar-Lee Meadowbrook. The Development Agreement shall be substantially in accordance with the Development Agreement attached hereto as Exhibit A. The Development Agreement and any related documents shall be approved as to form by, and subject to the final approval of, the Director of Law.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to enter into the above-referenced Development Agreement and facilitate the construction of the project at the earliest time possible. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

JASON S. STEIN
President of the Council

AMY HIMMELEIN
Clerk of Council

PASSED:

CLEVELAND HEIGHTS

Updated 12.2.2021

Cedar-Lee-Meadowbrook - Proposed Development Agreement:

The project is to construct a catalytic mixed-use residential & commercial/non-residential project on approximately 4.80 acres of City-Owned parcels from Cedar Road to Meadowbrook, and immediately east of the commercial area along Lee Road that includes the Cedar-Lee Theater and Boss Dog Brewery;

The Developer is F&C Development, Inc.; The project is to consist of one or more buildings of varying height, including approximately 200 – 225 market-rate apartment units, and 5,000 to 9,000 SF of non-residential commercial, retail and/or restaurant 1st floor/ground level space;

Total project investment is anticipated to be approximately $50,000,000, of which the Developer contribution is expected to be roughly $35,000,000, including a construction loan. The remainder of the structure is expected to consist of TIF Financing (30 years, 100%) – the Developer will be responsible for 100% of the cost of the improvements;

The project includes an existing City-owned parking garage; The City and Developer will enter into a separate Parking Facilities Agreement whereby the Developer will be able to provide parking for the new apartment tenants. The remaining parking spaces in the parking garage and some portion TBD of the remaining project site parking areas will provide parking for the public for the term of the future ground lease;

While there are several benchmarks throughout the project such as closing, occupancy, and stabilization, ultimately, the Developer will pay the City for tenant permits. After project stabilization, the amount paid by the Developer will be 50% of the annual City Debt service on the parking garage, and will be used by the City to defray the cost of outstanding debt service remaining, until that debt is retired. At that point, ownership of the garage including all maintenance, operations and property tax costs will transfer to the Developer.

The City plans to convert the existing outstanding tax-exempt debt on the garage to taxable debt. As a result, the annual debt service would drop from approximately $460,000 (to be paid off by 12/2028) to approximately $300,000 (to be paid off by 12/2033); The Developer's annual payment to the City for parking fees until the debt is paid off is anticipated to be 50% X $300,000 = $150,000. Therefore, it is projected that City debt service costs will be further reduced from $300,000 to $150,000 annually.

In addition, the Developer and City have agreed to include up to $725,000 of the City's costs associated with any Added Property which may be included in the project site as part of the

Project Costs to be financed within the proposed TIF.

Once the Development Agreement is in place, detailed design and finalizing the financial structure of the project are the next steps forward.

Current projections for the economic impact of the project include:

- Annual NEW Income Tax & Real Estate Tax revenues of $240,000;
  Approx. $8,700,000 over 30 years;
- Estimated one-time influx of income tax from Construction jobs of $310,000;
- Estimated annual public parking revenue to City: $84,000;

The project is expected to result in new residents and investment in the City, new tax revenue, and increased economic vibrancy for the City and specifically for the surrounding Cedar-Lee District and neighborhood.

November 19, 2021

Cleveland Heights
Economic Development

To: Economic Development Director Tim Boland
From: Business Development Manager Brian Anderson
Subject: Research of Prevailing Wage Policies

Background & Summary

As requested by City Council, Economic Development Staff, Law Department Staff and the City's outside counsel researched and reviewed prevailing wage policies of other local communities as it pertains to public-private partnership projects and/or private projects receiving support or incentives from those local communities (such as tax abatement or tax increment financing). With one exception, it was found that the local communities surveyed do not require prevailing wage for these types of projects. As noted below, in a limited number of cases, prevailing wages were paid on a particular project not because the local community required it, but because the type of construction and/or other outside financing sources required the use of prevailing wages for that project.

Below is a summary of the findings/feedback from other local communities.

Beachwood

Beachwood does not require prevailing wages for private development projects who have obtained TIF or other financial incentives through the City.

Cleveland

The City of Cleveland does not require prevailing wage on projects that receive tax abatements or tax increment financing. They have local requirements depending on the size of the project regarding MBE/FBE participation and the demographics of the labor used, but nothing regarding prevailing wage.

Individual projects may end up using prevailing wage based on other factors, including the nature of the construction and financing sources used for the project. An example is the Church and State project. Church and State is a project cited that used prevailing wage. This $60 million project lends itself to the use of prevailing wage due to the 11-story height of the project and inclusion of a parking garage. The project also utilized financing through the AFL-CIO Housing Investment Trust and the Cuyahoga County Port Authority, both of which require prevailing wage on projects they finance.

Lakewood

Lakewood did not have a prevailing wage requirement for the development of the site formerly occupied by Lakewood Hospital, which had an executed development agreement in 2019 but the project ultimately did not move forward. This unbuilt project would have been most similar to the Top of the Hill project.

Since then, Lakewood has begun instituting a policy that requires prevailing wage on TIF projects.

Richmond Heights

Richmond Heights is using a "fair wages" approach on the Belle Oaks project, which is a similar project to Cedar Lee Meadowbrook in terms of construction type (wood frame construction). From the development agreement for that project:

> "Fair Wages" as used in this Agreement shall not be construed to mean Prevailing Wage under Chapter 4115 of the Ohio Revised Code or pursuant to the Davis-Bacon Act (40 USC §§3141 – 3148) but shall have the meaning generally understood by contractors undertaking similar construction projects in the County in connection with payment of wages which are competitive with, and comparable to, other similar projects currently underway in the County."

Shaker Heights

Shaker Heights does not require prevailing wage for projects receiving support from the City (abatement or TIF). This includes all phases of the Van Aken project.

Westlake

Westlake does not have a prevailing wage requirement for projects receiving support from the City (abatement or TIF).

University Heights

University Heights does not have a policy/requirement that these types of projects use prevailing wage.

EXHIBIT A
RESOLUTION 154-2021

City Draft
~~11/24/2021~~12/3/2021

==========

DEVELOPMENT AGREEMENT

by and between

CITY OF CLEVELAND HEIGHTS, OHIO

and

F & C DEVELOPMENT, INC.

Project Name: Cedar-Lee-Meadowbrook Development

Date: _____, 2021

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EXHIBIT A
RESOLUTION 154-2021

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EXHIBIT A
RESOLUTION 154-2021

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation, having an address of 40 Severance Circle, Cleveland Heights, Ohio 44118 (the "City"), and **F & C DEVELOPMENT, INC.**, an Indiana corporation, licensed to do business in the State of Ohio, having an address of One Indiana Square, Suite 3000, Indianapolis, Indiana 46204 ("Developer").

RECITALS:

A. The City owns certain parcels of land commonly known as the Cedar-Lee-Meadowbrook parcels, consisting of approximately 4.8 acres located between Cedar Road and Meadowbrook Road, as shown on **Exhibit A** (Site Plan) hereto (together with the Added Property, as hereinafter defined, the "Project Site") and, consistent with the City's prior and current plans for urban redevelopment, the City has, from time to time, requested proposals for the redevelopment of all or portions of the Project Site.

B. Pursuant to a request for proposals process initiated by the City in October 2020, consistent with City's current urban redevelopment plan for the Project Site, Developer proposes to develop the Project Site generally as follows:

(i) Developer proposes to build in a single phase a mixed-use development that shall include (a) one or more buildings of varying heights including approximately 200-225 market-rate apartments (some of which may be in apartments that "wrap" the existing City parking garage and some of which shall have universal design and accessibility to the extent required by the Final Development Plan (as defined in Section 5 hereof), (b) approximately 5,000-9,000 square feet of first floor non-residential space such as commercial, retail and/or restaurant space, (c) public gathering and green spaces, and (d) all private and public sidewalks located on the Project Site, as well as driveways, access ways, street and parking lot lighting and utility connections on the Project Site, and sanitary, stormwater drainage and other infrastructure improvements on the Project Site, in each case, to the extent required as part of the Final Development Plan (collectively, the "Project Improvements"), all as further outlined below and as depicted and described on **Exhibit B** (Developer Proposal dated December 30, 2020, including the Conceptual Drawing depicting the Project Improvements) hereto (all of the foregoing being referred to herein collectively as the "Project");

(ii) In connection with a prior plan for the redevelopment of the Project Site, the City constructed and owns a structured parking garage located within the Project Site (the "City Parking Garage"), the ownership, use, management and maintenance of which shall be on the terms provided in Section 2(C) hereof;

(iii) The City will retain ownership of the Project Site;

(iv) Developer will lease the Project Site from the City at a nominal rental rate for a period of 99 years with an option to purchase the Project Site for $10.00 at any time after the fortieth (40th) anniversary of the Effective Date; and

(v) The City and Developer acknowledge the possible addition of certain adjacent property into the Project Site (collectively, the "Added Property") in accordance with an Added Property plan as described in Section 2(D) hereof, and if the Added Property is acquired by the City, such Added Property will be incorporated into the Project Site on the terms described in Section 2(D).

C. Developer and the City propose to collaboratively create a signature destination district on the Project Site. The City and Developer agree that the development of the Project Site shall be completed in a manner which, at a minimum:

(i) Creates a dense, vibrant, pedestrian-friendly and unique mixed-use development that leverages the place-making opportunities of the Project Site;

(ii) Dovetails with the architecture and aesthetics of the surrounding Cedar-Lee District;

(iii) Complements and is harmonious with adjacent residential neighborhoods;

(iv) Creates positive economic and fiscal benefits for the neighborhood and the City;

(v) Incorporates gathering and public spaces and~~/or~~ a strong landscaping plan into the design and construction of the development;

(vi) Effectively incorporates community feedback into the design;

(vii) Strongly encourages the use of commercially reasonable efforts to achieve inclusion of minority-owned and female-owned business enterprises in the construction of the development, as well as the use of commercially reasonable efforts to ensure that laborers and mechanics employed on the project shall be paid at a prevailing wage rate to the extent reasonably practicable and, in any event, at an aggregate level of not less than ~~20~~25% of the costs of the laborers and mechanics employed on the construction of the Project Improvements;

(viii) Uses commercially reasonable efforts to achieve the goal of local worker participation by having an approximate minimum aggregate level of ~~83%~~ five-sixths (5/6ths) of workers participating in the construction of this project being residents of Northeast Ohio; and

(ix) Employs or utilizes sustainability best practices acceptable to the City that are consistent with sustainability best practices and standards outlined in Developer's Proposal attached as **Exhibit B** and consistent with the terms of Section 7(J) below.

D. Developer currently anticipates that the costs associated with designing and constructing all of the Project Improvements will be approximately $50,000,000.00, as shown on **Exhibit C** (Preliminary Budget - Improvements) hereto.

E. Developer has represented to the City that it intends to use various sources of funds to finance the costs associated with the Project Improvements, as set forth on **Exhibit D** (Sources and Uses of Funds) hereto, including a Developer contribution (which includes a construction loan) of approximately $35,000,000.00 (the "Developer Contribution"). The actual costs incurred by Developer in designing and constructing all of the Project Improvements, including Developer's debt service on the various financings related to the Project, are referred to herein collectively as the "Project Costs" or "Improvement Costs."

F. Developer presently intends to substantially complete the Project within 30 months after the Closing.

G. The City has determined that the Project is in the vital and best interests of the City and the health, safety and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

H. In furtherance of urban redevelopment and for the public purposes of the City, and to facilitate the Project, Developer has requested that the Cleveland Heights City Council (the "City Council") adopt an ordinance or ordinances (collectively the "TIF Ordinance") to create a project-based tax increment financing area for the Project Site (including the Added Property) pursuant to Sections 5709.41, 5709.42 and 5709.43 of the Ohio Revised Code (collectively, the "TIF Statutes"), and to exempt one hundred percent (100%) of the increase in assessed value of each parcel of real property included in the Project Site after such parcel was acquired by the City while engaged in urban redevelopment (being the "Improvement" thereto as defined in Section 5709.40(a) of the Ohio Revised Code) for a period of thirty (30) years (the "TIF Exemption"), commencing, with respect to each parcel within the Project Site, in the year or years specified in or pursuant to the TIF Ordinance, and to provide for the payment of Improvement Costs from service payments in lieu of taxes generated by the Improvement to the parcels within the Project Site ("Service Payments") and minimum service payment obligations imposed by the City at the request of Developer pursuant to Section 5709.91 of the Ohio Revised Code ("Minimum Service Payments"), subject to the approval of the Cleveland Heights-University Heights City School District (the "School District") unless the TIF Ordinance specifies that Service Payments shall be paid to the School District in the amount of the taxes that would have been payable to the School District if the Improvement to the parcels within the Project Site had not been exempted from taxation.

I. The City has determined that it is in the best interest of the City to lease the Project Site to Developer for $10.00 per year with an option to purchase the Project Site for $10.00 at any time after the fortieth (40^{th}) anniversary of the Effective Date because the City will receive equivalent economic and non-economic benefits from the Project that equal or exceed the value of the Project Site and Improvements because Developer will procure one hundred percent (100%) of the Improvement Costs and all of the operational costs of the Project Improvements and the Project will create jobs, stimulate economic growth in the area, and enable the Project Site to be put to its highest and best use, for the benefit of the people of the City.

J. The City has determined that eliminating competitive bidding with respect to the City's lease of the Project Site to Developer is in the best interest of the public because the lease of the Project Site to Developer is necessary for the Project.

K. The City has determined that granting Developer the option to purchase the Project Site, for $10.00, at any time after the fortieth (40^{th}) anniversary of the Effective Date, is justified because the Project Improvements will yield an estimated 300 new residents living in the Cedar-Lee district of the City, and will add to the vibrancy and livability of the Cedar-Lee District.

L. The parties contemplate that the project-based TIF for the Project Improvements will be created, subject to the passage of separate ordinances by City Council following the parties' execution of this Agreement.

M. At Closing, the City and Developer shall enter into a lease in substantially the form attached as **Exhibit E** (Form of Ground Lease) hereto (the "Lease"), which shall be a lease for a term of ninety-nine (99) years under which Developer will develop and operate the Project.

N. Execution of this Agreement was authorized by Ordinance No._____, passed by City Council on _____, 2021.

O. The parties desire to memorialize in this Agreement their understandings as to the various responsibilities and obligations with respect to the Project and certain related matters.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows;

1. INCORPORATION OF RECITALS.

The Recital clauses set forth above are fully incorporated in this Agreement and specifically made a part hereof, as if fully restated herein, and such Recitals are deemed to be fully effective and a reflection of the agreements and understandings of the parties.

2. DESCRIPTION OF THE PROJECT IMPROVEMENTS.

Subject to adjustments that may be made as part of the development and approval of the Final Development Plan (as defined in 5(B) hereof) and any adjustments to the Final Development Plan that are made in accordance with Section 7(A) hereof, and further subject to any prior termination of this Agreement pursuant to Section 4(C) or 9(A) below, the parties agree that the Project will include the following Improvements:

(A) ***Apartments***. The Project shall include approximately 200-225 market-rate apartments with full amenity packages in one or more buildings that may vary in height (collectively, the "Apartments"). Some of the Apartments may "wrap" the existing City parking garage and some of the Apartments shall have universal design and accessibility. The Apartments are expected to be first-class in all respects and shall be constructed to be considered top of the market.

(B) ***Non-Residential and Commercial Space***. The Project shall include between 5,000 and 9,000 square feet of new non-residential space such as commercial, retail and/or restaurant space (collectively, the "Non-Residential Space"). The anticipated retail categories include the concepts described in the Merchandising Plan attached as **Exhibit F**, and Developer agrees that it shall not lease any Non-Residential Space in the Project in a manner that (i) is inconsistent with the Merchandising Plan, or (ii) results in a relocation of existing businesses within the City unless, in either case, the City Manager consents to such lease, which consent shall not be unreasonably withheld, delayed or conditioned (the parties hereto acknowledge and agree that all references to the term "City Manager" herein shall be deemed to be references to the City Mayor from and after the date the elected Mayor replaces the City Manager as the chief executive official of the City, which is expected occur on or about January 1, 2022).

(C) ***City Parking Garage***. The City owns the City Parking Garage located within the Project Site. The City Parking Garage may be "wrapped" with multi-family housing units developed by Developer as part of the Project. The City and Developer intend to enter into a parking facilities agreement substantially in the form of **Exhibit K** (the "Parking Facilities Agreement") following the approval of the Final Development Plan pursuant to the terms of which (i) the City will undertake to refinance the City's current tax-exempt debt associated with the City Parking Garage (the "Tax-Exempt Garage Debt"), which currently matures on December 1, 2028, with a federally taxable financing (the "Taxable Garage Debt") with the goal of having the Taxable Garage Debt mature on or about December 1, 2033, and the City currently expects such refinancing to lower the City's annual debt service requirements with respect to the City Parking Garage to approximately $300,000 annually; (ii) on the terms described in the Parking Facilities Agreement, from and after the Occupancy Date (as defined in the Parking Facilities Agreement), to, but not including, the Stabilization Date (as defined in the Parking Facilities Agreement), Developer will assume a proportionate amount equal to the Applicable Percentage (as hereinafter defined) of all maintenance costs and property tax payments associated with the City Parking Garage; (iii) on the terms described in the Parking Facilities Agreement, from and after the Stabilization Date, (a) Developer will agree to purchase permits from the City for ~~the Applicable Percentage of the~~ parking spaces in the City Parking Garage for use by Developer's tenants and guests in an area of the City Parking Garage that is reserved for such tenants' use for an aggregate annual purchase price equal to ~~the Applicable Percentage~~ fifty percent (50%) multiplied by the aggregate annual debt service on the Taxable Garage Debt; and (b) the remaining spaces in the City Parking Garage and certain parking spaces in areas outside the City Parking Garage but on the Project Site as further described in the Parking Facilities Agreement (the "Project Site Parking Areas") will remain public parking at all times throughout the term of the Ground Lease (collectively, the "Public Parking Spaces); and (iv) Developer will continue to purchase the number of permits as described in subsection (iii)(a) above until the maturity date of the Taxable Garage Debt, at which time the City will transfer ownership of the City Parking Garage to Developer, for no consideration, subject to (1) the Ground Lease, which shall remain in place, and (2) the agreement of Developer to continue to provide public access to the Public Parking Spaces until the earlier of (i) the expiration of the term of the Ground Lease, or (ii) the exercise by the Developer of its option to purchase the Project Site pursuant to the terms of the Ground Lease, all as more specifically described in the Parking Facilities Agreement. As used herein, the term "Applicable Percentage" will mean, (1) from and after the Occupancy Date to but not including the Stabilization Date, approximately 30%, and (2) from and after the Stabilization Date until the maturity date of the Taxable Garage Debt, approximately 60%, except that, for purposes of determining the number of

Public Parking Spaces in the City Parking Garage, the Applicable Percentage will be approximately 60% (such that there will be approximately 225 private parking spaces and approximately 152 Public Parking Spaces in the City Parking Garage). Such percentages and the allocation of parking spaces in the City Parking Garage to private parking spaces and Public Parking Spaces, as well as the percentage of the Apartments that must be leased to achieve stabilization of the Project (and the date by which stabilization must occur), are to be determined by the City and Developer after approval of the Final Development Plan based on the timing of the approval of the Final Development Plan in the context of the overall construction schedule for the Project and the total number of private parking spaces in the City Parking Garage to be reserved for tenants in the Project Improvements (which shall not be less than 200 or more than 225 of the total parking spaces in the City Parking Garage). Developer intends to provide any landscaping for the area surrounding the City Parking Garage, even if such landscaping is on City-owned property. Developer may enter into one or more subleases or rental agreements with its tenants for the parking spaces for which Developer purchases permits pursuant to the Parking Facilities Agreement as needed to support the viability of the Apartments.

(D) ***Added Property.*** The City and Developer will coordinate on efforts to include any Added Property into the Project Site. This coordination will be consistent with an Added Property plan. The City and Developer intend for this plan to be included in this Development Agreement when appropriate. Developer and City agree to include up to $~~500,000.00~~ 725,000.00 of the City's cost associated with any Added Property as part of the Project Costs to be financed within the TIF Financing described in Section 8 hereof.

(E) ***Gathering and Green Spaces.*** Gathering and green/open space locations shall be clearly delineated on all plans and materials, with indications of which locations are open to the public and which locations are for use by residential tenants of the Project. All open spaces and gathering locations on the Project Site will be owned and maintained by the Developer. Programming of the public spaces and/or their use for activity, public information, signage, etc. shall require notification to and approval from the Developer (not to be unreasonably withheld, conditioned or delayed) and may be facilitated through the City.

(F) ***Infrastructure Needs and Upgrades Directly Resulting From the Development.*** Any infrastructural needs or infrastructure upgrades that directly result from the construction of the Project shall be the responsibility of the Developer to the extent required as part of the Final Development Plan. The parties shall collaborate and coordinate with regard to design, engineering and construction of such upgrades with any City infrastructural improvements so as to streamline construction and reduce costs where possible.

(G) ***Offline Flow Detention Facility at Lee Road and Meadowbrook Road.*** The parties shall collaborate and coordinate with regard to the City's identified need to construct offline storm and sewer flow detention capacity on the east side of Lee Road north of Meadowbrook Road.

3. LEASE OF PROJECT SITE.

(A) ***Execution of Lease***. At Closing (as defined in Section 4(A)(iii)), the City shall lease the Project Site to Developer, for a term of ninety-nine (99) years, at rent of $10.00/year, by executing the Lease in substantially the form of **Exhibit E**. Under the Lease, Developer shall be solely responsible for all operating costs, insurance premiums, real estate taxes and assessments, and all other costs associated with the Project Site and the Project Improvements during the term of the Lease; provided that certain costs associated with the City Parking Garage shall be allocated between the City and Developer at various times during the term of the Lease as provided in the Parking Facilities Agreement. If requested by the Developer, the Lease may include a ground lease to one affiliate of Developer and a sublease by that affiliate to a separate affiliate of Developer that will construct and own the Project Improvements.

(B) ***City's Recording of Memorandum of Lease***. At the request of either party, the parties shall execute and record a statutory form of Memorandum of Lease in the Cuyahoga County Recorder's Office, which shall provide that it shall automatically terminate upon the exercise and closing of the purchase option under the Lease and the City shall execute any documents appropriate to evidence such termination. The Lease shall "run with the land" and be binding upon Developer and its successors and assigns.

(C) ***Option to Purchase***. As provided in the Lease, at any time after the fortieth (40^{th}) anniversary of the Effective Date, Developer shall have the right to purchase the Project Site for $10.00, exercisable by giving no less than 90 days prior written notice to the City, as more particularly set forth in the Lease.

(D) ***Financing of the Project***. If necessary or appropriate for any portion of the financing of the Project, at the request of Developer, Developer and the City shall negotiate diligently and in good faith to structure the Lease as a financeable ground lease.

(E) ***Sales Tax Savings***. In addition to the TIF Exemption, the City will, to the extent permitted by law and if requested by Developer, either structure the Lease, or permit Developer to enter into a sublease of the Project, to allow for an exemption from state and local sales taxes on all materials purchased for the construction of the Project.

4. CLOSING ON LEASE OF PROJECT SITE.

(A) ***Closing.*** Provided the Conditions (as defined in Section 4(B) below) have been satisfied, the City shall (i) execute the Lease and the Parking Facilities Agreement, (ii) transfer exclusive possession of the Project Site to Developer, and while retaining possession of the City Parking Garage consistent with the Parking Facilities Agreement, (iii) take such other actions or execute such other documents as contemplated hereunder, reasonably appropriate to consummate the transactions contemplated hereunder, or required to evidence satisfaction of the conditions or required by Developer's title company to insure Developer's leasehold interest in the Property (the "Closing") on or before the date which is the later of (a) December 31, 2022 or (b) six (6) months following the date of the approval of the Final Development Plan (as it may be extended, the "Outside Closing Date") so as to enable Developer to commence construction activities; subject, however, to any and all easements, covenants, restrictions and other matters of

record existing on the Effective Date affecting the Project Site, and further subject to the public parking requirements set forth in the Parking Facilities Agreement. If all of the Conditions have not been met by the Outside Closing Date, the date of the Closing may be extended by the City for up to six (6) months at the request of Developer, as set forth in Section 4(C) below, and any such request shall not be unreasonably denied as long as Developer is working diligently to satisfy the Conditions. Subject to the provisions in the last paragraph of Section 9(A), Developer will use good faith efforts to complete its due diligence in accordance with Section 9 on or prior to the date set forth above such that, at the Closing, Developer will be in a position to lease the Project Site for the term of the Lease without any environmental, title, financing or other contingencies of any kind.

(B) ***Conditions***. The Closing shall not occur until all of the following conditions ("Conditions") have been met:

(i) Developer shall have provided to the City a certificate certifying that Developer has secured all funding required by Developer in order to complete the Project Improvements in substantial accordance with the Budget (as defined in Section 6(C)), the Final Development Plan and the Final Schedule (each as defined in Section 5);

(ii) Developer shall have received all governmental or other permits, licenses and approvals necessary or appropriate for the commencement of the Project and is prepared to commence construction within 60 days of the Closing;

(iii) Developer shall have obtained approval (as contemplated under Section 5) of the Final Development Plan and the Final Schedule, and Developer shall have delivered to the City a written confirmation that Developer no longer has the right to terminate this Agreement under Section 5(C) hereof;

(iv) Developer shall have entered into a construction agreement with the general contractor for the Project;

(v) Developer and City shall have entered into the Parking Facilities Agreement in substantially the form attached hereto **as Exhibit K**;

(vi) Developer shall have paid or reimbursed the City for the "Costs" as defined and contemplated in Section 8(B);

(vii) Developer shall have provided evidence to the City that it has obtained the amounts and types of insurance required to be obtained by Developer as provided in Section 11;

(viii) Developer shall have delivered to the City a detailed construction Budget for the Project as provided in Section 6(C);

(ix) Developer shall have delivered to the City (a) a completion guaranty of Developer and David M. Flaherty as required by Section 7(D) below, and (b) if required, a guaranty by David M. Flaherty of Developer's payment obligations relating to any TIF financing related to the Project in a form reasonably satisfactory to the City;

(x) Developer shall have delivered to the City a final Merchandising Plan for commercial tenants consistent with the plan described in **Exhibit F**;

(xi) Developer shall have delivered to the City a detailed traffic impact and parking study as described in Section 5(B) of this Agreement;

(xii) Developer shall have delivered to the City a preliminary pro forma statement of revenues and expenses of the Project following completion as described in Section 5(D) of this Agreement;

(xiii) Developer shall have delivered a detailed plan reasonably acceptable to the City relating to security and avoidance of nuisances on the Project Site during construction as is typical for projects of similar nature and scope;

(xiv) Developer shall have delivered to the City (contemporaneously with the Closing) evidence that it has completed its due diligence in accordance with Section 9(A) and shall have delivered to the City a written confirmation that Developer no longer has the right to terminate this Agreement under Section 9(A) hereof;

(xv) Developer shall have delivered to the City evidence that it has complied with the requirements of Section 9(B) with respect to the Cedar Lee Special Improvement District;

(xvi) The City Council shall have adopted the TIF Ordinance providing for the TIF Exemption and authorizing the charge and collection of the Service Payments and, if requested by Developer, the Minimum Service Payments for the payment of Improvement Costs;

(xvii) The City and the School District shall have entered into a compensation agreement (the "School Compensation Agreement") providing for the compensation of the School District for a portion of the real estate taxes that would have been paid to the School District had the City not granted the TIF Exemption, which compensation shall be payable solely from the Service Payments and shall otherwise be acceptable in amount to Developer;

(xviii) Developer shall have updated its due diligence and feasibility studies, tests, reports and analyses and there have been no material changes.

(C) ***Failure to Meet Conditions***. In the event either party determines that the Conditions have not been met by the Outside Closing Date, and the City has not agreed to an extension of such date in accordance with the last sentence of this Section 4(C), each party shall have the right to terminate this Agreement by written notice to the other at any time after such date (but prior to the date on which both parties agree that all Conditions have been met), and upon such notice this Agreement shall terminate and except as provided in Section 8(B), neither party shall thereafter have any rights or obligations under this Agreement. Notwithstanding the foregoing, the City may extend the foregoing termination date by up to sixty (60) days at the request of Developer, and such request shall not be unreasonably denied as along as Developer is working diligently to satisfy the Conditions.

5. TIMELINE; PREPARATION OF PLANS AND SPECIFICATIONS; TRAFFIC STUDY.

(A) ***Timeline/Schedule***. A Preliminary Schedule/Timeline is attached as **Exhibit H**. Prior to execution of the Lease, Developer shall deliver to the City a final schedule/timeline (the "Final Schedule"), which shall be in the form of a project critical path schedule, resource loaded, and coordinating and integrating the anticipated design and construction schedules, Developer's responsibilities, City responsibilities, governmental agency reviews, submittal and procurement schedules and other activities as are necessary for timely completion of the Project. The Final Schedule shall indicate proposed sequences and durations, milestone dates for receipt and approval of pertinent information, processing of shop drawings and samples, delivery of materials or equipment requiring long lead-time procurement, anticipated occupancy dates showing portions of the Project having occupancy priority, if any, over other portions and an estimated completion date. Developer agrees that the Project shall be developed substantially in accordance with the Final Schedule, subject to delays caused by Force Majeure.

(B) ***Preliminary and Final Development Plan***. Developer shall be solely responsible for the planning, design, construction, administration, oversight and completion of the Project. At such time as Developer deems appropriate, it shall begin preparing a preliminary development plan for the Project Site. Developer shall submit such "Preliminary Development Plan" to the City's Director of Planning ("Planning Director"), for review and comment, with copies to the City's Director of Economic Development ("EDD"). Any objections by the City's Planning Director shall be submitted in writing to Developer within fifteen (15) business days of receipt of said drawings. The presentation of the Preliminary Development Plan to the Planning Commission, and final approval of a Final Development Plan for the Project Site, by the Planning Commission, Architectural Board of Review (the "ABR"), and any other City board or commission as appropriate as determined by the City, shall all proceed in accordance with the steps outlined in the City of Cleveland Heights Zoning Code. None of those approvals are guaranteed by this Agreement. Nothing in this Agreement shall require Developer to include in the Preliminary Development Plan or the Final Development Plan (as defined below) any specific component of the Project Improvements described in Section 2 if Developer reasonably determines that completing such component is not economically feasible. The basis for Developer's determination that completing a component of the Project Improvements is not economically feasible shall be set forth in a report submitted to the EDD and the Planning Director prior to consideration of the Final Development Plan by the appropriate City board or commission.

As part of this process, Developer shall submit a traffic impact (including, but not limited to, vehicular, pedestrian and bicycle) study and parking studies to the City's Planning Department, and Departments of Public Works, Fire, and Police for review, with copies to the Economic Development Department and hereby agrees to cooperate and coordinate with the City to use commercially reasonable efforts to mitigate traffic and parking problems identified in such studies to the satisfaction of these Departments. If requested by the City, Developer agrees to have a district-wide parking study completed (in which case the City will pay the incremental cost of expanding such study to a district-wide study). The Preliminary and Final Development Plan, including all proposed parking, traffic, architectural design and site improvements, shall be reviewed by the Planning Director and other Departments as noted above. The Planning Director and other Departments as noted above shall provide recommendations based on such review. The

Preliminary and Final Development Plan for the Project Site, as submitted and proposed by Developer, and as approved by the Planning Commission, the Architectural Board of Review (ABR), and any other City board or commission as appropriate as determined by the City, as the same may thereafter be modified during construction following the process outlined in the City of Cleveland Heights Zoning Code, is referred to herein as the "Final Development Plan."

(C) ***Right to Terminate Agreement for Failure to Approve Final Development Plan***. The parties agree to work diligently and cooperatively with each other for City approval of the Final Development Plan. If for any reason the parties, after exercising reasonable efforts, are unable to obtain approval of the City and other governmental authorities as needed for the Final Development Plan, by the Outside Closing Date, and that date has not been extended by the City in accordance with Section 4(C), each party shall have the right to terminate this Agreement by giving written notice thereof to the other party no later than sixty (60) days thereafter (but prior to the date on which the Final Development Plan is approved), whereupon neither party shall thereafter have any further rights or obligations hereunder except as described in Section 8(B). For purposes of this Section 5(C) and Section 4(B)(iii), the term "approval" means final legislation or administrative action without further appeal or referendum adopted in accordance with the Charter and Ordinances of the City and with standards of other applicable governmental authorities that approves all aspects of the Final Development Plan.

(D) ***Preliminary Pro Forma***. Prior to the Closing, Developer shall submit to the City a preliminary pro forma statement of revenues and expenses for the Project following construction, consisting of Developer's good faith projection of revenues and expenses of the Project following completion, based on sound accounting principles consistently applied, and including assumptions utilized by Developer in deriving the information contained therein.

6. OBTAINING & APPROVING CONSTRUCTION BIDS.

(A) ***Final Bids***. Developer shall not solicit bids from contractors or subcontractors that are listed on the Federal Debarred List or the State Debarred List or that are identified as being debarred on the City's Vendor's Performance list. The final bids for the Project, as approved by Developer, are referred to herein as the "Final Bids."

(B) ***MBE/FBE Participation***. Developer shall use commercially reasonable efforts to achieve MBE/FBE participation goals established by the City in connection with the Project as may be set by mutual agreement of Developer and the City, and shall provide monthly reports to the City or the City's owner representative concerning MBE/FBE participation and the percentage of workers on the Project Site that are residents of Northeast Ohio.

(C) ***Prevailing Wage.*** Developer shall use commercially reasonable efforts to ensure that laborers and mechanics employed on the Project shall be paid at a prevailing wage rate to the extent reasonably practicable and, in any event, at an aggregate level of not less than ~~20~~25% of the costs of the laborers and mechanics employed on the construction of the Project Improvements, and shall provide monthly reports to the City or the City's owner's representative concerning Developer's compliance with this subsection;

(D) ***Budget***. Promptly after the approval of the Final Development Plan contemplated under Section 5(B), Developer shall provide the City with an updated construction budget for the Project specifying all projected costs and expenses of every kind and nature to be incurred in connection with the Project, including all costs of labor, materials, equipment and fixtures needed for completion of the Project and all other costs, fees and expenses relating to construction of the Project Improvements (as the same may thereafter be updated from time to time during construction, the "Budget").

7. CONSTRUCTION.

(A) ***Construction***. Once the parties have approved the Final Development Plan and the Closing has occurred, and Developer has received all necessary and required permits and approvals, including but not limited to, approval of building plans by the City's Building Department, Developer shall proceed with construction of the Project. Developer shall thereafter complete construction of the Project in substantial accordance with the Final Development Plan, provided that Developer may make changes to the Final Development Plan in accordance with the process set forth in the City's Zoning Code. Except for assistance to be provided by the City to Developer under this Agreement, Developer shall be solely responsible for constructing and paying for the Project. Developer represents and warrants to the City that the sources of funding set forth on **Exhibit D** hereto are expected to be adequate to enable Developer to complete the Project in accordance with the current scope of the Project; subject to cost increases resulting from matters approved in the Final Development Plan.

The Project shall be performed and completed by Developer, its contractors and subcontractors, or any successors thereof, in a good and workmanlike manner using first-class materials in accordance with all federal, state or local laws, statutes, ordinances, building codes, orders, rules and regulations applicable to the Project, whether in force on the Effective Date or enacted thereafter (the "Legal Requirements"). Responsibility for acceptable quantity and quality of work performed rests with Developer. The City makes no warranty relative thereto. Further, Developer agrees not to hold the City liable in any manner for any deficiency in the quantity or quality of work performed or to be performed. All work in any existing and future right of way shall only be done under permit from the City. Developer shall be responsible for obtaining and paying for all necessary permits and licenses and for obtaining all necessary third-party approvals for the Project, including but not limited to, driveway and other access or ingress/egress permits or easements. Developer shall be responsible for all tap-in fees, impact fees or other fees related to procuring, upgrading, or bringing utilities to, and through, the Project Site, as required to construct and operate the Project.

Upon the commencement of construction of the Project Improvements, Developer shall diligently pursue such construction to completion in accordance with the Final Schedule, subject to delays caused by Force Majeure (as defined in Section 13(A)), and shall use its commercially reasonable efforts to avoid delays and resolve disputes. Developer shall give the City notice of the initial occurrence of each and every individual event of Force Majeure which may materially impact the construction of the Project Improvements within thirty (30) days after the commencement of such event.

Developer will not deviate from the Final Development Plan in any material fashion without obtaining approval of a revised Final Development Plan by the Planning Commission and City Council to the extent required by and in accordance with the process set forth in the City of Cleveland Heights planning and zoning ordinances.

(B) ***Construction Sequencing***. The sequencing of construction of the Project Improvements shall be in accordance with the Final Development Plan.

(C) ***Surety Bonds***. Prior to commencing construction of the Project, Developer shall provide the City with evidence that the general contractor for the Project is bondable.

(D) ***Completion Guaranty***. At the Closing, Developer shall cause Developer and David M. Flaherty ("Guarantors") to deliver to the City a Completion Guaranty (the "Completion Guaranty") for the Project, which Completion Guaranty shall be in a form acceptable to the City and approved by the City's Law Director.

(E) ***Applicable Laws***. Developer shall obtain and maintain all necessary City and other governmental permits, licenses and other approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements relating to development of the Project. By executing this Agreement, the City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits and other approvals from the City's Department of Planning, the City's Department of Public Works, the City's Planning Commission, Architectural Board of Review or any other City board or commission, that may be required in connection with the Project. Developer agrees that it will comply with all applicable federal, state and local laws with regard to housing opportunities and fair employment practices and will not discriminate on the basis of the protected classes identified in Section 749.01 of the Cleveland Heights Codified Ordinances (age, race, color, religion, sex, familial status, national origin, disability, sexual orientation, or gender identity or expression) in connection with the development of the Project Site or any related activities pursuant to this Development Agreement.

(F) ***Inspection of Work***. During construction, the City, its employees and agents, at its own expense, shall have the right at all reasonable times, after written notice to Developer, subject to Developer's reasonable guidelines and in a manner not to unreasonably interfere with or delay construction activities, to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement and for any other reasonable purpose. The foregoing shall not be deemed as limiting in any way the rights of the City's building inspectors to conduct inspections from time to time and without prior notice, in accordance with normal City inspection procedures.

(G) ***Mechanics Liens***. If a mechanics' lien shall at any time be filed against the Project, Developer shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged as a lien against the Project, by bonding or otherwise.

(H) ***Hazardous Materials***. Developer, its officers, agents, employees, contractors, subcontractors, guests and invitees shall not bring in, on or incorporate into the real property or any of the Project, any asbestos or other hazardous or toxic substance in contravention

of any federal, state, county or city health, safety, or sanitation law, ordinance, regulation or rule. If it is determined that Developer has caused or permitted hazardous materials to be brought in, on or incorporated into the Project Site or the Project Improvements in violation of law, Developer shall fully remediate such condition within thirty (30) calendar days following any determination by any government authority. In the event such remediation reasonably requires a longer period of time to complete, such thirty-day period shall be reasonably extended provided Developer has commenced such remediation within the initial thirty-day period and pursues and completes such remediation with due diligence.

(I) ***Sales Tax Exemption***. Upon the request of Developer, and as provided in Section 3(E) hereof, the City shall cooperate with Developer, contractors and subcontractors working on the Project Improvements to facilitate Developer's obtaining sales tax exemption certificate(s) under Section 5739.02 of the Ohio Revised Code, if available under existing law, for the purchase of materials to be used in the construction of the Project Improvements. The Developer acknowledges that any such exemption will require the participation of another governmental entity and may increase costs as a result of fees payable for that participation and increased complexity and resulting increases in fees and expenses of counsel and other advisors to transaction participants.

(J) ***Green Infrastructure and Utilization of Alternative Sources of Energy.*** Developer shall design and construct, at its expense, the Project to incorporate a variety of green building components. This shall be demonstrated through indication of meeting the criteria for standards such as the United States Green Building Council Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND), Enterprise Community Partners Enterprise Green Communities, Institute of Sustainable Infrastructure (ISI) Envision, Green Building Initiatives Green Globes, National Association of Home Builders National Green Building Standard, International Living Building Institute Living Building Challenge or equivalent green building/infrastructure program criteria acceptable to the Planning Director. The Project shall make best efforts to integrate various components but will not be required to meet specific thresholds and/or achieve a predetermined level of green building (or similar designation).

8. FINANCING; FEES AND EXPENSES OF CITY.

(A) ***Financing***. Subject to Section 10(B) hereof, the City will cooperate with Developer to establish the TIF Exemption under the TIF Statutes. The TIF Ordinance establishing the TIF Exemption will provide for the charge and collection of Service Payments and, if requested by Developer, Minimum Service Payments for the payment of Improvement Costs, and, as applicable, provide for the assignment of the Service Payments and any Minimum Service Payments, as follows: (i) by the City to another governmental issuer to enable that issuer to issue revenue bonds or provide financing for the Improvement Costs, and (ii) by the City or other governmental issuer to a corporate bond trustee acceptable to the Developer and City (the "TIF Financing"). The City will work with Developer to structure the TIF Exemption, and any TIF Financing, in a manner that is consistent with other components of Developer's plan of finance for the Project. Notwithstanding anything in this Agreement to the contrary, if requested, the City will cooperate with Developer and take such actions and execute and deliver such documents, including a loan or cooperative agreement, as may be reasonably required to enable the applicable issuer to provide the TIF Financing. The City will assist Developer, if requested, with its

negotiations with the School District concerning the compensation to be paid to the School District pursuant to the School Compensation Agreement. Any Service Payments not required to pay debt service on the TIF Financing or compensation payable to the School District pursuant to the School Compensation Agreement will be applied, at the sole discretion of the City, to one of the following uses: (a) to reimburse Developer for Improvement Costs paid by Developer, (b) to pay costs of additional improvements to the Project Site, or (c) to prepay a portion of the indebtedness incurred as part of the TIF Financing.

The City acknowledges that in addition to the TIF Financing, Developer expects to create a multi-tiered plan of finance for the Project and that Developer shall have the right to grant a security interest, mortgage or other encumbrance (in any event, an "Encumbrance") to secure debt related thereto ("Developer Financing") in Developer's leasehold interest in the Project Site and all of Developer's right, title and interest in the Project Improvements, the Parking Facilities Agreement and any fixtures, equipment and personal property of the Developer located in or on the Project Improvements or the City Parking Garage. Except as described in Section 3 of this Agreement and this Section 8, no such Encumbrance shall extend to, affect or be a lien upon the fee simple estate and interest of the City in the Project Site, any part thereof or the City Parking Garage, and any Encumbrance securing the Developer Financing shall be subordinate to the liens on the Project Site, the Project Improvements and the City Parking Garage securing the TIF Financing and any lender, as part of the Developer Financing, shall acknowledge and consent to such subordination in a manner acceptable to the City.

In connection with any Developer Financing, the City shall cooperate with Developer in the giving of any estoppel certificates with respect to the Lease and the Parking Facilities Agreement granting of any customary recognition and non-disturbance agreements with respect to the Lease and the Parking Facilities Agreement as may be reasonably required with respect to Developer Financing.

(B) ***Fees and Expenses***. Developer agrees to reimburse the City for all out-of-pocket costs incurred by the City in connection with the preparation and negotiation of the Memorandum of Understanding fully executed on July 13, 2021 (the "MOU"), this Agreement and any other documentation contemplated hereby upon the execution of the Lease of the Project Site to Developer (the "Costs"); provided the Costs are consistent with the estimates provided by the City to Developer which is attached hereto as **Exhibit J**. Developer acknowledges that the estimate of the Costs is based upon certain assumptions, and that such estimate may need to be adjusted by mutual agreement of the City and Developer to the extent circumstances change as the Project progresses. In the event this Agreement terminates for any reason prior to execution of the Lease, Developer shall be obligated to reimburse the City for the Costs, but the amount of such reimbursement shall not exceed $25,000. Such amount is exclusive of and in addition to any amount payable by the Developer directly to bond counsel, or other transaction participants or advisors, under any separate agreement signed or otherwise accepted by Developer

Developer will pay all costs and expenses incurred by Developer in connection with the development of the Project (subject to its rights to contest), including, but not limited to, all costs and expenses incurred by Developer in connection with title searches and title insurance, environmental studies and reports, feasibility studies, traffic impact studies and parking studies,

appraisals, surveys and plats, architectural and construction costs, financing costs, and all legal fees incurred by Developer.

9. DUE DILIGENCE; ECONOMIC FEASIBILITY; COMMUNITY ENGAGEMENT; CITY COOPERATION.

(A) ***Due Diligence***. Developer or its designee shall have a period of time commencing on the Effective Date and continuing for 90 days (the "Inspection Period") to conduct inspections, studies and investigations of the Project Site and the Project. Developer and its agents, representatives and contractors has been granted full access to the land comprising the Project Site, and to the City Parking Garage, pursuant to an Access Agreement dated as of _____, 2021 (the "Access Agreement") for purposes of conducting such physical and environmental inspections, tests and surveys, including without limitation a Phase I environmental survey, soil borings, geotechnical testing, surveys and title searches (collectively, the "Inspections") of the Project Site as Developer deems necessary or appropriate, in Developer's sole discretion, to determine the feasibility, costs and physical and other impediments to development of the Project. Developer and City hereby agree the Access Agreement shall remain in full force and effect through the first to occur of the Closing or the termination of this Agreement.

Developer shall allow the City to review any and all test results and reports relating to Inspection Work performed at the Project Site. Developer shall be responsible for any damage to the Project Site caused by Developer or Developer's inspectors or contractors during such Inspections, shall repair and restore the Project Site to its condition immediately prior to said Inspections, and shall indemnify and hold the City harmless from and against any and all costs, claims and liabilities arising therefrom except arising out of pre-existing conditions.

The City shall furnish or make available to Developer upon the Effective Date, all available information with respect to the history and physical and environmental condition of the Project Site which is in the City's possession or control, including without limitation any studies or tests, surveys, plats and title reports. Additionally, the City agrees that between the Effective Date and the date of Closing it will not take any actions or steps that might have a material impact on the environmental condition, soil condition, survey status or title of the Project Site or the City Parking Garage without Developer's prior consent.

Developer agrees that during the Inspection Period it will complete or cause to be completed, at its cost, such market studies and analysis (collectively, "Market Studies") as it deems necessary or appropriate to determine the economic feasibility of the Project as described in this Agreement. Developer shall allow the City to review any and all such Market Studies and analysis.

In the event that Developer is dissatisfied with the results of the Inspections for any reason whatsoever, or determines, based upon the Market Studies, that the Project, or any portion thereof, as described in this Agreement is not economically feasible for the Project Site, Developer may give written notice to the City to such effect and thereafter shall have no obligation or liability with respect to the Project other than the reimbursement of the Costs not to exceed $25,000 to the City. Alternatively, Developer may propose changes to the nature and scope of the proposed Project. If such changes are rejected by the City, Developer may likewise give written notice to the City and thereafter shall have no obligation or liability with respect to the Project other than the

reimbursement of the Costs to the City not to exceed $25,000. Such amount is exclusive of and in addition to any amount payable by the Developer directly to bond counsel, or other transaction participants or advisors, under any separate agreement signed or otherwise accepted by Developer

(B) ***Community Engagement***. Developer acknowledges that the City considers community engagement to be a critical component of the development process for the Project, and Developer agrees to cooperate with the City to gather input concerning the Project from residents and businesses in the Cedar-Lee district and the greater Cleveland Heights community.

Developer agrees that it shall meet personally with the Cedar Lee Special Improvement District (the "SID") to review for potential incorporation into the Project the design elements set forth in the SID's transportation and streetscape plan known as the Lee Road Streetscape Plan. Developer shall use reasonable efforts to enter into an agreement to participate in the SID that is acceptable to both Developer and the SID.

Developer agrees that as part of its Project review process it will make itself reasonably available to meet at convenient times and places with interested/inquiring task forces and community groups and to participate upon reasonable request in City Council meetings, public briefings and information sessions that are open to all interested parties. Developer agrees that, to the extent commercially reasonable, it will endeavor to incorporate into the Project, if and where appropriate, suggestions made during the foregoing.

(C) ***City Cooperation***. The City intends to work collaboratively with Developer to refine the Project and to assist Developer as much as possible with streamlining City zoning, permitting and design review and approval processes.

The City will cooperate with Developer in connection with the vacation of existing streets, dedication of new streets, re-platting/reconfiguration of the Project Site, changes in zoning (if applicable) and execution of reciprocal easement agreements or similar instruments with respect to the Project which are reasonably necessary to facilitate ingress, egress, access to utilities and access to the City Parking Garage and to other public improvements.

The City will cooperate with Developer with respect to requests that Developer makes, from time to time, of other governmental or quasi-governmental entities providing resources or funding to the Project (*i.e.*, Federal, State, County, Port Authority).

(D) ***Existing/Future Easements/Agreements/Restrictions.*** In designing the Project Site improvements, Developer shall reasonably consider and plan to reasonably accommodate adjacent property owners and businesses that utilize portions of the Project Site to serve and/or facilitate access to or use of the rear of these adjacent properties. Continuation of such uses may be reasonably pursued through establishment of easements or other similar instruments as may be required.

10. TAXES AND IMPOSITIONS; REAL PROPERTY TAX EXEMPTION.

(A) ***Taxes and Impositions***. Commencing on the Closing and thereafter during the term of the Lease, except as otherwise provided in the Parking Facilities Agreement, Developer shall pay all real property taxes, service payments, minimum service payments, assessments and

other similar impositions (prorated on a lien basis) with respect to the Project Site directly to the taxing authority before the same become overdue. The City will cooperate with Developer to cause all bills and statements for such taxes, assessments and other impositions to be delivered directly to Developer and shall promptly deliver to Developer any such bills and statements which the City receives. Except as otherwise provided in this Agreement or under the terms of the proposed TIF Financing, Developer shall be permitted to contest any real property taxes, assessments or other impositions with respect to the Project in accordance with applicable law and procedures. Developer may apply for and receive any and all other incentives available and applicable to the Project from any and all federal, state and local governmental authorities and the City will cooperate with Developer to apply for such incentives.

Developer shall direct its general contractor, and shall include in its construction contract with such general contractor, a requirement for such general contractor to (1) make all income tax payments associated with such work during construction of the Project and to direct its subcontractors to do the same and (2) provide to Developer and the City, on a timely basis, and direct its subcontractors to provide to Developer and the City, on a timely basis, reports for each monthly period during construction of the Project that summarize the number of employees working for such general contractor or subcontractor on the Project Site that are subject to income tax withholding and the amounts of payroll and income tax withheld for such monthly period.

(B) ***TIF Exemption***. The City agrees to take all such actions as are necessary to establish the TIF Exemption under the TIF Statutes; provided that the parties acknowledge that the establishment of the TIF Exemption under the TIF Statutes will require the passage of by the City Council of the TIF Ordinance. The parties acknowledge that the TIF Exemption shall not occur unless and until the City Council has passed the TIF Ordinance (provided that the passage of the TIF Ordinance is not guaranteed by this Agreement) and the State of Ohio Department of Taxation has issued a final determination with respect to "improvements", as defined in the TIF ~~Statues~~Statutes, to one or more parcels included in the Project Site in accordance with Section 5715.27 of the Ohio Revised Code. The City will cooperate with Developer in filing an application with the State of Ohio Tax Commissioner, including signing such application if required.

11. INSURANCE; INDEMNITY.

(A) ***Insurance during Construction***. Until such time as all construction has been completed, Developer shall maintain the following insurance: (i) Commercial General Liability insurance of at least Ten Million Dollars ($10,000,000) per occurrence, combined single limit/$10,000,000 aggregate (through a combination of primary and excess/umbrella coverage), naming the City as an additional insured and providing that Developer's policy is primary and any City policy is secondary and non-contributing, (ii) customary builder's risk insurance in the amount of one-hundred percent (100%) of the value of the Project Improvements (exclusive of land and foundation), (iii) worker's compensation insurance in such amount as required by law, and (iv) all insurance as may be required by Developer's lenders or the TIF Financing documents. Developer shall also require any contractors and subcontractors working on the Project Site to maintain (x) Commercial General Liability insurance of at least Five Million Dollars ($5,000,000) per occurrence, combined single limit/$5,000,000 aggregate, naming the City as additional insured and providing that the contractor's or subcontractor's policy is primary and any City policy is secondary and non-contributing, (y) worker's compensation insurance in such amount as required

by law, and (z) all insurance as may be required by Developer's lenders or the TIF Financing documents. All insurance policies (excluding worker's compensation insurance) shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City (ten days for cancellation for nonpayment of premiums).

(B) ***Waiver of Subrogation in Favor of City***. Notwithstanding anything in this Agreement to the contrary, Developer hereby waives all claims and rights of recovery, and on behalf of its respective insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Developer shall at all times protect itself against such loss or damage by maintaining adequate insurance. Developer shall cause its respective property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) ***General Indemnity***. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, and except to the extent caused by the negligence or willful misconduct of the Indemnified Parties (as defined below) or any one or combination thereof, Developer agrees to defend, indemnify and hold the City, its employees, agents, contractors and subcontractors (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation reasonable attorneys' fees), demands, judgments, liability and damages for personal injury or property damage (excluding diminution in value or claims of eminent domain) asserted against the Indemnified Parties as a result of or arising directly from the acts of Developer or its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at its request in connection with the Project (collectively referred to as "Claims"). Developer shall undertake, at its sole expense and through counsel reasonably satisfactory to the City's Law Director, the defense of the City in any Claims covered by the foregoing indemnification.

(D) ***Survival of Claims***. Developer's indemnification and defense obligations shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable Legal Requirements.

(E) ***Indemnification for Environmental Matters***. Developer agrees to indemnify and hold the Indemnified Parties harmless from and against all Claims asserted against any Indemnified Party as a result of the existence on, or release from, the Property, of Hazardous Materials, or arising out of any claim for violation or failure to comply with Legal Requirements concerning environmental protection, as well as wetlands protection laws, applicable to the construction site or its environs in connection with the Project, but only to the extent any of the foregoing are caused by any act of omission or commission of Developer, or any party under Developer's direction, or any of their agents, employees, independent contractors, invitees, licensees, successors or assignees. Nothing in this Agreement is meant to release, extinguish or

otherwise alter or interfere with any rights which the Indemnified Parties may now or hereafter have against any other Person for any environmental liabilities as a result of such Person's former, present or future ownership, occupancy or use of or interest in, any real property included in or in the vicinity of the Project Site.

(F) ***Claims***. In case any Claim or demand is at any time made, or action or proceeding is brought against or otherwise involving an Indemnified Party in respect of which indemnity may be sought hereunder, the Indemnified Party seeking indemnity promptly shall give notice of that action or proceeding to Developer, who upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of the Indemnified Party to give that notice shall not relieve Developer from any obligation under this section unless, and only to the extent, that a failure to give notice materially prejudices the defense of the action or proceeding by Developer. An Indemnified Party may employ separate counsel and participate in the defense of an indemnified Claim, but the fees and expenses of such counsel shall be paid by the Indemnified Party unless (a) the employment of such counsel has been specifically authorized by Developer in writing, (b) Developer has failed to assume the defense and to employ counsel, or (c) the named parties to any such action (including any impleaded parties) include both an Indemnified Party and Developer and such Indemnified Party has been advised by its counsel that there may one or more legal defenses available to it which are different from or additional to those available to Developer, in which case, if the Indemnified Party notifies Developer in writing that it elects to employ separate counsel at Developer's expense, Developer shall not have the right to assume the defense of such action on behalf of such Indemnified Party and Developer shall be responsible for payment of the fees and expenses of such separate counsel. An Indemnified Party seeking indemnity agrees to fully cooperate with Developer, to the extent such cooperation does not prejudice the position of such Indemnified Party, and lend Developer such assistance as Developer shall reasonably request in defense of any claim, demand, action or proceeding. Developer shall not, nor shall any Indemnified Party, be liable for any settlement made without its consent.

(G) ***Successors and Assigns***. The indemnification set forth in this Section is intended to and shall include the indemnification of all affected officers, officials, directors, employees and agents of each Indemnified Party, respectively, and their successors and permitted assigns. That indemnification is intended to and shall be enforceable thereby to the full extent permitted by law and shall survive the termination of this Agreement.

12. CASUALTY.

In the event of damage to ~~the and~~ the Project Improvements or the City Parking Garage by fire or other casualty, the casualty provisions set forth in the Lease or Parking Facilities Agreement, each to the extent applicable, shall govern.

13. DEFAULT; REMEDIES.

(A) ***Default***. The occurrence of any of the following shall be an "event of default" under this Agreement:

(i) The dissolution of Developer or the filing of any bankruptcy or insolvency proceedings by or against it which is not dismissed or removed in 90 days, the appointment of a receiver (temporary or permanent) for Developer which is not dismissed or removed in 90 days, the attachment of, levy upon, or seizure by legal process of any property of Developer which is not dismissed or removed in 90 days; or

(ii) A default by Developer under the Lease (after giving effect to any notice or grace period provided for therein);

(iii) The failure of Developer to perform or observe any of its obligations, duties, or responsibilities under this Agreement (including without limitation the failure to timely complete the Project Improvements), and failure by Developer to correct such failure within thirty (30) days after receipt of written notice thereof from the City; provided, however, that if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, an event of default shall not be deemed to have occurred if Developer commences to cure the default within such thirty day period and thereafter diligently completes such cure; or

(iv) The failure of the City to perform or observe any of its obligations, duties or responsibilities under this Agreement, which continues for sixty (60) days after receipt of written notice thereof from Developer; or

(v) Any representation or warranty made by Developer herein or any statement made by Developer (as opposed to a third party) in any report, certificate, financial statement, in any agreements or other instruments furnished in connection with this Agreement or the development of the Project shall at any time prove to have been materially false or misleading in any material respect when made or given.

Notwithstanding the foregoing, if, by reason of Force Majeure, Developer is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (ii) or (iii) hereof, Developer shall not be deemed in default during the continuance of such inability. However, Developer shall promptly give notice to the City of the existence of an event of Force Majeure within thirty (30) days after the commencement thereof and shall use commercially reasonable efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within Developer's discretion. The term "Force Majeure" shall mean, without limitation, the following:

> acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; delays caused by City or any governmental

authority with respect to permitting, zoning or similar issues; or any cause, circumstance or event, whether similar or dissimilar to the foregoing, not reasonably within the control of Developer; provided that inability to obtain necessary financing shall not, by itself, constitute an event of Force Majeure.

The declaration of an Event of Default under subsection (i) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

(B) ***Remedies***. Upon the occurrence of an event of default by Developer under this Agreement, the City shall be entitled to (i) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of the defaulting party, and (ii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including without limitation pursuing an action for specific performance against the defaulting party. Upon the occurrence of an event of default by the City under this Agreement, Developer will be entitled to enforce the obligation of the City through exercising its rights under law or in equity. Developer shall be liable for all direct costs and damages, including without limitation reasonable attorneys' fees, suffered or incurred by the City as a result of Developer's default under this Agreement or the City's termination of this Agreement. The failure of the City or Developer to insist upon the strict performance of any covenant or duty, or to pursue any remedy, under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

(C) ***Lender's Rights to Notice and Opportunity to Cure***. Developer's lender's rights to notice and opportunity to cure a default under Section 9(B) of the Lease shall apply to this Agreement such that all of the obligations of the City and all of the rights of a lender with respect to an event of default by Developer under the Lease shall apply to an event of default by Developer under this Agreement as if such Section 9(B) of the Lease was restated herein in its entirety with the references to "Lease" changed to "Agreement".

14. NOTICES.

All notices given by the parties hereunder shall be deemed given if delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City: City of Cleveland Heights
40 Severance Circle
Cleveland Heights, Ohio 44118
Attention: Economic Development Director

With a copy to:	City of Cleveland Heights 40 Severance Circle Cleveland Heights, Ohio 44118 Attention: City Manager
And a copy to:	City of Cleveland Heights 40 Severance Circle Cleveland Heights, Ohio 44118 Attention: Director of Law
To Developer:	F & C Development, Inc. One Indiana Square, Suite 3000 Indianapolis, IN 46204 Attention: Deron J. Kintner
And a copy to:	Arik A. Sherk, Esq. Thompson Hine LLP 10050 Innovation Drive, Suite 300 Dayton, Ohio 45342-4934

If Developer sends a notice to the City alleging that the City is in default under this Agreement, they shall simultaneously send a copy of such notice by U.S. certified mail to: Law Director, City of Cleveland Heights, 40 Severance Circle, Cleveland Heights, OH 44118.

15. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(A) Developer is a corporation duly organized and validly existing under the laws of the State of Indiana, licensed to do business in the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(B) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for therein. This Agreement has by proper action been duly authorized, executed and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, a valid and binding obligation of Developer.

(C) The execution, delivery and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality applicable to Developer, or the organizational documents of Developer, or any mortgage, indenture, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(D) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, at law or in equity or before or by any governmental authority that, if determined adversely to Developer, would have a material impact on Developer's ability to perform its obligations hereunder.

(E) Developer shall use commercially reasonable efforts to take all actions as are necessary to satisfy or fulfill the Conditions listed in Section 4(B) that are to be satisfied by Developer.

(F) The statements made by Developer in the documentation provided by Developer to the City that are descriptive of Developer or the Project have been reviewed by Developer and do not, to the knowledge of Developer, solely as of the Effective Date, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

The City represents that the City has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed and delivered by the City and all actions necessary have been taken to constitute this Agreement, when executed and delivered, a valid and binding obligation of the City. The City shall use its reasonable best efforts to take all actions as are necessary to satisfy or fulfill the conditions listed in Section 4(B) that are to be satisfied by the City.

16. REPORTING REQUIREMENTS; COMMUNICATIONS; PRESS RELEASES.

(A) ***Submission of Records and Reports; Records Retention***. Until such time as ~~the and~~ the Project Improvements have been completed, Developer shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be reasonably requested by the City pertaining to Developer, the Project, or this Agreement, including without limitation financial statements certified by an officer of Developer, construction contracts and subcontracts, all design documents and drawings, and such other reports and information as may be required for compliance with programs and projects funded by the City or Developer's lender (including periodic reports prepared by any construction inspector reporting to such lender) (collectively, "Records and Reports"). All Records and Reports compiled by Developer and furnished to the City shall be in such reasonable form as the City may from time to time require.

(B) ***City's Right to Inspect and Audit***. From and after the Effective Date, Developer shall permit the City and its designees and auditors, at the City's cost and expense, to have reasonable access to and to inspect and audit Developer's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer to the City, Developer shall reimburse the City for its reasonable out-of-pocket costs associated with such inspection or audit.

(C) ***Communications and Coordination***. Attached as **Exhibit I** is the plan for communication and coordination between Developer and the City during the pre-construction

planning period and the construction period for the Project, and such plan is incorporated as part of this Agreement.

(D) ***Press Releases***. Developer agrees not to issue any press releases or make other public announcements with respect to the Project without prior written approval of the City.

(E) ***Litigation Notice***.

(i) Developer shall give the City prompt notice of any action, suit or proceeding by or against Developer at law or in equity, or before any governmental instrumentality or agency, or of any of the same which is threatened in writing, of which Developer has notice, and which, if adversely determined, would materially impair the right or ability of Developer to carry on the business activities of Developer or the right or ability to operate the Project or would materially and adversely affect its ability to perform its obligations hereunder.

(ii) The City shall give Developer prompt notice of any action, suit or proceeding by or against the City at law or in equity, or before any governmental instrumentality or agency, or of any of the same which is threatened in writing, of which the City has notice, and which, if adversely determined, would materially impair the right or ability of the City to carry on the business activities of the City or would materially and adversely affect its ability to perform its obligations hereunder.

17. <u>DISPUTE RESOLUTION</u>.

If the parties cannot reach resolution on a matter relating to or arising out of the Agreement, the parties shall endeavor to reach resolution through good faith direct discussions between the parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the parties' representatives are not able to resolve such matter within five (5) business days of the date of first discussion, the parties' representatives shall immediately inform senior executives of the parties in writing that resolution was not effected. Upon receipt of such notice, the senior executives of the parties shall meet within five (5) business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) business Days from the date of first discussion, the parties shall submit such matter to dispute resolution procedures provided herein.

Should the parties be unable to resolve said dispute through good faith negotiations, the dispute shall be decided by arbitration in accordance the Construction Industry Rules of the American Arbitration Association before an arbitrator with substantial experience in construction law. Any arbitration shall provide for the conduct of discovery by both parties pursuant to the Ohio Rules of Civil Procedure. Failure of either party to provide discovery in a pending arbitration shall terminate the agreement to arbitrate upon written notice of termination by the party requesting discovery to the opposing party. Such termination shall divest the arbitrator(s) of jurisdiction and neither party shall be bound by any determination of the arbitrator(s). The arbitrator(s) are not empowered to award punitive damages and each party expressly waives any right to punitive damages. The conduct of any hearing shall be in accordance with the Ohio Rules of Evidence and Civil Procedure and the arbitrator shall apply Ohio law. Nothing contained in this paragraph shall

prevent either party from obtaining injunctive relief from a court of competent jurisdiction to obtain provisional relief pending a decision on the merits by the arbitrator(s). The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

18. GENERAL PROVISIONS.

(A) ***Assignment***. Developer shall not assign its rights or interests under this Agreement without the prior written consent of the City Manager, which shall not be unreasonably withheld, delayed and conditioned; except that Developer's assignment to an affiliate of Developer (with prior written notice to the City), and Developer's collateral assignment of its rights under this Agreement to its lenders for the Project, and full and unfettered assignability by such lender, without the consent of the City, upon an exercise by such lender of its rights under its loan documents, shall be permitted; provided however that no such assignments by Developer to an affiliate or lender shall relieve Developer of its obligations or liability to the City under this Agreement.

(B) ***Entire Agreement; Conflicting Provisions***. This Agreement (including the exhibits hereto) and the other agreements referred to herein contain the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

(C) ***Amendments and Supplements***. Recognizing the likelihood of changing conditions (such as demand and supply factors and changes in available tenants in the market area), the need for development of the Final Development Plan and the need to finalize terms and conditions of financings relating to the Project, the parties agree to review and consider in good faith amendments to this Agreement as necessary or appropriate. This Agreement may be amended only by a written amendment signed by all parties. The City agrees to reasonably consider any requests for amendments to this Agreement requested by Developer's lender.

(D) ***Governing Law***. This Agreement shall be governed by and construed in accordance with the laws of the City of Cleveland Heights and the State of Ohio. All actions regarding this Agreement shall be brought in the Cuyahoga County Court of Common Pleas, and Developer agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) ***Binding Effect***. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns. Each party to this Agreement hereby represents and warrants that it is executing this Agreement with the full and proper authority and that the parties whose names appear hereon are duly authorized and empowered to make and execute this Agreement.

(F) ***Captions***. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) ***Severability***. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) ***No Recording***. This Agreement shall not be recorded in the Cuyahoga County Recorder's office.

(I) ***Time***. Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement, provided that the time periods for the performance of Developer's obligations shall be extended for delays caused by Force Majeure as described in Section 13 hereof.

(J) ***No Third Party Beneficiaries***. The parties hereby agree that, except for the rights of Developer's lenders under Section 13 (Default; Remedies) hereof, no third party beneficiary rights are intended to be created by this Agreement.

(K) ***No Brokers***. The parties represent that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(L) ***Official Capacity***. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity. No official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount or amounts which may become due to Developer or any successor to Developer or on any obligations under the terms and conditions of this Agreement.

(M) ***Contingency for Legislative Authorization from City Council***. Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement if for any reason City Council does not pass any and all additional ordinances as may be necessary for the City to enter into any amendments to this Agreement.

(N) ***Waiver***. No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition, or duty of the other party shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty to be observed by the other party.

(O) ***Termination Upon Completion***. Upon completion of construction of the Project in substantial accordance with the terms of this Agreement, this Agreement shall terminate and be void and of no further force and effect except as provided herein with respect to provisions that survive termination. The City shall execute any reasonable certificates requested by Developer to memorialize such termination, provided that the execution of such document or documents shall not be a condition to such termination.

(P) ***Agency***. Notwithstanding anything herein to the contrary, where Developer is identified herein as acting as the agent of the City, such designation shall not impose any additional duties, liabilities or obligations upon Developer outside or in addition to those specifically and expressly set forth in this Agreement.

(Q) ***Exhibits***. The following Exhibits are attached to this Agreement and made a part hereof:

Exhibit A - Site Plan
Exhibit B - Revised Developer Proposal dated December 30, 2020 including the Conceptual Drawing Depicting Improvements
Exhibit C - Preliminary Budget – Improvements
Exhibit D - Source and Uses of Funds
Exhibit E - Form of Ground Lease
Exhibit F - Merchandising Plan
Exhibit G - [Reserved]
Exhibit H - Preliminary Schedule/Timeline
Exhibit I - Plan for Communication and Coordination between Developer and City
Exhibit J - Estimate of City Costs
Exhibit K - Form of Parking Facilities Agreement

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Executed by the parties on the dates indicated below, effective as of the latest of such dates (the "Effective Date").

CITY OF CLEVELAND HEIGHTS, OHIO	**F & C DEVELOPMENT, INC.**
By:_____	By: _____
_____, City Manager	Name: _____
	Title:_____
Date:_____	Date:_____

Approved as to Form:

By:_____
City Law Director

EXHIBIT A
RESOLUTION 154-2021

CITY'S FISCAL OFFICER CERTIFICATE

It is hereby certified that the amount required to meet the contract, agreement, obligation, payment or expenditure for the attached agreement between F & C Development, Inc. and the City of Cleveland Heights has been lawfully appropriated for such purpose and is in the Treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

_____

Amy Himmelein, Director of Finance

Date:_____

EXHIBIT A

TO DEVELOPMENT AGREEMENT

SITE PLAN

[SEE ATTACHED]

Initial Proposed Site Plan

D. Proposed Development Vision – Site Plan



CEDAR-LEE-MEADOWBROOK
CONCEPTUAL SITE PLAN

FLAHERTY & COLLINS PROPERTIES
CITY ARCHITECTURE

62

Initial Proposed Site Plan

D. Proposed Development Vision – Site Plan – Expanded Option



CEDAR-LEE-MEADOWBROOK
CONCEPTUAL EXPANDED SITE PLAN – 2 ADDITIONAL SITES (CUT BEAUTY SCHOOL & HEIGHTS ANIMAL HOSPITAL)

FLAHERTY & COLLINS PROPERTIES
CITY ARCHITECTURE

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Updated Preliminary Site Plan



EXHIBIT B

REVISED DEVELOPER PROPOSAL DATED DECEMBER 30, 2020 INCLUDING THE CONCEPTUAL DRAWING DEPICTING IMPROVEMENTS

On file with the City's Economic Development Department and available to view on the City's website at: https://www.clevelandheights.com/DocumentCenter/View/8864/Flaherty-and-Collins-Cedar-Lee-Meadowbrook-RFQ-RFP-Response?bidId=

EXHIBIT C

PRELIMINARY BUDGET – PROJECT IMPROVEMENTS

PRELIMINARY IMPROVEMENTS BUDGET

Site Work	3,500,000
Hard Construction Cost	34,000,000
Commercial Hard Costs	1,000,000
Total Hard Construction Cost	**$38,500,000**

EXHIBIT D

SOURCES AND USES OF FUNDS

USES OF FUNDS	Total
To Purchase Land	**$500,000**
Constructon Costs, incl Sitework	38,500,000
Total Hard Construction Cost	**$38,500,000**
Architectural & Engineering	
Architectural and Engineering Fees	1,925,000
Architectural Services Fees	150,000
Construction Period Costs	
Real Estate Attorney & Consultant	200,000
Construction Loan Legal	100,000
Construction Loan - Lender	75,000
City Fees	50,000
Title and Recording	200,000
Construction Interest	1,433,369
Financing Fee - Construction	318,527
Furnishings and Equipment	575,000
Other Period Costs	
Taxes	500,000
Lease-up Incentive	61,800
Commercial Leasing Commissions	196,800
Capitalized Lease-up Marketing	15,000
Working Cap. / Init. Oper. Def.	300,000
City Connection/Impact Fees/Perm	824,000
Tenant Improvements	656,000
Market Study	5,000
Appraisal	15,000
Insurance	300,000
Land Broker Fee	-
Organizational (e.g. Partnership)	10,000
Construction Management	770,000
Development Contingency	1,925,000
Total Development Cost	**$49,605,496**
Developer Overhead	2,408,606
TOTAL USES	**$52,014,102**

SOURCES OF FUNDS	Total
Developer Contribution	38,014,102
Project Gap/TIF Proceeds	14,000,000
TOTAL SOURCES	**$52,014,102**

EXHIBIT E

FORM OF GROUND LEASE

[SEE ATTACHED]

FORM OF

GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into as of _____ , _____ (the "Effective Date") by and between the **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation, having an address of 40 Severance Circle, Cleveland Heights, Ohio 44118 (the "City"), and **[_____]**, an Ohio limited liability company, having an address of One Indiana Square, Suite 3000, Indianapolis, Indiana 46204 (together with its successors and permitted assigns, "Ground Lessee").

RECITALS:

A. The City and F & C Development, Inc. ("Developer") are parties to a Development Agreement with the effective date of _____, 2021 (as amended from time to time, the "Development Agreement"), which provides for the development of the property commonly known as the "Cedar-Lee-Meadowbrook" parcels, consisting of approximately ___ acres ~~[acreage without garage]~~ located between Cedar Road and Meadowbrook Road, in the City of Cleveland Heights, Ohio, as described in Exhibit A attached to this Lease ~~[legal description should carve out garage so that it is not in Project Site until Transfer Date]~~ (the "Project Site"). The Project Site is currently owned by the City.

B. Pursuant to the City's prior and current urban redevelopment plans for the Project Site and the Development Agreement, (i) the City agreed that upon fulfillment of certain conditions specified in the Development Agreement it will lease the Project Site to Ground Lessee, and (ii) the Developer has agreed, subject to the terms of the Development Agreement, to build a mixed-use development on the Project Site that will include (a) approximately 200-225 market-rate apartments, (b) approximately 5,000-9,000 square feet of first floor non-residential space such as commercial, retail and restaurant space, (c) public gathering and green spaces, and (d) all sidewalks located on Project Site, as well as driveways, access ways, street and parking lot lighting and utility connections on the Project Site, and sanitary storm water drainage and other infrastructure improvements on the Project Site, in each case, to the extent required in the Final Development Plan (as defined in the Development Agreement) (collectively, the "Project"), all as further outlined in the Development Agreement.

C. In connection with a prior plan for redevelopment of the Project Site, the City constructed and owns a structured parking garage (the "City Parking Garage") that will be incorporated into the Project, and the ownership, use, management and maintenance of the City Parking Garage will be on the terms provided in a Parking Facilities Agreement dated as of _____, _____ (as amended from time to time, the "Parking Facilities Agreement") between the City and the Developer.

[D. Pursuant to an Assignment and Assumption Agreement dated of even date herewith between Developer and Ground Lessee, Developer assigned, on a non-exclusive basis, all of its rights, title, interests, duties, obligations and liabilities (other than _____) under the Development Agreement to Ground Lessee, an affiliate of Developer, and Ground

Lessee (without release of, or other limitation on, the Developer as to any of such duties, obligations and liabilities under the Development Agreement) assumed all such rights, title, interests, duties, obligations and liabilities under the Development Agreement.]

E. The City and Ground Lessee now desire to execute this Lease to memorialize the City's lease of the Project Site to Ground Lessee, an affiliate of Developer, and Ground Lessee's obligations with respect to construction and operation of the Project, as contemplated by the Development Agreement.

F. Execution of this Lease was authorized by [Ordinance No. _____, passed by City Council on _____].

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GRANT.

(A) Grant. On the terms and conditions set forth in this Lease, the City does hereby lease the Project Site to Ground Lessee, and Ground Lessee does hereby lease the Project Site from the City, for the Term established under section 3 below. The parties acknowledge that, as part of the transactions contemplated under the Development Agreement, Ground Lessee has conducted its own title search, survey work, environmental assessments, soil and geotechnical studies, and other due diligence in order to familiarize itself with the condition and characteristics of the Project Site. The City has not made any representations or warranties concerning the condition or characteristics of the Project Site or the suitability or fitness of the Project Site for the construction and operation of the Project, and Ground Lessee acknowledges and agrees that Ground Lessee is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Project Site. On the Commencement Date (as defined in section 3 below), Ground Lessee shall accept the Project Site in "as is" condition.

(B) Title Matters. The City is leasing the Project Site to Ground Lessee subject to and together with (as the case may be) any and all easements, covenants, restrictions and other matters of record affecting the Project Site as of the Effective Date of the Development Agreement and any other encumbrances agreed to in writing by the City and Ground Lessee (hereinafter defined; collectively "Record Matters"). Ground Lessee shall not take any actions that would violate any Record Matters. Except for Permitted Mortgages under section 9 (Permitted Leasehold Mortgages) below and easements, covenants, conditions and restrictions that are consistent with the Final Development Plan (as defined in the Development Agreement), in the exercise of reasonable judgment, or any future development, improvement or alteration of the Property, or any portion thereof (collectively, the "Development Encumbrances") which future development, alteration or improvement has been approved (to the extent such approval is required by Legal Requirements) through the applicable review process of the City (the "Approved Process"), Ground Lessee shall not have the right to grant any additional easements or otherwise further encumber or restrict the City's title to the Project Site without the City's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed. The City shall not have the right to grant any additional easements or otherwise further encumber the City's title to the Project Site or materially

and adversely affect Ground Lessee's ability to construct and operate the Project Site and the Improvements, or any future alterations, additions or improvements, without the Ground Lessee's prior written consent, which consent may be withheld in Ground Lessee's sole discretion.

2. CONSTRUCTION; OWNERSHIP OF PROJECT SITE AND IMPROVEMENTS.

(A) Construction of Improvements. Ground Lessee shall construct the Improvements in accordance with the requirements set forth in the Development Agreement. As used herein, the term "Improvements" shall mean the Project, together with all other alterations, additions, modifications and improvements made now or in the future to the Project Site; provided that prior to the Transfer Date (as defined in the Parking Facilities Agreement) the term "Improvements" shall not include the City Parking Garage

(B) Ownership of Project Site and Improvements. Throughout the Term, the Ground Lessee shall be deemed to be the owner of Improvements, and except as set forth herein, the City shall remain the owner of the Project Site.

3. TERM.

(A) Term. The term ("Term") of this Lease shall commence on the Effective Date, as defined on the signature page hereof (also referred to herein as the "Commencement Date"), and, unless extended or sooner terminated in accordance with the provisions of this Lease, shall expire on the last day of the calendar month in which the ninety-ninth anniversary occurs. All obligations of Ground Lessee under this Lease that have accrued but have not been fully performed as of the end of the Term, including without limitation indemnity obligations, shall survive the expiration or termination of the Term until fully performed, provided that in the event Ground Lessee exercises its option to purchase under Section 3(c) only Ground Lessee's indemnity obligations shall survive.

(B) Grant and Exercise of Right of First Offer. Ground Lessee shall provide written notice to the City if Ground Lessee intends to sell some or all of the Improvements, identifying those Improvements Ground Lessee desires to sell and any material terms of the sale determined by Ground Lessee at that time, specifically including the purchase price at which said Improvements will be offered. The City and Ground Lessee shall negotiate in good faith for sixty (60) days for the City to buy such Improvements. In the event the City (or a related body or entity) and Ground Lessee have not executed a purchase agreement for such Improvements within such sixty (60) day period, Ground Lessee shall be free to sell the Improvements to any third party, subject to the requirements in Section 13 hereof relating to the assignment of the portion of the Lease attributable to such Improvements, and further provided that (i) the sales price of such Improvements to such third party is equal to or greater than 80% of the lowest sales price offered to the City during such negotiations, and (ii) Ground Lessee consummates such sale within 12 months after the expiration of such sixty (60) day period. If the conditions in (i) or (ii) of the immediately preceding sentence are not met, then provided that this Lease hasn't otherwise expired or been terminated pursuant to the terms and conditions hereof, the right of first offer to purchase such Improvements granted hereby shall be reinstated for the remainder of the term of this Lease with respect to the applicable Improvements. The foregoing right of first offer shall be personal

to Ground Lessee and shall not run with the land and upon sale by Ground Lessee of any Improvements in accordance with the terms and conditions contained herein, City shall have no further right of first offer with respect to the Improvements so sold.

(C) Purchase Option.

(i) Provided that an Event of Default has not occurred and is continuing at the time of Ground Lessee's exercise, Ground Lessee shall have the option to purchase fee simple title to the Project Site from the City at any time after the fortieth (40^{th}) anniversary of the Effective Date for $10.00 upon ninety (90) days prior written notice to the City.

(ii) If Ground Lessee exercises its option to purchase, the City shall convey to Ground Lessee all of its right, title and interest to the Project Site, by transferable and recordable limited warranty deed, in its AS-IS, WHERE-IS condition and with ALL FAULTS, and subject the following (the "Permitted Exceptions"): (a) real estate taxes and assessments not then due and payable; (b) Record Matters and encumbrances created by City but only to the extent and in the manner permitted hereunder or which are created by Ground Lessee; (c) zoning, building and other laws, ordinances and regulations; and (d) all legal highways (collectively, the "Permitted Exceptions").

If the City's title to the Project Site is subject to any liens, encumbrances, easements, conditions, restrictions or encroachments created by the City in violation of this Lease (any of these matters being referred to as a "Title Defect"), other than the Permitted Exceptions, the City, within 30 days after written notice from Ground Lessee of the Title Defect, shall remedy or remove the Title Defect. If the City is unable to remedy or remove the Title Defect within the 30-day period, Ground Lessee may, at its option, by written notice to the City, (i) accept such title to the Project Site as the City is able to convey, (ii) if City caused such encumbrance in violation of the terms and conditions contained in this Lease, remove such Title Defect and recover reasonable and actual, out-of-pocket costs thereof from the City, or (iii) terminate its exercise of the option to purchase the Project Site, in which case the parties shall be released from all further obligations under this Section. Notwithstanding the foregoing, the City shall have the obligation to discharge any monetary liens placed or suffered to be placed upon the Project Site by the City.

(iii) The closing shall occur within 90 days after Ground Lessee gives the City notice of Ground Lessee's exercise of option as provided in Section 3(C)(i). At the closing, Ground Lessee or its designee shall pay the purchase price for the Project Site. The rent and other sums then due and payable under this Lease shall be prorated to and including such date of purchase, and the City shall deliver to Ground Lessee its limited warranty deed and any other instruments reasonably required by Ground Lessee's title company or otherwise necessary to effectively convey to Ground Lessee the title to the Project Site, provided that the City shall not take on material, additional liability thereby, nor have any obligation whatsoever to indemnify any party in connection therewith.

(iv) If the City fails or refuses to convey title to the Project Site to Ground Lessee in accordance with, and by the time required by, this Lease, then Ground Lessee shall have the right to enforce specific performance of the City's obligations to convey the Project

Site to Ground Lessee by writ of mandamus (in which event the City waives the defense of adequate remedy at law). Until such time as the City shall convey the Project Site with the title as required by this Lease, Ground Lessee may extend the term of this Lease on all of the terms and conditions as provided in this Lease.

4. PERMITTED USE.

Ground Lessee shall initially use the Project Site for the construction, use, maintenance, replacement and operation of the Project (including any and all ancillary or related uses) and for no other purposes without the consent of the City's Mayor which shall not be unreasonably withheld, delayed or conditioned. After the completion of the construction of the Project, Ground Lessee may use the Project Site for all lawful purposes so long as Ground Lessee complies with the Approved Process to the extent applicable and applicable law and without consent of the City's Mayor (unless such consent is required by the Approved Process). Ground Lessee shall operate the Project Site and Improvements during the Term in a first-class manner. Ground Lessee shall obtain and maintain all necessary licenses and permits and shall operate and maintain the Project Site and Improvements in compliance with all Legal Requirements, as defined below. Throughout this Agreement, the term "Legal Requirements" shall mean all applicable federal, state and local laws, codes, ordinances and other governmental requirements, including without limitation all environmental laws, all open meeting laws and all public records laws. As provided in the Parking Facilities Agreement, commencing on the Stabilization Date (as defined in the Parking Facilities Agreement) and continuing through the remainder of the Term, Ground Lessee shall make no fewer than __ parking spaces in the City Parking Garage available at all times for use by the general public (the "Public Parking Spaces") as provided in Section 7(C) hereof.

5. RENT.

(A) Base Rent. Beginning on the Commencement Date, and on each anniversary thereof throughout the Term, Ground Lessee shall pay the City annual base rent ("Base Rent") in the amount of Ten and No/100 Dollars ($10.00). Ground Lessee may, at its option, prepay Base Rent for the entire Term on the Commencement Date.

(B) Additional Rent. This is a "triple net" lease, and throughout the Term, Ground Lessee shall pay all costs associated with the Project Site and Improvements, including without limitation, taxes (or payments in lieu thereof, whether imposed by law, by contract or by covenant running with the land), insurance, maintenance costs and operating expenses. Ground Lessee shall make such payments directly to the persons or entities to whom such payments are owed.

(C) Net Lease. This Lease is a net lease and City, in its private capacity as landlord hereunder, shall not be required to provide any services or security, incur any costs or do any act or thing with respect to the Project Site or the appurtenances thereto, except as may be specifically provided herein or in the Parking Facilities Agreement. The foregoing shall not relieve the City of its obligations as a municipal corporation.

6. REAL ESTATE TAXES.

Except as otherwise provided in the Parking Facilities Agreement, Ground Lessee shall pay all real estate taxes and assessments levied against the Project Site and Improvements that

become due and payable during the Term (or payments in lieu thereof, whether imposed by law, by contract or by covenant running with the land). Upon each such payment, Ground Lessee shall furnish the City with appropriate evidence of payment. Ground Lessee is permitted to contest the validity or amount of taxes or assessments. If Ground Lessee institutes proceedings to so contest the validity or amount of such taxes or assessments and such proceedings are not prohibited by applicable law or contractual agreement, the City, at no cost to the City, shall cooperate with Ground Lessee to a reasonable extent and to the extent that the participation of the owner of the lessor's interest under this Lease is required, but Ground Lessee may not defer payment of such taxes during such contest unless permitted by law. Ground Lessee shall be entitled to any and all amounts recovered which relate to tax payments previously made by Ground Lessee.

7. OPERATION OF THE PROJECT.

(A) Maintenance & Repairs: Services. Throughout the Term after completion of the construction of the initial Improvements, Ground Lessee shall keep the Project Site and Improvements, including all abutting sidewalk areas, in good, clean and safe condition and repair, subject however, to reasonable wear and tear and to damage by fire or other casualty (as more specifically provided in Section 11) or taking by eminent domain (as more specifically provided in Section 11). The City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of the Project Site or Improvements under this Lease. The foregoing shall not relieve City of its obligation as a municipal corporation.

(B) Revenue from Project. Throughout the Term, Ground Lessee shall be entitled to collect all revenue generated from the operation of the Project Site and Improvements ("Project Revenue").

(C) City Parking Garage; Parking Facilities Agreement. The City Parking Garage may be "wrapped" with multi-family housing units developed by Developer as part of the Project. The City and Developer have entered into the Parking Facilities Agreement pursuant to the terms of which (i) the City has refinanced the City's tax-exempt debt associated with the City Parking Garage (the "Tax-Exempt Garage Debt"), with a federally taxable financing (the "Taxable Garage Debt") that matures on _____, and the City's annual debt service requirements with respect to the Taxable Garage Debt are approximately $_____ annually; (ii) on the terms described in the Parking Facilities Agreement, from and after the Occupancy Date (as defined in the Parking Facilities Agreement), to, but not including, the Stabilization Date (as defined in the Parking Facilities Agreement), Developer will assume a proportionate amount equal to the Applicable Percentage (as hereinafter defined) of all maintenance costs and property tax payments associated with the City Parking Garage; (iii) on the terms described in the Parking Facilities Agreement, from and after the Stabilization Date, (a) Developer will agree to purchase permits from the City for the Applicable Percentage of the parking spaces in the City Parking Garage for use by Developer's tenants and guests in an area of the City Parking Garage that is reserved for such tenants' use for an aggregate annual purchase price equal to ~~the Applicable Percentage~~ fifty percent (50%) multiplied by the aggregate annual debt service on the Taxable Garage Debt; and (b) the remaining spaces in the City Parking Garage and certain parking spaces in areas outside the City Parking Garage but on the Project Site as further described in the Parking Facilities Agreement (the "Project Site Parking Areas") will remain public parking at all times throughout the term of this Ground Lease (collectively, the "Public Parking Spaces); and (iv) Developer will

continue to purchase the number of permits as described in subsection (iii)(a) above until the maturity date of the Taxable Garage Debt, at which time the City will transfer ownership of the City Parking Garage to Developer, for no consideration, subject to (1) this Ground Lease, which shall be amended to include the City Parking Garage parcel and otherwise remain in place, and (2) the agreement of Developer to continue to provide public access to the Public Parking Spaces until the earlier of (i) the expiration of the term of this Ground Lease, or (ii) the exercise by the Developer of its option to purchase the Project Site pursuant to the terms of this Ground Lease, all as more specifically described in the Parking Facilities Agreement. As used herein, the term "Applicable Percentage" will mean, (1) from and after the Occupancy Date to but not including the Stabilization Date, ~~[30]~~30%, and (2) from and after the Stabilization Date until the maturity date of the Taxable Garage Debt, ~~[60]~~60%. Such percentages and the allocation of parking spaces in the City Parking Garage to private parking spaces and Public Parking Spaces, as well as the percentage of the Apartments that must be leased to achieve stabilization of the Project (and the date by which stabilization must occur), have been determined by the City and Developer as part of the Final Development Plan based on the total number of private parking spaces in the City Parking Garage to be reserved for tenants in the Project Improvements. Developer intends to provide any landscaping for the area surrounding the City Parking Garage, even if such landscaping is on City-owned property. Developer may enter into one or more subleases or rental agreements with its tenants for the parking spaces for which Developer purchases permits pursuant to the Parking Facilities Agreement as needed to support the viability of the Apartments.

(D) Parking Garage Operator. In accordance with the Parking Facilities Agreement, after the Stabilization Date the Ground Lessee may hire a parking operator to manage and operate the Parking Garage. Such parking operator (which may be an affiliate of Ground Lessee) shall be reputable, and shall have prior experience in operating similar-sized parking garages. The hiring by Ground Lessee of a parking operator for the Parking Garage shall not relieve Ground Lessee from any obligations or liability under this Lease or the Parking Facilities Agreement.

(E) Reporting Requirements. The City shall be entitled to receive copies of all financial reports and such other reports and information as may be required for compliance with any public agency providing or overseeing funding in connection with the Project Site and Improvements (all reports, records, statements and other information furnished by Ground Lessee under this paragraph being referred to herein collectively as "Records and Reports"), and Ground Lessee shall further promptly notify the City of any and all notices alleging default by Ground Lessee with respect to any financing for the project; provided that, notwithstanding the foregoing, the City may review but shall not receive copies of any Records and Reports that contain confidential information regarding the Ground Lessee or the Project (and default notices described above) and shall not disclose any such information to the public unless and until required by Legal Requirements (as defined in Section 4).

(F) Commercial Tenants. During the first twenty (20) years of the term of this Lease, Ground Lessee shall only lease the non-residential space in the Project to tenants consisted with the Merchandising Plan attached hereto as Exhibit D, as amended from time to time. In the event that Ground Lessee proposes to lease any of the non-residential space in the Project to tenants which are not consistent with the Merchandising Plan, during the first twenty (20) years of the term of this Lease such proposed tenants shall be subject to prior approval of the City, not to be unreasonably withheld or delayed.

(G) City's Right to Inspect. The City shall have the right to inspect the Project Site and Improvements from time to time for any proper purpose.

8. ALTERATIONS; SIGNS; NO LIENS.

(A) Alterations. From and after substantial completion of construction of the Project, Ground Lessee shall be permitted to alter or modify the Improvements or construct additional improvements on the Project Site. Any and all alterations, modifications or additions made by Ground Lessee shall be made in a good and workmanlike manner and in compliance with all Legal Requirements.

(B) Signs. Ground Lessee shall be permitted to install such directional, informational, advertising and other signs at the Project Site which Ground Lessee deems appropriate, provided that all such signs are professionally prepared and comply with all Legal Requirements. Ground Lessee shall, at its expense, keep all signs in good condition and repair, reasonable wear and tear excepted.

(C) No Liens. If any mechanics' lien or other similar lien is filed against the Project Site as a result of labor or material furnished at Ground Lessee's request. Ground Lessee shall cause the lien to be released or bonded off within sixty (60) days following the filing of such lien.

9. PERMITTED LEASEHOLD MORTGAGES.

(A) Permitted Mortgages. The parties acknowledge and agree that (i) Ground Lessee has obtained or may obtain one or more loans from time to time in connection with the construction of any Improvements, and (ii) following the parties' execution of this Lease, Ground Lessee may grant to its lenders a leasehold mortgage and other security instruments with respect to Ground Lessee's leasehold interests in the Project Site (other than Ground Lessee's interest in the Garage Parcel (as defined in Parking Facilities Agreement) prior to the Transfer Date) as security for the repayment of such loans (herein, a "Permitted Mortgage", and one or more extensions, modifications, renewals or replacements of a Permitted Mortgage, in such amounts and in such terms as Ground Lessee may from time to time determine with the holder of each such Permitted Mortgage being referred to herein as a "Permitted Mortgagee"). Except to the extent Ground Lessee purchases the fee title to the Project Site, at the end of the Term, Ground Lessee shall surrender the Project Site and Improvements to the City free and clear of all Permitted Mortgages.

(B) Notice to Permitted Mortgagees; Opportunity to Cure Ground Lessee's Default. If the City sends a notice of default to Ground Lessee under this Lease and intends to exercise any right it may have under this Lease to terminate this Lease by reason of such default, the City shall, prior to exercising such right, send a copy of such notice of default to each Permitted Mortgagee (but only if the Permitted Mortgagee shall have previously provided the City with the address to which such notices to the Permitted Mortgagee shall be sent). The City shall send notices to the Permitted Mortgagees in the same manner in which the City sends notices to Ground Lessee under this Lease. Notwithstanding anything in section 12 (Default; Remedies) below to the contrary, the City shall permit each Permitted Mortgagee a reasonable opportunity to cure Ground Lessee's default; provided, however, that if the Permitted Mortgagee has not notified the City in writing, within thirty (30) days after receiving a copy of the notice of default, that they have commenced

to cure the default (with respect to the Permitted Mortgagee, by way of instituting foreclosure proceedings or otherwise), or if the Permitted Mortgagee notifies the City in writing, within thirty (30) days after receiving a copy of the notice of default, that they have commenced to cure the default but they fail to completely cure the default to the City's reasonable satisfaction within ninety (90) days after receiving a copy of the notice of default or within such additional period of time as may be reasonably required in order for the Permitted Mortgagee to complete the foreclosure proceedings, obtain possession of the Project Site and Improvements and thereafter cure the default, the City may exercise its right to terminate this Lease. Nothing in this Lease shall be construed as requiring any Permitted Mortgagee to cure defaults of Ground Lessee under this Lease.

(C) Right to Obtain New Lease. In the event of the termination of this Lease by reason of the happening of any default, or of the rejection of this Lease in any bankruptcy of the then Ground Lessee, the City shall give prompt notice thereof to any Permitted Mortgagee. The City shall, subject to Legal Requirements, on written request of any Permitted Mortgagee, made at any time within thirty (30) days after the giving of such notice by the City, enter into a new lease of the Project Site with the Permitted Mortgagee within ninety (90) days after receipt of such request, which new lease shall be effective as of the date of such termination of this Lease for the remainder of the Term of this Lease, at the rent provided for in this Lease, and upon the same terms, covenants, conditions and agreements as are contained in this Lease; provided that the Permitted Mortgagee shall (i) contemporaneously with the delivery of such request pay to the City all the installments of rent and all items of additional rent and other charges payable by Ground Lessee under this Lease that are then due, whether or not the City has specified them as due in any notice to the Permitted Mortgagee; (ii) pay to the City at the time of the execution and delivery of the new lease any and all sums for rent and additional rent and other charges payable by Ground Lessee to and including the date of the new lease (which shall be determined as if this Lease had remained in effect), together with all out-of-pocket costs and expenses, including reasonable attorney's fees, incurred by the City in connection with the termination of this Lease and with the execution and delivery of the new lease; and (iii) on or prior to the execution and delivery of the new lease, agree in writing that promptly following the delivery of the new lease, the Permitted Mortgagee will perform or cause to be performed all of the other covenants and agreements contained in this Lease on Ground Lessee's part to be performed to the extent that Ground Lessee shall have failed to perform the same to the date of delivery of such new lease (which shall be determined as if this Lease had remained in effect), except for any non-curable default, which shall be deemed waived.

(D) Subordination of City's Rights of Distraint with Respect to Ground Lessee's Personal Property. Notwithstanding any existing or future statute, law or rule of law to the contrary, the City hereby agrees that any rights of distraint or liens arising in favor of the City under this Lease to machinery, equipment, apparatus, appliances, goods, chattels and any other personal property located at the Project Site and belonging to Ground Lessee shall be subject and subordinate to the rights of any holder of a Permitted Mortgage. Although the foregoing subordination shall be self-operative without the necessity for any further instrument or document, the City hereby agrees, upon written request from Ground Lessee, to furnish written confirmation thereof to Ground Lessee and any vendor, supplier, holder of a security interest in Ground Lessee's property, or any other third party designated by Ground Lessee.

(E) City's Transfer of its Interest in the Project Site and Improvements. If during the Term of this Lease the City sells or otherwise transfers its interest in the Project Site to a third party, such sale or transfer shall be subject to this Lease and to the rights of each Permitted Mortgagee hereunder. Ground Lessee agrees to attorn to any such transferee provided such transferee agrees to be bound by, and perform all of its obligations under, this Lease.

(F) No Surrender. If any Permitted Mortgage is in effect, the City will not accept a voluntary surrender of this Lease. If any Permitted Mortgage is in effect, this Lease shall not be modified or amended without the prior written consent of the Permitted Mortgagee.

(G) Nonliability for Covenants. The provisions of this Section 9 are for the benefit of the Permitted Mortgagee(s) and may be relied upon and shall be enforceable by the Permitted Mortgagee(s). Neither the Permitted Mortgagee(s) nor any other holder or owner of the indebtedness secured by the Permitted Mortgage(s) or otherwise shall be liable upon the covenants, agreements or obligations of Ground Lessee contained in this Lease, unless and until the Permitted Mortgagee(s) or that holder or owner acquires the interest of Ground Lessee, and then only for the period that the Permitted Mortgagee(s) owns such interest.

10. INSURANCE; INDEMNITY.

(A) Insurance. From and after the completion of the Project, Ground Lessee shall maintain, or cause to be maintained, the following insurance:

(i) special peril (formerly known as "all-risk") full replacement cost insurance on the Project;

(ii) property insurance on any and all personal property of Ground Lessee from time to time located at the Project Site in the amount of the full replacement cost thereof;

(iii) liability insurance covering claims for bodily injury, personal injury or death, and property damage occurring at the Project Site in an amount not less than Five Million Dollars ($5,000,000) per accident, or such additional amounts as the City or its insurance or risk advisors may determine from time to time to be customary, together with umbrella liability insurance in the amount of not less than $10,000,000, naming the City as an additional insured;

(iv) workers compensation insurance as required by law;

(v) such other or additional amounts of insurance as may be required under any and all Permitted Mortgages; and

(vi) the insurance requirements during construction of the Improvements as are set forth in the Development Agreement.

(B) Policy Requirements. Ground Lessee's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide (if commercially available) that the insurer will notify the City thirty (30) days prior to any cancellation or modification of the policy, and (iii) be primary

and non-contributory with respect to insurance maintained by the City. Upon the initial completion of the Improvements and annually thereafter, Ground Lessee shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Ground Lessee hereunder and naming City as an additional insured.

(C) Self-Insurance. Any insurance required to be maintained by Ground Lessee may be maintained in whole or in part either on its own plan of self-insurance, or from a carrier which specializes in providing coverage to or for such party or its affiliates, or firms in the same or related businesses, if (i) such party's net worth exceeds $250,000,000.00, as shown in its most recent audited financial statements, and (ii) such party maintains appropriate loss reserves for the amount of its self-insurance obligations under this Lease and otherwise which are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. Any successor to the named Ground Lessee under this Lease may retain (in whole or in part) the financial risk for any claim as long as such successor maintains the net worth and loss reserves set forth in clauses (i) and (ii) above and such successor maintains a ratio of current assets to current liabilities of at least 2 to 1. In the event that Ground Lessee self-insures under the provisions of this Section 10(C), Ground Lessee agrees to indemnify, defend and hold harmless the City from any loss, damage, liability expense, suits, claims, or judgments which would have been covered had the City been named as an additional insured with a third party (procured by the self-insuring party). Ground Lessee shall be permitted to have an affiliate provide the insurance required hereunder, if such affiliate agrees in writing that its program is applicable to such party and that it guarantees performance of such party's insurance and indemnification obligations under this Lease; provided, however, such affiliate may undertake the self-insurance obligation only if it satisfies the financial criteria requirement. If Ground Lessee shall elect to self-insure, the City shall have all of the benefits provided by this Section 10 that it would have had if Ground Lessee carried the required insurance.

(D) Waiver of Subrogation. Ground Lessee hereby waives all claims and rights of recovery, and on behalf of Ground Lessee's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Lease to be maintained by Ground Lessee, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Ground Lessee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Ground Lessee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(E) Indemnity. The City assumes no responsibility for any acts, errors or omissions of Ground Lessee or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Ground Lessee. Ground Lessee shall defend, indemnify and hold the City, its employees and agents ("Indemnified Parties") harmless from and against all costs (including without limitation reasonable legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Ground Lessee, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Ground Lessee in connection with Ground Lessee's activities at or with respect to the Project Site or in connection with any breach by Ground Lessee under this Lease.

11. CASUALTY; EMINENT DOMAIN.

(A) Casualty. If the Project shall be damaged or rendered wholly or partially untenantable by fire or other casualty during the term of this Lease, no rent shall abate during such period, this Lease shall remain in effect, and Ground Lessee shall promptly clear the damage in a manner to create, as nearly as reasonably practicable, a Project Site clean of debris and ready for construction activities. Thereafter Ground Lessee shall rebuild or repair the Improvements to substantially their former condition, or, at Ground Lessee's sole option, build new or different improvements, or repair or rebuild the existing Improvements to a condition, reflecting current market conditions. Ground Lessee's obligation to rebuild shall not be limited by the amount of insurance proceeds available for rebuilding. However, if Ground Lessee rebuilds the Project to the condition as required by this Lease and there are excess proceeds, the excess proceeds shall belong to Ground Lessee.

(B) Condemnation.

(i) Unless this Lease is terminated pursuant to Section 11(B)(ii), if a portion of the Project Site or Improvements shall be taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, by an authority ("Condemning Authority") having the power of eminent domain, or is sold to a Condemning Authority under threat of the exercise of that power, this Lease shall continue and Ground Lessee shall restore the affected Improvements, to the extent practicable, to complete architectural unit(s), or otherwise as market conditions may dictate or require, and the Project Site so that it continues to function as an integrated project.

(ii) If a portion of the Project Site and Improvements is so taken or sold, and that portion in Ground Lessee's judgment is material to Ground Lessee's use and occupancy of the Project Site and Improvements, or if all of the Project Site and Improvements is so taken or sold, Ground Lessee may terminate this Lease by giving written notice to the City. This Lease shall then terminate on the day following the vesting of title in the Condemning Authority, except as provided below and except with respect to obligations and liabilities of Ground Lessee and the City under this Lease that have arisen on or before the date of termination. Rent and other charges under this Lease shall be prorated as of the date of termination, and upon termination Ground Lessee shall satisfy and cause to be released any mortgages (including any Permitted Mortgage), liens or other encumbrances placed or suffered to be placed on the Project Site and Improvements by Ground Lessee. In the event that Ground Lessee shall fail to exercise its option to terminate this Lease as provided in this subsection, or in the event that a part of the Project Site and Improvements shall be taken under circumstances under which Ground Lessee will have no such option, Ground Lessee shall have the sole responsibility for restoring the affected Improvements to complete architectural unit(s), or otherwise as market conditions may dictate or require, and the Project Site so that it continues to function as an integrated project.

(iii) Any award or compensation paid on account of any taking or sale described in this Section 11(B) shall, as to the Improvements, belong to Ground Lessee, and shall, as

to the Project Site (the land value), be divided between the City and Ground Lessee based upon their respective interests in the Project Site.

12. DEFAULT: REMEDIES.

(A) Default. Each of the following shall constitute an event of default (an "Event of Default") by Ground Lessee under this Lease;

(i) If Ground Lessee fails to pay any sum payable to the City hereunder when due, and such failure to pay continues for longer than thirty (30) days after Ground Lessee receives written notice thereof from the City;

(ii) If Ground Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than thirty (30) days after Ground Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such thirty (30) day period, an event of default shall not be deemed to have occurred if Ground Lessee commences to cure such failure within such thirty (30) day period and thereafter diligently pursues such cure to completion. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as reasonably determined by the City, an event of default shall be deemed to have occurred if Ground Lessee fails to take corrective action promptly after written notice from the City that the City has determined such a condition exists;

(iii) Ground Lessee files or there is filed against Ground Lessee a petition in bankruptcy or a petition or answer seeking reorganization under the Federal Bankruptcy Code or any other applicable statute (unless, in the case of involuntary proceedings, the same shall be dismissed within ninety (90) days after institution); or an order is entered adjudicating Ground Lessee a bankrupt or approving an involuntary petition seeking a reorganization of Ground Lessee under the Federal Bankruptcy Code or any other applicable statute or appointing a receiver, trustee or conservator for all or any substantial part of the property of Ground Lessee, and the order is not vacated or stayed within 90 days of entry; and

(iv) If Ground Lessee has "abandoned" the Improvements and/or Project Site and fails to cure such abandonment as provided in paragraph 12(B), below. For purposes of this Lease, "abandoned", "abandon", "abandonment" and words of the like shall mean that Ground Lessee (a) voluntarily relinquished its interest in the Improvements and/or the Project Site or failed to use the Improvements and/or the Project Site without vesting such interest in another party; and (b) does not intend to reclaim or continue with the operation or use of the Improvements and/or the Project Site (in accordance with the Approved Process, if applicable). ~~[Subject to final discussion and lender consent].~~

(B) Remedies. Upon the occurrence of an Event of Default that continues beyond the applicable notice and cure period provided for under paragraph 12(A) above, the City shall be entitled, subject to the rights of any Permitted Mortgagee as provided in this Lease, to (i) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate

to cure or lessen the impact of such Event of Default, all at the expense of Ground Lessee, including without limitation paying any costs due and owing by Ground Lessee for which the Ground Lessee shall promptly reimburse the City within thirty (30) days after demand therefor, and (ii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative, provided that in no event shall the City be entitled to exercise the remedy of termination and the City hereby waives its right to terminate the Lease as a remedy for an Event of Default except to the extent an Event of Default occurs due to Ground Lessee abandoning the Project. Ground Lessee shall be liable for all direct, actual costs and damages, including without limitation reasonable legal fees, suffered or incurred by the City as a result of the occurrence of an Event of Default of Ground Lessee under this Lease or the City's enforcement or termination of this Lease. Ground Lessee shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved. Notwithstanding anything contained herein to the contrary, in the event that Ground Lessee has abandoned the Improvements and/or the Project Site, then City may terminate this Lease by written notice to Ground Lessee, and City shall thereafter have the right to reenter or repossess the Project Site, either by summary proceedings, surrender or otherwise, and dispossess and remove therefrom Ground Lessee, and, at City's option, title to all Improvements owned by Ground Lessee shall revert to City; provided, however, that City shall not have the right to terminate this Lease until City has provided written notice of the alleged abandonment to Ground Lessee and its lender and has provide Ground Lessee and its lender thirty (30) days to cure such abandonment.

(C) Rights of Permitted Mortgagees. Notwithstanding the City's rights provided for in paragraph 12(B) above, prior to exercising such rights the City shall provide each Permitted Mortgagee with notice and an opportunity to cure as described in paragraph 9(B) above.

13. ASSIGNMENT AND SUBLETTING; SEPARATION OF GROUND LEASE.

(A) Ground Lessee acknowledges that the City is entering into this transaction because of the City's confidence that Ground Lessee has the financial backing, business experience and community support that are necessary to carry out the construction and operation of the Project in accordance with the provisions of this Lease. Ground Lessee acknowledges that the City shall not be expected to consent to a proposed assignment by Ground Lessee of its interests under this Lease prior to the expiration of the fifth (5^{th}) anniversary of the Effective Date (the period between the Effective Date and the fifth (5^{th}) anniversary of the Effective Date is hereafter referred to as the "Hold Period") to any person or entity in whom the City does not have similar confidence. Any attempt by Ground Lessee to assign or otherwise transfer its interests under this Lease to a third party prior to the expiration of the Hold Period without the City's prior written consent (which shall not be unreasonably withheld, delayed or conditioned) shall be null and void and shall, at the option of the City, constitute a default of Ground Lessee under this Lease. The foregoing notwithstanding, if Ground Lessee transfers its interests under this Lease, or a portion of this Lease,

(i) to an affiliate of Ground Lessee, or to the surviving entity in a merger involving Ground Lessee, to the purchaser of all or substantially all of Ground Lessee's assets or ownership interests, or (ii) after the expiration of the Hold Period, to an entity which has experience in the asset class which is the subject of the assignment of this Lease, or portion thereof, any transfer of the foregoing shall not constitute a prohibited assignment for purposes of this section and shall be permitted without the consent of the City. As used in the preceding sentence, an "affiliate" of Ground Lessee means an entity that controls, or is controlled by, or is under common control with Ground Lessee. For purposes hereof "control" shall mean the power, exercisable jointly or severally, to manage and direct the business and affairs of a party through the ownership of more than fifty percent (50%) of membership or partnership interests, corporate stock and/or voting rights. Ground Lessee shall not assign its interests under this Lease pursuant to the preceding three sentences without giving the City at least thirty (30) days prior written notice thereof. The foregoing limitations shall not apply to a transfer upon foreclosure of a Permitted Mortgage or a deed in lieu of foreclosure, nor to the subsequent transfer by a Permitted Mortgagee acquiring Ground Lessee's interests under this Lease by foreclosure or deed in lieu of foreclosure. There are no restrictions on Ground Lessee's right to sublease the Project Site and Improvements, provided that any sublease shall be in compliance with the terms hereof and all Record Matters. No assignment (other than with the consent of the City or otherwise as permitted without the consent of the City) or sublease by Ground Lessee of its rights or obligations under this Lease to any third party shall relieve Ground Lessee from any liability to the City under this Lease.

(B) Provided no Event of Default has occurred and is continuing, in connection with a permitted assignment of a portion of this Ground Lease set forth in Section 13(A) above, Ground Lessee shall have the right to separate the portion of the Ground Lease being assigned from the portion of the Ground Lease being retained by Ground Lessee. Ground Lessee shall give written notice to the City at least sixty (60) days prior to the desire to separate the Ground Lease which notice shall describe the portion of the Improvement and the Project Site subject to the assignment of the portion of the Ground Lease. The new ground lease with respect to the assignment of a portion of this Ground Lease (the "New Ground Lease") shall be in form and contain terms and conditions substantially and materially similar to this Ground Lease and will be coterminous with this Ground Lease, provided that the New Ground Lease shall not be cross defaulted with this Ground Lease. The parties shall finalize and execute a partial termination of this Ground Lease as to the portion of the Project Site and Improvements being transferred by an assignment permitted in Section 13(A) above and New Ground Lease prior to the closing of such partial assignment.

14. ESTOPPEL CERTIFICATES.

Within fifteen (15) days after written request from the other party (or, with respect to certificates from the City, within such longer period of time (not to exceed thirty (30) days) as may be reasonably needed in order to obtain all required governmental authorizations and signatures), each party shall execute and deliver to the requesting party an estoppel certificate (i) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) stating, to the best of such party's knowledge, whether or not the requesting party is in default under this Lease, and, if so, specifying the nature of such default, and (iii) covering such other matters pertaining to this Lease as the requesting party may reasonably request.

15. SURRENDER; HOLDOVER.

(A) Surrender. On the last day of the Term of this Lease (and unless Ground Lessee shall have purchased the Project from the City), Ground Lessee shall surrender the Project Site and Improvements to the City in good condition and repair, reasonable wear and tear excepted, and free and clear of all mortgages and other monetary liens. On or before the last day of the Term, Ground Lessee shall remove all of Ground Lessee's personal property, trade fixtures and equipment, and any property not so removed shall be deemed abandoned. Ground Lessee shall not remove any signs, ordinary fixtures or equipment used in connection with the Project unless the City approves of such removal in writing, which shall not be unreasonably withheld, delayed or conditioned. Ground Lessee shall promptly repair any and all damage to the Project caused by its removal of any items under this paragraph.

(B) Holdover. If Ground Lessee fails to surrender possession of the Project Site and Improvements to the City at the end of the Term if Ground Lessee has not exercised the purchase option hereunder, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term), terminable by the City upon thirty (30) days' notice by giving written notice thereof to Ground Lessee. Ground Lessee shall be liable for all direct, actual costs and damages suffered or incurred by the City as a result of Ground Lessee's holding over after the initial thirty (30) days of holdover.

(C) Documents to be Delivered to City. At the end of the Term of this Lease and if Ground Lessee has not exercised the purchase option hereunder, Ground Lessee shall deliver to the City originals of all books and records, unpaid invoices, operating manuals, contracts with third parties, warranty information, and all other written materials and documents that are in Ground Lessee's possession or under Ground Lessee's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Project.

16. NOTICES.

All notices required to be given to any party under this Lease shall be in writing and (i) deposited in the United States mail, first class, postage prepaid, or (ii) delivered by a nationally recognized overnight courier service, to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

To the City:	City of Cleveland Heights 40 Severance Circle Cleveland Heights, OH 44118 Attention: Economic Development Director
With a copy to:	City of Cleveland Heights 40 Severance Circle Cleveland Heights, OH 44118 Attention: City Law Director

To the Ground Lessee:

Cleveland Heights FC II, LLC
One Indiana Square, Suite 3000
Indianapolis, IN 46240
Attention: Deron Kintner

With a copy to:

Arik Sherk, Esq.
Thompson Hine LLP
Austin Landing I
10050 Innovation Drive
Suite 400
Dayton, Ohio 45342-4934

If Ground Lessee sends a notice to the City alleging that the City is in breach of this Lease, Ground Lessee shall simultaneously send a copy of such notice by U.S. certified mail to: Law Director, City of Cleveland Heights, 40 Severance Circle, Cleveland Heights, Ohio 44118.

17. INTELLECTUAL PROPERTY.

(A) Grant of License. Subject to the further terms and conditions of this Lease and provided Ground Lessee has the right to so permit such use, the City shall have the right to use the Intellectual Property (hereinafter defined) during the Term in connection with the promotion, advertising, reporting and dissemination of information with respect to the Project and the Project Site, whether as a part of internally-prepared materials and media, or other materials or media prepared at the direction of City. For purposes of this Lease, the term "Intellectual Property" shall mean all right, title, claim and interest of Seller and its affiliates in and to any trademarks, service marks, trade names or copyrights used exclusively in connection with the Project Site and Project, whether registered or unregistered, and any applications therefore, as may exist as of the Effective Date or thereafter. Notwithstanding the foregoing, the City shall follow reasonable direction from Ground Lessee regarding the use of the Intellectual Property.

(B) Conveyance Upon Default. Upon the expiration of the Term and Ground Lessee has not exercised its purchase option hereunder, Ground Lessee hereby agrees to take any and all actions reasonably necessary to grant, convey and transfer all of Ground Lessee's rights in and to the Intellectual Property to City to the extent the Intellectual Property is transferable. Upon the expiration of the Term and Ground Lessee has not exercised its purchase option hereunder, Ground Lessee by these presents does hereby make, constitute and appoint City its true and lawful attorney with respect to the granting, conveying and transfer set forth in the first sentence of this Section 18(B), giving and granting unto City full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done with respect to the Intellectual Property with respect to the transactions contemplated in the first sentence of this Section 18(B), as fully, to all intents and purposes, as the Ground Lessee might or could do, with full power of substitution and revocation, hereby ratifying and confirming all that said attorney in fact or its substitute shall lawfully do or cause to be done by virtue hereof.

18. GENERAL PROVISIONS.

(A) Entire Agreement. This Lease (including the exhibits hereto and the other agreements referred to herein) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Lease may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the City of Cleveland Heights and the State of Ohio. All actions regarding this Lease shall be brought in the Cuyahoga County Court of Common Pleas, and Ground Lessee agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Lease.

(D) Binding Effect. This Lease shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(E) Captions. The captions of the various sections and paragraphs of this Lease are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Lease.

(F) Severability. If any part of this Lease is held to be void, illegal or unenforceable by a court of law, such part shall be deemed severed from this Lease, and the balance of this Lease shall remain in full force and effect.

(G) No Recording. This Lease shall not be recorded in the Cuyahoga County Recorder's office. The parties shall execute a memorandum of lease for recording purposes in substantially the form attached hereto as Exhibit B (Form of Memorandum of Lease).

(H) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Lease.

(I) No Third Party Beneficiaries. The parties hereby agree that, except for the rights of Permitted Mortgagees under section 9 (Permitted Leasehold Mortgages) hereof, no third party beneficiary rights are intended to be created by this Lease.

(J) No Brokers. The City and Ground Lessee represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Lease.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity.

No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(L) Representation as to Authority. The City and Ground Lessee each represents to the other that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease have been duly authorized by all necessary actions on the part of the performing party.

(M) The City's Assistance. From time to time during the Term at the request of Ground Lessee, and without further consideration, but subject to all Legal Requirements (as defined in Section 4), the City, in its capacity as landlord, shall execute and deliver, and/or join with Ground Lessee in executing and delivering, such applications for licenses, variances, zoning changes, approvals, permits and consents from governmental bodies, utility companies and other entities and shall supply such information, execute such forms and take such actions as Ground Lessee may reasonable request in connection with the construction, development, use, ownership, operation, maintenance or replacement of any of the Improvements or Project Site; provided, however, that the City shall not be required to incur any expense or liabilities in connection with these matters or to agree to any material restrictions or limitation of City's rights hereunder, encumbrances on title to the Project Site (except as permitted herein), transfers of any portion of the Project Site (except as permitted herein), or modifications to this Lease.

(O) Exhibits. The following Exhibits are attached hereto and made a part hereof:

Exhibit A – Legal Description
Exhibit B – Form of Memorandum of Lease
Exhibit C – Merchandising Plan

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[SIGNATURE PAGE TO GROUND LEASE]

This Lease is executed by the parties on the dates indicated below their respective signatures as of the Effective Date.

CITY OF CLEVELAND HEIGHTS, OHIO

By:_____
_____, _____

Date: _____, _____

Approved as to Form:

By:_____
_____, City Law Director

CITY'S FISCAL OFFICER CERTIFICATE

It is hereby certified, as of the above date, that the amount required to meet the contract, agreement, obligation, payment or expenditure by the City of Cleveland Heights for the attached agreement between the City, as ground lessor, and _____, as ground lessee, has been lawfully appropriated for such purpose and is in the Treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

_____
_____, Director of Finance

STATE OF OHIO

COUNTY OF CUYAHOGA

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, _____ of the City of Cleveland Heights, an Ohio municipal corporation, on behalf of the corporation. No oath or affirmation was given in connection with this notarial act.

_____
Notary Public

My commission expires: _____

_____, LLC,
an Ohio limited liability company

By:_____
_____, _____

Date:_____

STATE OF INDIANA

COUNTY OF INDIANAPOLIS

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, the _____ of _____, LLC, an Ohio limited liability company, on behalf of the company. No oath or affirmation was given in connection with this notarial act.

_____
Notary Public

My commission expires: _____

This instrument prepared by:
Tucker Ellis LLP
950 Main Avenue, Suite 1100
Cleveland, Ohio 44113

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EXHIBIT A

LEGAL DESCRIPTION

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EXHIBIT B

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

(Ground Lease – Cedar-Lee-Meadowbrook)

This Memorandum of Lease is executed by and between the **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation, having an address of 40 Severance Circle, Cleveland Heights, Ohio 44118 (the "City"), and _____**, LLC**, an Ohio limited liability company, having an address of One Indiana Square, Suite 3000, Indianapolis, Indiana 46204 (the "Ground Lessee").

1. The City and Ground Lessee entered into a certain Ground Lease ("Lease") dated as of _____, _____ pursuant to which the City has leased to Ground Lessee certain real estate (the "Project Site"), being the real property commonly known as the Cedar-Lee-Meadowbrook parcel, consisting of approximately ____ acres located between Cedar Road and Meadowbrook Road, in the City of Cleveland Heights, Ohio. The legal description of the Project Site is attached hereto as Exhibit A.

2. The initial term of the Lease commenced on the date of the Lease and will expire ninety-nine (99) years following the Effective Date of the Lease.

3. The Lease contains an option to purchase in favor of Ground Lessee and certain rights of first offer in favor of the City.

4. This Memorandum of Lease is executed solely for recording purposes, and nothing herein shall be deemed as modifying any of the terms or conditions of the Lease.

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CITY OF CLEVELAND HEIGHTS, OHIO

By:_____
_____, _____

Date: _____, _____

Approved as to Form:

By:_____
_____, City Law Director

CITY'S FISCAL OFFICER CERTIFICATE

It is hereby certified, as of the above date, that the amount required to meet the contract, agreement, obligation, payment or expenditure by the City of Cleveland Heights for the attached agreement between the City, as ground lessor, and _____, LLC, as ground lessee, has been lawfully appropriated for such purpose and is in the Treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

_____
_____, Director of Finance

STATE OF OHIO

COUNTY OF CUYAHOGA

The foregoing instrument was acknowledged before me this ____ day of _____, ____, by _____, _____of the City of Cleveland Heights, an Ohio municipal corporation, on behalf of the corporation. No oath or affirmation was given in connection with this notarial act.

_____
Notary Public

My commission expires: _____

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[SIGNATURE PAGE TO MEMORANDUM OF LEASE]

_____, LLC,
an Ohio limited liability company

By:_____
_____

Date:_____

STATE OF INDIANA

COUNTY OF INDIANAPOLIS

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, the _____ of _____, an Ohio limited liability company, on behalf of the company. No oath or affirmation was given in connection with this notarial act.

_____
Notary Public

My commission expires: _____

This instrument prepared by:
Tucker Ellis LLP
950 Main Avenue, Suite 1100
Cleveland, Ohio 44113

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EXHIBIT A TO MEMORANDUM OF LEASE

[LEGAL DESCRIPTION]

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EXHIBIT C

MERCHANDISING PLAN

Cleveland Heights – Cedar-Lee-Meadowbrook Commercial Strategy

[See Exhibit __ of Development Agreement]

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EXHIBIT F

MERCHANDISING PLAN

In keeping with goals of Developer's Proposal, specifically that the City is seeking for the Project to be a dense, vibrant, pedestrian friendly commercial district that dovetails with the architecture and aesthetics of the surrounding neighborhood, Developer expects to propose a fully integrated, regional mixed-use experience, consisting of approximately 5,000-9,000 square feet of first floor non-residential space such as commercial, retail and/or restaurant space and concepts that may not currently exist in the region. Developer will endeavor to attract retail tenants including, but not limited to, the following: apparel, home stores, chef-driven restaurants, and service providers. Developer agrees that no retail or restaurant concepts will be inconsistent with existing zoning for the Project Site, and further agrees that no retail, commercial or service tenants will be relocated from anywhere within the City without prior consent of the City Manager which shall not be unreasonably withheld, delayed or conditioned.

EXHIBIT G

[RESERVED]

EXHIBIT H

PRELIMINARY SCHEDULE/TIMELINE

Preliminary Project Schedule

Fourth Quarter 2021 – Development Agreement Approved
First Quarter 2022 – Plan Approvals and Due Diligence
Fourth Quarter 2022 – Design Complete and Permits Issued
Fourth Quarter 2022 – Financial Closing
First Quarter 2023 – Construction Commences
Fourth Quarter 2024 – Project Complete

EXHIBIT I

PLAN FOR COMMUNICATION AND COORDINATION BETWEEN DEVELOPER AND THE CITY

The plan for communication and coordination between Developer and the City during the pre-construction planning period and the construction period for the Project shall be as follows:

I. Pre-Construction Planning Period:

All Press releases, briefings, City Council updates, public briefings or information sessions shall be coordinated between the two parties and shall be approved, issued and provided solely by the City of Cleveland Heights.

Community Meetings intended to update the community, answer questions and receive input from residents on the project will be held periodically throughout this period. Community engagement is a key element for a successful development project and input from citizens will be a vital ingredient in the final development agreement for this project. Anyone interested in this important project is encouraged to attend these community meetings.

The Preliminary and Final Development Plan review process will involve several meetings. Please refer to Chapter 1147 of the City of Cleveland Heights' Zoning Code for additional details.

A meeting representing the Closing shall be held at such time as deemed acceptable so as to enable Developer to commence all construction activities.

At least one (1) pre-construction meeting will be held between the parties to this agreement, general contractor and subcontractor and all other parties as determined by the City. The purpose of this meeting is to exchange contact information and discuss all pertinent construction related issues in prepare for commencement of the building of the project improvements. A complaint resolution process shall also be negotiated and agreed to by the parties at this meeting.

II. Construction Period:

All Press releases, briefings, City Council updates, public briefings or information sessions shall be coordinated between the two parties and shall be approved, issued and provided solely by the City of Cleveland Heights.

A Ground-Breaking Ceremony shall be held at the Project Site prior to commencement of construction. The City shall issue invitations to this event and coordinate all media coverage as deemed necessary.

A schedule for periodic Construction Progress meetings shall be agreed to at the pre-construction meeting for the project. Notes will be taken at these meetings and distributed to all parties within a reasonable time after the progress meeting is held.

The City shall have the right to inspect the project at all reasonable times during construction, after written notice to Developer, and following all other requirements stated in this agreement. The foregoing shall not be deemed as limiting in any way the rights of the City's building inspectors to conduct inspections from time to time and without prior notice, in accordance with normal City inspection procedures.

EXHIBIT J

ESTIMATE OF CITY COSTS

City of Cleveland Heights **MEADOWBROOK & LEE Project Expenses - Accrued and Estimated**	*10/31/2021*
Phase I **Legal Assistance with Structuring Transaction & Negotiation of MOU:**	
Tucker Ellis	$11,093.00
Phase II **Drafting/Negotiating Development Agreement/Parking Agreement/Ground Lease**	
Tucker Ellis	$25,360.00
To Date	$5,000.00
Estimate to Completion	
OTHER Costs Incurred:	
Tucker Ellis	
(Attention to Reversion Right in Prior Owner)	$9,800.00
Phase III Estimated Costs	
Real Estate Issues/Diligence Issues:	
Legal fees	$35,000.00
Phase VI **Estimated Costs**	
TIF Negotiations, Analysis, Legislation, Implementation, School Compensation/Financing/ Lease (Not including any Bond Counsel Work) :	
Legal	$40,000.00
Total *(Payable at closing of TIF/construction cost financing):*	**$126,253**

EXHIBIT K

[FORM OF PARKING FACILITIES AGREEMENT]

[SEE ATTACHED]

PARKING FACILITIES AGREEMENT

THIS PARKING FACILITIES AGREEMENT (this "**Agreement**") has been executed as of _____, _____ (the "**Effective Date**"), by and between F&C Development, Inc., [or a designated affiliate of F&C Development, Inc. acceptable to City], an [Indiana corporation] having an address at One Indiana Square, Suite 3000, Indianapolis, Indiana 46204 ("**Developer**" and, together with its affiliates participating in the development contemplated by the Development Agreement (defined below), "**Developer Parties**") and the CITY OF CLEVELAND HEIGHTS, OHIO, an Ohio municipal corporation, having an address at 40 Severance Circle, Cleveland Heights, Ohio 44118 (the "**City**").

RECITALS

A. The City owns certain parcels of land commonly known as the Cedar-Lee-Meadowbrook parcels consisting of approximately 4.8 acres as shown on Exhibit A hereto (the "**Project Site**").

B. In connection with a prior plan for the redevelopment of the Project Site, the City constructed and owns a structured public parking garage containing approximately 377 spaces, and including all related driveways, ramps, easements or other rights of access from the public streets of the City, located within the Project Site (collectively, the "**Garage**") on the parcel further described in Exhibit A hereto (the "Garage Parcel").

C. Pursuant to a request for proposals process initiated by the City in October 2020, consistent with City's current urban redevelopment plan for the Project Site, Developer proposes to build a mixed-use development on the Project Site as further described in a Development Agreement dated _____, 2021 (as supplemented and amended, the "**Development Agreement**") between Developer and the City, which development is expected to include one or more buildings of varying height including approximately 200-225 market-rate apartments, approximately 5,000-9,000 square feet of first floor non-residential space such as commercial, retail and/or restaurant space, and public gathering and green spaces (as constructed pursuant to the Development Agreement, the "**Project Improvements**"), with a portion of the Project Improvements expected to "wrap" a portion of the Garage.

D. Contemporaneously herewith, City and a Developer Party have entered into that certain Ground Lease (as amended from time to time, the "**Ground Lease**") whereby such Developer Party, as Ground Lessee (as hereinafter defined), has leased the Project Site (but not the Garage) from the City, the City has leased the Project Site to Ground Lessee, and the Ground Lessee has agreed to construct, own and operate the Project Improvements on the Project Site, or cause the same to be done all consistent with the urban redevelopment plans of the City.

E. City desires to provide for (i) Developer Parties' rights to utilize the Garage for use by or for Ground Lessee's tenants and/or sub-tenants, and (ii) continued public access for employees of and visitors to all Cedar-Lee neighborhood businesses.

F. Capitalized terms used herein not otherwise defined shall have the meaning ascribed to such terms in Article I hereof.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated in and made a part of this Agreement, and the covenants and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I - DEFINITIONS

Section 1. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings specified below:

(a) "**Applicable Law**" means all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, bonds, courts, authorities, agencies, officials and officers, foreseen and unforeseen, ordering or extraordinary, which now or at any time hereafter may be applicable to the Project Site or any parts thereof (specifically including, without limitation, the Americans with Disabilities Act).

(b) "**Comparable Parking Spaces**" means: (i) for parking spaces in the Garage, spaces that are in the Top of the Hill covered parking garage in the City, and (ii) for surface parking spaces in the Project Site Parking Areas, spaces that are in similar public surface parking lot areas in the ~~region~~City.

(c) "**Ground Lessee**" means: (i) a Developer Party that is the ground lessee under the Ground Lease, or (ii) a Developer Party that is a sub-lessee of the Project Site that is the owner of the Project Improvements.

(d) "**Occupancy Date"** means the date on which the City issues the first occupancy permit for the multi-family housing portion of the Project Improvements.

(e) "**Stabilization Date**" means the earlier of (i) the date [ninety] percent [(90%)] of the apartment units in the Project Improvements are leased to tenants or (ii) [January 1, 2026].

(f) "**Transfer Date**" means the first business day following the maturity date of the Taxable Garage Debt (defined below).

(g) "**Project Site Parking Areas**" means any parking spaces in areas outside the Garage, but on the Project Site, after completion of the Project Improvements, excluding therefrom up to fifteen (15) parking spaces adjacent to the Project Improvements that may be reserved by the Developer or Ground Lessee for the exclusive use of the Ground Lessee's tenants and/or sub-tenants, as specified in the Final Development Plan (which parking spaces shall not be considered to be in the Project Site Parking Areas).

ARTICLE II – INCORPORATION OF CITY PARKING GARAGE INTO THE PROJECT

Section 1. Restructuring City Indebtedness Relating to Garage. The Garage is currently financed through tax-exempt debt (the "**Tax-Exempt Garage Debt**"), on which the City pays approximately $460,000.00 in debt service annually. The Tax-Exempt Garage Debt is scheduled to mature on or about December 1, 2028. In order to provide maximum flexibility for locating residential parking within the Garage, thereby facilitating the Developer's proposed residential uses, the City hereby agrees to refinance the Tax-Exempt Garage Debt with an issuance of taxable revenue bond debt secured only by non-tax revenues of the City (the "**Taxable Garage Debt**"), as soon as reasonably practicable on or after the Effective Date, with the objective of reducing, to the extent possible, the annual debt service to be paid on Garage-related indebtedness. The City currently estimates that annual debt service on Garage-related indebtedness could be reduced to approximately $300,000.00, but the actual final debt service will depend on the par amount of the Taxable Garage Debt and the security therefor, the maturity and average life of the Taxable Garage Debt, market interest rates on the date of issuance of the Taxable Garage Debt and the final costs of issuance of the Taxable Garage Debt. The City expects that the Taxable Garage Debt can be structured so that it matures on or about December 1, 2033.[1]

Section 2. Portion of Garage Reserved for Tenant Use. A total of up to ~~[~~225~~]~~ parking spaces in the Garage (the "**Tenant Spaces**") will be provided by the City for use by Ground Lessee's tenants and/or sub-tenants and those Tenant Spaces will be separated into an area on floors [__] and [__] of the Garage reserved exclusively for tenant use (the "**Tenant Area**"). The Tenant Area, with [225] spaces, will constitute [60] % of all spaces in the Garage.

Section 3. Purchase of Parking Permits Prior to Stabilization. During the period commencing on the Occupancy Date and ending on the Stabilization Date (the "**Pre-Stabilization Period**"), Developer or Ground Lessee may purchase parking permits for Tenant Spaces for its tenants and/or sub-tenants (the "**Pre-Stabilization Tenant Permits**"). Pre-Stabilization Tenant Permits (not to exceed the number of Tenant Spaces) may be purchased from the City at the same rate per month/per Tenant Space purchased as the City charges to members of the general public during the Pre-Stabilization Period.

[1] Section 1 to be revised to reflect actual annual debt service on Taxable Garage Debt if known at the time this Agreement is executed.

Section 4. Purchase of Permits after Stabilization. During the period commencing on the Stabilization Date and ending on the Transfer Date, Developer or Ground Lessee shall purchase [225] Tenant Permits (the "**Tenant Permits**") at an aggregate annual purchase price for all Tenant Permits (which amount shall be payable without deduction or set-off until the Transfer Date by Developer in equal quarterly installments in advance commencing with the first day of the calendar quarter following the quarter in which the Stabilization Date occurs) in an amount equal to ~~[sixty~~ fifty percent (~~60%)]~~ 50%) of the total annual debt service required to be paid on the Taxable Garage Debt. Developer or Ground Lessee shall have the right to provide such Tenant Permits to its tenants and/or sub-tenants on whatever terms it determines. In the event any quarterly installment is not received by the City within thirty (30) days of the date the same is due and payable, Developer shall pay a late charge to the City in the amount of five percent (5%) of the sum then due and payable. In the event any quarterly installment plus any applicable late fee is not received by the City within (15) days of the date the same is due and payable, the City may in its discretion terminate this Agreement.

Section 5. Public Parking Spaces. [152] of the parking spaces that are not in the Tenant Area of the Garage (the "**Public Parking Spaces**"), as well as any spaces located in the Project Site Parking Areas, shall remain as public parking spaces available to the general public on a non-reserved, first-come first served, daily/monthly basis at all times until the earlier of (i) the expiration of the term of the Ground Lease, or (ii) the exercise by the Developer of its option to purchase the Project Site pursuant to the terms of the Ground Lease (the "**Termination Date**"). Prior to the Transfer Date, the City shall set the rates and fees to be charged for the use of such Public Parking Spaces and Project Site Parking Areas, and shall receive any and all revenue generated by such Public Parking Spaces and Project Site Parking Areas. From and after the Transfer Date, revenue generated by such Public Parking Spaces and Project Site Parking Areas shall be retained by Developer or Ground Lessee as the owner of the Garage; provided that until the Termination Date, the daily/monthly rate that may be charged for the use of such Public Parking Spaces and Project Site Parking Areas shall not exceed the daily/monthly rate charged for Comparable Parking Spaces. Developer shall determine and disclose to the City at the Transfer Date the daily/monthly rate to be charged for the use of the Public Parking Spaces and Project Site Parking Areas, and shall notify the City in writing not less than thirty (30) days in advance whenever Developer (or Ground Lessee) intends to change such rates.

Section 6. Maintenance Cost and Property Tax. Prior to the Occupancy Date, the City shall pay property taxes, service payments, assessments and other similar impositions associated with the Garage and shall perform all necessary maintenance and repairs on the Garage in a good and workmanlike manner in full compliance with Applicable Law. From and after the Occupancy Date, Developer (or Ground Lessee) shall reimburse the City within 30 days for ~~[~~thirty percent (30%)~~]~~ of the property taxes, service payments, assessments and other similar impositions associated with the Garage, and shall reimburse the City for~~[~~ thirty percent (30%)~~]~~ of the cost of all necessary maintenance and repairs on the Garage ~~equal to the Tenant Usage Percentage~~. From and after the Stabilization Date and prior to the Transfer Date, Developer (or Ground Lessee) shall

pay the property taxes, service payments, assessments and other similar impositions associated with the Garage and shall perform all necessary maintenance and repairs on the Garage in a good and workmanlike manner in full compliance with Applicable Law and without unreasonable interference with the use by the public of the Public Parking Spaces and Project Site Parking Areas; provided, however, that the City shall be responsible to reimburse Developer and Ground Lessee within thirty (30) days for a pro rata share of such real estate taxes and maintenance and repair costs, to be determined based upon the number of spaces in the Garage that are Public Parking Spaces at the end of the calendar quarter in which such costs have been incurred. From and after the Transfer Date, Developer (or Ground Lessee) shall be solely responsible for payment of the property taxes, service payments, assessments and other similar impositions associated with the Garage and shall be solely responsible for performing all necessary maintenance and repairs on the Garage in a good and workmanlike manner in full compliance with Applicable Law and without unreasonable interference with the use by the public of the Public Parking Spaces and Project Site Parking Areas

Section 7. Management. Prior to the Stabilization Date, the City shall manage the operations of the Garage. Commencing on the Stabilization Date, Developer or Ground Lessee shall assume management responsibilities for the Garage, subject to the continued rights of the City to receive both the revenue from the Developer for the Tenant Permits and the revenue generated by the Public Parking Spaces and Project Site Parking Areas until the Transfer Date. Upon assuming management responsibilities for the Garage, Developer may engage a parking management company to manage the Garage on behalf of Developer. Developer covenants that during any period it is managing the Garage (either directly or through a third-party management company) it will not take, and will make reasonable efforts to prevent, any actions or circumstances in the Garage that would interfere with the public access to or use of the Public Parking Spaces or the Project Site Parking Areas.

Section 8. Transfer of Ownership on the Transfer Date. On the Transfer Date, in consideration of the undertakings by the Developer and Ground Lessee hereunder and under the Development Agreement and the Ground Lease, and the performance thereof, and for no additional consideration, the City shall transfer ownership of the Garage to Developer or Ground Lessee by means of one or more instruments of transfer reasonably satisfactory to Developer, but shall retain the fee simple interest in the underlying ground, which shall continue to be leased to Ground Lessee as part of the Ground Lease on the same terms as the remainder of the Project Site. From and after the Transfer Date, all revenue from the Garage shall be retained by Developer or Ground Lessee; provided that the Developer shall comply with the restrictions related to the number of Public Parking Spaces and the rates and fees that can be charged for such Public Parking Spaces as provided in this Agreement until the Termination Date.

Section 9. Construction Period Parking Arrangements and Parking in the Cedar-Lee District outside of the Project Site After Construction. The parties acknowledge that some or all of the Project Site Parking Areas, over time, may be utilized for staging and construction during

development, creating a reduction in public parking in the Cedar-Lee District. Therefore, during construction of the Project, the City and Developer will develop an acceptable temporary parking plan which will allow for parking to be shifted from staging/construction areas to other available locations including the Garage, on-street parking and/or other parking made available by the City, the CHUH School District, or the Cleveland Heights Library System. This section should not be construed in any way to prevent the possibility of the parking spaces resulting from the temporary parking plan from becoming permanent in nature through future agreements or arrangements between the Developer or Ground Lessee and the CHUH School District and/or the Library, or action by the City relating to on-street parking and/or parking on City-owned property.

Section 10. Claims; Indemnity and Insurance. From and after the Stabilization Date, the City shall not be liable for any damage or injury to Ground Lessee's tenants and/or sub-tenants using the Garage or occurring at the Garage or any part thereof, and Developer and the Ground Lessee agree to hold the City harmless for any tenant claim for damages during the term of this Agreement, except to the extent such damage or injury is the result of the gross negligence of the City or any of the City's agents. From and after the Stabilization Date, the City shall not be responsible for any theft, loss or damage to any vehicle or property left in any vehicle. Commencing on the Stabilization Date, Developer (or a parking management company engaged by Developer) shall procure and maintain throughout the term of this Agreement a policy or policies of insurance insuring Developer, Ground Lessee and the City against all claims, demands or actions arising out of or in connection with any tenant's use or occupancy of the Garage, the limit of such policy or policies to be in an amount not less than $500,000 in respect of injuries to or death of any one person, and in an amount not less than $1,000,000 in respect of any one accident or disaster, and in an amount not less than $100,000 in respect of property damaged or destroyed, all of such liability insurance to be written by insurers or recognized responsibility which are acceptable to the City.

Section 11. Default and Remedies. Upon the occurrence of any material default by Developer or Ground Lessee, the City shall have the option to terminate this Agreement, in which event Developer and Ground Lessee shall immediately provide the City with access to the Tenant Area (and any gates or other devices segregating the Tenant Area from the remainder of the Garage and any related key-card software and systems) and if Developer and the Ground Lessee fail to do so the City may enter and take possession of the Tenant Area or any other portion of the Garage and/or expel or remove any tenant or other person who may be occupying any of the Tenant Spaces. Pursuit of any remedy shall not preclude pursuit of any other remedies provided by law, nor shall pursuit of any remedy constitute a forfeiture or waiver of any payment due to the City hereunder or any damages accruing to the City by reason of the violation of any of the terms of this Agreement.

ARTICLE III – MISCELLANEOUS

Section 1. Term. The Term of this Agreement shall expire upon the expiration or termination of the Ground Lease.

Section 2. Recording. This Agreement or a memorandum thereof shall be recorded in the Office of the Recorder in the Fiscal Office of Cuyahoga County, Ohio immediately following the recording of the Ground Lease or a memorandum thereof.

Section 4. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Ohio.

Section 5. Relationship of Parties. Nothing contained herein shall be deemed or construed by Developer, Ground Lessee or City as creating the relationship of principal and agent or of partnership or joint venture between Developer or Ground Lessee and the City, it being understood and agreed that the only relationship between the parties is contractual in nature as described herein.

Section 6. Headings. Sections and paragraph headings in this Agreement are for convenience or reference only, and shall not affect the interpretation or construction of the provisions hereof.

Section 7. Severability. Invalidation of any of the provisions contained in this Agreement or the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions hereof of the application thereof to any other person and the same shall remain in full force and effect.

Section 8. Assignment; Lender Recognition. Developer and Ground Lessee shall not assign their respective rights or interests under this Agreement without the prior written consent of the chief executive or administrative officer of the City, which shall not be unreasonably withheld, delayed and conditioned; except that Developer's or Ground Lessee's assignment to an affiliate of Developer (with prior written notice to the City), and Developer's, Ground Lessee's or any such assignee's collateral assignment of its rights under this Agreement to its lenders for the Project, and full and unfettered assignability by such lender, without the consent of the City, upon an exercise by such lender of its rights under its loan documents, shall be permitted; provided however that no such assignments by Developer or Ground Lessee to an affiliate or lender shall relieve Developer or Ground Lessee of its obligations or liability to the City under this Agreement. The City agrees to provide to such lender (a) reasonable rights to cure defaults by Developer or Ground Lessee under this Agreement, and (b) any estoppel certificates with respect to this Agreement, as may be reasonably required by such lender.

[Balance of Page Intentionally Omitted]

~~5315383.8~~
5315383.9

IN WITNESS WHEREOF, Developer~~, Ground Lessee~~ and the City have executed this Agreement on the day and year first above written.

"**Developer**"

[_____],
a _____

By:_____
Its:_____

The legal form and correctness
of this Agreement is hereby approved:

"**City**"

City of Cleveland Heights, Ohio

_____ By:_____

Date:_____ Its: _____

[Add Form of Fiscal Officer Certificate and notary acknowledgments]

~~5315383.8~~
5315383.9


Wendy's
Cleveland Heights High School
Heights High Football Field & Track
Cedarbrook Road
CEDAR-LEE SITE
PARKING GARAGE
Tullamore Road
NEW STREET
Barber & Beauty Supply Outlet
Property Line
Cedar Road
Cedar-Lee Theatre
Cleveland Barber Studio
Westwork Architectureal Studio
HeightsArts Gallery
Boss Dog Brewing Company
Rudy's Pub
Elite Bistro
Momo's Kebab
Lee's Seafood Boil
Two Brothers
Marchant Manor Cheese
Lee Road
MEADOWBROOK SITE
Property Line
Meadowbrook Boulevard

Proposed: 12/06/2021

ORDINANCE NO. 155-2021 (AS), *First Reading*

By Council Member

An Ordinance amending Section 183.01, "Public Hearing," of Chapter 183, Political Influence by Corporate Entities, of the Cleveland Heights Codified Ordinances to the date of the public hearing that is to be held annually;

WHEREAS, in 2013, an initiative Ordinance was submitted to the City to amend the Codified Ordinances of the City of Cleveland Heights to enact a new Chapter entitled "Political Influence by Corporate Entities"; and

WHEREAS, this Council, by Resolution No. 143-2013, submitted the initiative Ordinance to the City's electorate at the next regular election; and

WHEREAS, the electorate of the City of Cleveland Heights passed the initiative Ordinance at the regular election on November 5, 2013, thereby establishing Chapter 183 of the Codified Ordinances of the City of Cleveland Heights; and

WHEREAS, Section 183.01, "Public Hearing," of Chapter 183, Political Influence by Corporate Entities, of the Cleveland Heights Codified Ordinances currently establishes that a public hearing shall be held during the month of January each year; and

WHEREAS, based upon the press of new business and the potential for inclement weather during the month of January, this Council has determined it is in the best interests of the City and its residents to move the date of the public hearing required under Section 183.01 to June of each year.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 183.01, "Public Hearing," of Chapter 183, Political Influence by Corporate Entities, of the Codified Ordinances of Cleveland Heights is hereby amended to henceforth read as follows:

> Beginning in 2014, City Council shall hold a public hearing during the month of January June each year to examine the impact on our City, our state and our nation of political influence by corporate entities and big money in connection with the most recent election. Corporate entities include business corporations, Political Action Committees, Super PACs, 501 c4 groups and unions. Members of the general public in attendance shall be afforded the opportunity to speak on these matters for up to five (5) minutes per person. The public hearing shall be held during an evening or weekend time. The City will publicize the public hearing on its website and in area media at least two (2) weeks in advance. The City shall record the

minutes of the hearing and make them available to the public no later than March August 1 of each year by posting them on the City's website.

SECTION 2. All remaining provisions of Chapter 183 shall remain in full force and effect.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance shall take effect and be in force at the earliest time permitted by law.

_____
JASON S. STEIN
President of Council

_____
AMY HIMMELEIN
Clerk of Council

PASSED:

CLEVELAND HEIGHTS

To: Members of Council

From: William R. Hanna, Director of Law
Alix Noureddine, Assistant Director of Law

Cc: Susanna Niermann O'Neil

Date: December 3, 2021

Re: Ordinance 155-2021 Amending Chapter 183 of the Codified Ordinances

The attached Ordinance 155-2021 was prepared following the receipt of a request from "Cleveland Heights Move to Amend" to change the date for "Democracy Day." Cleveland Heights Move to Amend is the organization that submitted the initiative Ordinance, that was approved by voters in 2013 and established Chapter 183 of the Codified Ordinance of the City of Cleveland Heights, "Political Influence by Corporate Entities." Pursuant to Section 183.01 of the Codified Ordinances, the City is required to hold a public hearing in January every year, colloquially known as 'Democracy Day,' to consider the topic of Chapter 183.

Cleveland Heights Move to Amend has requested that City Council amend Chapter 183 so as to avoid potential interference with governmental operations during the month of January, especially in light of the transition to a new form of government and the seating of a substantially new Council in 2022. Accordingly, Cleveland Heights Move to Amend suggested revising Chapter 183 to change the date of the annual Democracy Day hearing until later in the year in 2022 and going forward. Changing the date of the annual Democracy Day to June is also expected to make it easier for the public to participate, due to better weather.

Proposed: 12/06/2021

RESOLUTION NO. 156-2021 (AS), *First Reading*

By Council Member

A Resolution authorizing the City Manager to enter into an agreement with Arthur J. Gallagher & Company for continuation of its protected liability self-insurance program for the City; and declaring an emergency.

WHEREAS, the City of Cleveland Heights, after careful evaluation of over twenty-five years of experience with its program of protected liability self-insurance, has determined that it is in the best interests of the City to continue such program; and

WHEREAS, the service to be performed by Arthur J. Gallagher & Company is a professional service for which bidding is not required, and after informal evaluation of other alternatives, it has been determined that the fees proposed are competitive and reasonable.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The City Manager be, and she is hereby, authorized to enter into all necessary agreements with Arthur J. Gallagher & Company and all other necessary entities for the continuation of the City's protected liability self-insurance program for the period from January 1, 2022, through December 31, 2022, at a cost not to exceed One Million Seven Thousand Dollars ($1,007,000.00), in accordance with the terms and conditions set forth in the proposal from Arthur J. Gallagher & Company, a copy of which is on file with the Clerk of Council.

SECTION 2. All documents and contracts necessary to effectuate the Program shall be approved as to form by the Director of Law.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to continue uninterrupted the program of protected liability self-insurance. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

JASON S. STEIN
President of the Council

AMY HIMMELEIN
Clerk of Council

PASSED:

Proposed: 12/06/2021

ORDINANCE NO. 157-2021 (F), *First Reading*

By Council Member

An Ordinance authorizing the execution of a Property Schedule to a Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc., as lessor, and the City, as lessee, for the purpose of acquiring an aerial ladder fire truck including related equipment and appurtenances, and declaring an emergency.

WHEREAS, this Council has determined that it is in the best interest of the City to acquire an aerial ladder fire truck including related equipment and appurtenances (the Equipment) pursuant to a Master Tax-Exempt Lease/Purchase Agreement (the Lease-Purchase Agreement) and an Addendum to Tax-Exempt Lease/Purchase Agreement (the Addendum), each dated November 3, 2014, between U.S. Bancorp Government Leasing and Finance, Inc., as lessor (the Lessor), and the City, as lessee, by entering into an additional property schedule, as modified and supplemented by an Addendum (Ohio) to Master Tax-Exempt Lease/Purchase Agreement (the Schedule, and, together with the Lease-Purchase Agreement and the Addendum, the Lease) pursuant to the Lease-Purchase Agreement and the Addendum, a copy of which Lease has been presented to this Council; and

WHEREAS, the obligations of the City under the Lease will be subject to annual appropriations by this Council;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, County of Cuyahoga, Ohio, that:

SECTION 1. Declaration of Necessity of Lease. It is hereby declared necessary and advantageous to the City for the City to enter into the Lease with the Lessor for the purpose of acquiring an aerial ladder fire truck including related equipment and appurtenances.

SECTION 2. Authorization of Schedule; Authorized Aggregate Principal Component; Interest Rate; Term. The City Manager and the Director of Finance are authorized and directed to sign, acknowledge and deliver, in the name and on behalf of the City, the Schedule in substantially the form on file with the Clerk of Council, provided that the aggregate principal components of the rental payments due under the Lease shall not exceed ***$1,200,000***, the interest component of those rental payments shall accrue at an annual rate not in excess of ***2.5%***, and the final renewal term of the Lease shall end not later than ***10½ years*** from the commencement date of the Lease. The form of the Schedule is approved with changes therein not inconsistent with this Ordinance and not substantially adverse to the City that are permitted by law and shall be approved by the City Manager and the Director of Finance, as signing the same on behalf of the City, provided that the approval of those changes by the City Manager and the Director of Finance, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the signing of the Lease.

SECTION 3. Approval and Execution of Related Documents. The President of Council, the City Manager, the Director of Finance, the Director of Law and the Clerk of Council, as appropriate, are further authorized and directed to sign any certifications, financing statements, documents (including an escrow agreement, if applicable, in substantially the form now on file with the Clerk of Council), addendums and instruments and to take such actions as are desirable, advisable, necessary or appropriate to consummate the transactions contemplated by this Ordinance and the Lease.

SECTION 4. Application of Lease Proceeds. The proceeds of the Lease shall be credited to the proper fund or funds as provided in the Lease, and those proceeds are appropriated and shall be used for the purpose for which the Lease is authorized and are hereby appropriated for that purpose.

SECTION 5. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Lease so that (a) the obligations of the City under the Lease 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 obligations the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest components of the Lease payments (Interest) will not be treated as an item of tax preference under Section 57 of the Code.

The City further covenants that (a) the City will take or cause to be taken such actions which may be required of it for the Interest to be and to remain excluded from gross income for federal income tax purposes, (b) the City will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) the City, or persons acting for it, will, among other acts of compliance, (i) apply or cause the application of the Lease proceeds to the governmental purpose of the Lease, (ii) restrict the yield on investment property acquired with the Lease proceeds, (iii) make timely and adequate payments to the federal government if required, (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 those proceeds, all in such manner and to the extent necessary to assure such exclusion of the Interest under the Code.

The Director of Finance, as the fiscal officer, or the City Manager 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 Lease as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Lease or Interest or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, 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, as determined by that officer, 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 Lease, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Lease, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Lease, the facts,

circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the Interest and the tax status of the Lease. Either of those officers is specifically authorized to designate or otherwise determine the obligations of the City under the Lease to be "qualified tax-exempt obligations" for purposes of Section 265 of the Code if such designation or determination is applicable and desirable, and to make any related necessary representations and covenants.

SECTION 6. Appropriation of Funds. The funds necessary to make the Lease Payments due under the Lease during the current fiscal year, if any, have been appropriated and shall be used for that purpose.

SECTION 7. Prior Acts Ratified and Confirmed. Any actions previously taken by City officials or agents of the City in furtherance of the matters set forth in this Ordinance are hereby approved, ratified and confirmed.

SECTION 8. Retention of Counsel. The legal services of Squire Patton Boggs (US) LLP, as counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the execution and delivery of the Lease and the rendering of the necessary legal opinion upon the delivery of the Lease. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. 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.

SECTION 9. Compliance with Open Meeting Requirements. 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 its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

SECTION 10. Captions and Headings. The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

SECTION 11. Declaration of Emergency; Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to enable the City to enter into the Lease at the earliest possible date, which is necessary to enable the City to enter into contract(s) for the acquisition of the aerial ladder fire truck and related equipment and appurtenances which is needed to enhance the fire protection services provided by

the City and thereby better protect the health and safety of the citizens of the City; wherefore, this Ordinance shall be in full force and effect immediately upon its passage, provided it receives the affirmative vote of five members of Council elected thereto; otherwise, it shall be in full force and effect from and after the earliest period allowed by law.

JASON S. STEIN
President of Council

AMY HIMMELEIN
Clerk of Council

PASSED:

Proposed: 12/06/2021

ORDINANCE NO. 158-2021 (F), *First Reading*

By Council Member

An Ordinance to amend certain subparagraphs of Ordinance No. 127-2020 (F) and subsequent amending ordinances, relating to appropriations and other expenditures of the City of Cleveland Heights, Ohio for the fiscal year ending December 31, 2021; and declaring an emergency.

BE IT ORDAINED by the Council of the City of Cleveland Heights that:

SECTION 1. Certain subparagraphs of Ordinance No. 127-2020 (F) and subsequent amending ordinances all relating to appropriations for the current expenses and other expenditures of the City of Cleveland Heights, Ohio for the fiscal year ending December 31, 2021 be, and the same hereby are increased, decreased and/or transferred in the amounts set forth in Exhibit 1.

SECTION 2. All expenditures of the City of Cleveland Heights within the fiscal year ending December 31, 2021, shall be made within the appropriations herein provided. "Appropriation" as used herein means the total amount appropriated for the individual fund. Notwithstanding the financial detail herein presented within an individual fund, the City Manager is authorized to transfer budgeted amounts within each fund, so long as the total amount appropriated for each individual fund is not exceeded.

SECTION 3. Notice of the passage of this ordinance shall be given by publishing the title and abstract of contents, prepared by the Director of Law, once in one paper of general circulation in the city of Cleveland Heights.

SECTION 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of public peace, health, and safety of the inhabitants of the City of Cleveland Heights, such emergency being the ongoing and continuous need to preserve the faith and credit of the City. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

_____

JASON STEIN
President of the Council

_____

AMY HIMMELEIN
Clerk of Council

PASSED:

Exhibit 1

Fund	Department	Object	Reason	Approved Budget	Requested Change	Revised Budget
101 - General	2108 - General Operations	O.T.P.S.	Transfer for RITA collection fees which are offset by revenue.	1,594,072.41	(91,697.57)	1,502,374.84
	2501 - Community Relations	Personal Services	Transfer for fees related to Cumberland Pool.	14,237.10	(14,237.10)	0.00
	3101 - Finance	Capital	Transfer for RITA collection fees which are offset by revenue.	40,000.00	(25,914.00)	14,086.00
	3201 - Income Tax	O.T.P.S.	Transfer for RITA collection fees which are offset by revenue.	1,037,337.05	117,611.57	1,154,948.62
			Transfer for Safe Built fees which are offset by revenue.	1,037,337.05	(103,000.00)	934,337.05
	6207 - Vehicle Maintenance	Personal Services	Transfer for materials, tools and supplies due to price increases.	874,670.68	(35,000.00)	839,670.68
		O.T.P.S.	Transfer for materials, tools and supplies due to price increases.	1,388,025.00	35,000.00	1,423,025.00
	6211 - Traffic Signs & Signals	O.T.P.S.	Increase to replace traffic controller cabinet at Mayfeild and Monticello. Accident damage settlement of $30,000 was received.	155,650.00	30,000.00	185,650.00
	7201 - Police Admin	O.T.P.S.	Transfer for E-citations software to be added to Police cruisers.	741,012.80	(24,750.00)	716,262.80
		Capital	Transfer for E-citations software to be added to Police cruisers.	402,324.33	24,750.00	427,074.33
	7401 - Building Services	O.T.P.S.	Transfer for Safe Built fees which are offset by revenue.	803,700.00	203,000.00	1,006,700.00
	7402 - Housing Inspections	Personal Services	Transfer for Safe Built fees which are offset by revenue.	553,125.96	(100,000.00)	453,125.96
	8201 - Public Prop/Park Maint	O.T.P.S.	Transfer for communication fees.	1,063,105.00	17,000.00	1,080,105.00
	8403 - Swimming Pools	O.T.P.S.	Transfer for fees related to Cumberland Pool.	153,495.71	23,000.00	176,495.71
	8411 - Community Center Admin	Personal Services	Transfer for fees related to Cumberland Pool.	659,633.72	(8,762.90)	650,870.82
			Transfer for tools, materials and supplies.	659,633.72	(1,500.00)	658,133.72
		O.T.P.S.	Transfer for communication fees.	485,800.00	(17,000.00)	468,800.00

Exhibit 1

Fund	Department	Object	Reason	Approved Budget	Requested Change	Revised Budget
			Transfer for tools, materials and supplies.	485,800.00	1,500.00	487,300.00
202 - Foundation Grants/Donatns	7201 - Police Admin	Capital	Increase for freight charges for radar signs and trailers for the Police which is funded by NOPEC.	22,000.00	518.96	22,518.96
	7304 - ALS Ambulance Services	O.T.P.S.	Increase for expenses funded by the State EMS Grant.	0.00	2,632.78	2,632.78
214 - Local Programming	2108 - General Operations	O.T.P.S.	Transfer for cable and internet expenses.	103,737.93	(1,000.00)	102,737.93
	2601 - Cable TV Admin	O.T.P.S.	Transfer for cable and internet expenses.	187,581.63	1,000.00	188,581.63
238 - Coronavirus Relief Fund	7201 - Police Admin	O.T.P.S.	Increase for flooring for the Police, paid for by the CARES ACT.	4,050.00	12,291.78	16,341.78
606 - ALS Ambulance Services	7304 - ALS Ambulance Services	O.T.P.S.	Transfer for meals and tires.	302,700.00	284.00	302,984.00
		Capital	Transfer for meals and tires.	566,105.00	(284.00)	565,821.00
Total				**11,152,364.32**	**45,443.52**	**11,197,807.84**

Proposed: 12/06/2021

RESOLUTION NO. 159-2021 (MS), *First Reading*

By Council Member

A Resolution authorizing the City Manager to enter into an agreement with the County of Cuyahoga to perform certain services to help maintain the City's sanitary and storm sewers; and declaring an emergency.

WHEREAS, the City owns and operates sanitary and storm sewers and catch basins, which require regular maintenance; and

WHEREAS, Section 171.02(b) of the Cleveland Heights Codified Ordinances authorizes the purchase of services without obtaining competitive bids where the price for services offered by a political subdivision is less than the price that would be obtained by taking bids from private persons; and

WHEREAS, the City Manager has determined that Cuyahoga County offers certain maintenance services for sanitary and storm sewers and catch basins at a price less than would be obtained by taking bids from private persons and that it would be in the City's best interests to retain the County for such services.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The City Manager be, and she is hereby, authorized to execute an agreement necessary to retain the County of Cuyahoga to provide certain services to maintain the City's sanitary and storm sewers and catch basins, in accordance with the requirements set forth in Section 171.02(b) of the Cleveland Heights Codified Ordinances. The agreement shall be similar to the one on file with the Clerk of Council. Term of the agreement shall expire on December 31, 2022, and the total amount to be paid by the City shall not exceed the sum of Six Hundred Thousand Dollars ($600,000). The agreement and any related documents shall be approved as to form and subject to the final approval of the Director of Law.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to proceed with the maintenance of the City's sewer and storm systems as soon as possible. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

_____
JASON S. STEIN
President of Council

_____
AMY HIMMELEIN
Clerk of Council

PASSED:

2022 AGREEMENT

FOR

SANITARY & STORM SEWER MAINTENANCE WITHIN THE

CITY OF CLEVELAND HEIGHTS, OHIO

This AGREEMENT is made this 1st day of January, 2022 ("Effective Date"), by and between the County of Cuyahoga, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the effective date hereof (hereinafter referred to as "COUNTY"), on behalf of the Cuyahoga County Department of Public Works, and the **City of Cleveland Heights** (hereinafter referred to as "CITY"), a municipal corporation of the State of Ohio, pursuant to the authority of _____ **No.** _____ passed by City Council on _____, 202_.

WHEREAS, the entire territory within the limits of CITY is designated as County Sewer District 17; and

WHEREAS, CITY is serviced by sanitary and storm sewer systems; and

WHEREAS, CITY owns and operates certain sanitary and storm sewers, catch basins, manholes, culverts and storm water detention and retention basins located in the public right-of-way and in or along easements (hereafter referred to as the "City Sewers") and any future improvements to the City Sewers or newly-constructed City Sewers may similarly be owned by the CITY; and

WHEREAS, CITY desires to retain the COUNTY to perform certain services relative to the City Sewers, as determined from time-to-time, to further advance CITY's sanitary and storm sewer maintenance program as part of County Sewer District No.17; and

WHEREAS, CITY desires the COUNTY to direct bill the CITY for performing said services; and

NOW THEREFORE, it is agreed that in consideration of the covenants and agreements contained herein and the conditions enumerated below, CITY and COUNTY agree as follows:

SECTION I. GENERAL CONDITIONS

A. This AGREEMENT shall supersede all other agreements heretofore made between the COUNTY and the CITY relative to the maintenance and repair of the City Sewers.

B. By entering into this AGREEMENT, CITY agrees on behalf of its respective elected officials, officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring COUNTY signatures may be executed by electronic means, and that the electronic signatures affixed by the COUNTY to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. CITY also agrees to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of the COUNTY.

C. All COUNTY agreements, including this AGREEMENT, are subject to the Cuyahoga County Code and all applicable laws, resolutions, regulations, rules and policies of the COUNTY, including, but not limited to, Title 4 pertaining to Cuyahoga County Ethics and the Inspector General, and Title 5 pertaining to Cuyahoga County Contracting and Purchasing Procedures. The County Code is available on the County Council's web site at http://council.cuyahogacounty.us/. CITY agrees that the charter provisions and all ordinances, resolutions, rules and regulations of the COUNTY now or hereafter applicable shall be included in this AGREEMENT for all purposes.

D. CITY represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24.

E. This AGREEMENT has been properly authorized pursuant to the required provisions of any and all charter provisions, ordinances, resolutions and regulations of the COUNTY and the CITY. The individuals signing on behalf of the parties to this AGREEMENT are authorized to execute this AGREEMENT on behalf of the COUNTY and the CITY. CITY recognizes and agrees that no public official or employee of the COUNTY may be deemed to have apparent authority to bind the COUNTY to any contractual obligations not properly authorized pursuant to the COUNTY'S Contracting and Purchasing Procedures.

SECTION II. STORM AND SANITARY SEWERS

A. Scope of Services:

(1) Upon written request from the CITY, the COUNTY agrees to provide the following storm and sanitary sewer system services ("Core Services") to the CITY:

a. Mainline storm and sanitary sewer cleaning and televising; and
b. Maintenance and repair of mainline storm and sanitary sewers in the public right-of-way or public easements; and
c. Maintenance and repair of storm and sanitary sewer lateral service lines in the public right-of-way and public easements. COUNTY shall not be responsible for cleaning storm and sanitary sewer lateral service lines and lateral connections located on private property; and
d. Engineering Services; and
e. Pump Station Maintenance; and
f. Cleaning, maintenance and repair of catch basins and manholes; and
g. Construction Inspection; and
h. Emergency services such as sewer backups, breaks and other malfunctions of the City Sewers as described in paragraph 4; and
i. Inflow & Infiltration inspection.

The parties agree that the CITY may, by written submission, request additional services from the COUNTY in addition to the Core Services. The CITY agrees to pay the actual cost incurred by the COUNTY in providing such additional services.

(2) Each request for Core Services from the CITY shall include all existing record plans, a map describing the area where the work is to be performed and a detailed scope of services.

(3) In response to the CITY's request, the COUNTY will perform a field investigation and prepare a cost estimate for the Core Services described in the detailed scope of services submitted by the CITY. The COUNTY will bill the CITY for the actual number of hours expended for performing a cost estimate for each request. If the COUNTY determines that the request for Core Services necessitates additional work than originally estimated, the COUNTY will contact the CITY for further instruction on how to proceed. The COUTY shall start performing the Core Services requested by the CITY upon receiving written approval from the CITY.

(4) In addition to the Core Services, the CITY may request Emergency Services from the COUNTY, including, but not limited to, response to sewer backups, sewer breaks and other malfunctions of the City Sewers. In the event the CITY requires the COUNTY to perform Emergency Services, the CITY shall submit to the COUNTY a description of the scope of services for a specific location. COUNTY will make best efforts to respond within two (2) hours of receipt of a written or verbal request for Emergency Service, except in circumstances of extreme weather or other circumstances beyond its control. In any such circumstances that prevent the response by the COUNTY in this time periods, the COUNTY shall advise the the CITY verbally or in writing immediately and provide an alternative time for response.

(5) The CITY shall be responsible for acquiring and paying for any and all permits, easements and rights of entry necessary for the construction, operation, maintenance and repair of City Sewers requested by the CITY to be performed by the COUNTY.

B. Term:

(1) The initial term of this AGREEMENT shall begin on January 1, 2022 and expire on December 31, 2022, unless sooner canceled or terminated as permitted in this AGREEMENT.

(2) The parties may exercise the option to renew this AGREEMENT for an additional term of twelve (12) calendar months thereafter if both parties so agree in writing.

C. Compensation:

(1) In consideration for providing the Core Services, including performing preliminary field investigations and cost estimates, the CITY shall pay the COUNTY according to the rate structure set forth in the Hourly Rate Schedule, attached hereto and incorporated in this AGREEMENT as Exhibit A. The CITY agrees that the Hourly Rate Schedule applies only to Core Services performed by the employees of the COUNTY. All other Core Services performed by parties other than employees of the COUNTY will be billed for actual costs incurred.

(2) In consideration for performing Emergency Services, the CITY shall pay the COUNTY on a time and materials/force account basis. In the event the emergency services are performed by parties other than employees of the Sewer Division, the CITY shall pay for actual costs incurred by the COUNTY.

(3) The COUNTY shall provide detailed invoices to the CITY after completion of Core Services and emergency services, but no more frequently than monthly. The invoices shall provide a detailed explanation of the work completed, the time for completion, the hourly rate, or if a lump sum is agreed to, the agreed price.

(4) The total amount to be paid by the CITY to the COUNTY for work performed under this AGREEMENT shall not exceed $600,000.00 unless the CITY agrees in writing to additional compensation. COUNTY shall not provide any services under this agreement that would cause the contract amount for the year 2022 to exceed the maximum amount stated in this paragraph unless the CITY has agreed in writing to pay the additional compensation.

(5) The CITY shall pay any invoice within thirty (30) days after receipt unless the CITY advises the COUNTY of any discrepancy in the invoice. Once any claimed discrepancy is resolved, the CITY shall pay within 30 days thereafter. No interest, fees, or charges shall be added to any invoice.

D. Termination and Suspension:

(1) This AGREEMENT may be terminated by either party to the AGREEMENT upon thirty day (30) written notice. Any notice of termination shall be by certified mail, addressed to the person designated for receipt of notices in this AGREEMENT. Upon termination of the AGREEMENT, the CITY shall pay any and all outstanding expenses relating to the Core Services requested and authorized within thirty (30) days of the receipt of an invoice for such services.

(2) If the CITY determines that there is any imminent risk to public safety or property, the CITY may suspend the work of the COUNTY immediately upon verbal or written notice and shall provide a written explanation of the suspension and steps needed to resume work.

E. Liability and Insurance

(1) Each party assumes responsibility for its own acts, omissions, negligence and intentional acts that may cause damage or injury.

(2) COUNTY shall have self-insurance or an insurance policy sufficient to cover the work of the COUNTY pursuant to this AGREEMENT. The CITY shall be named an additional insured on any policy of insurance and provided a certificate of insurance showing such additional insured status.

F. Independent Contractor

The COUNTY shall be considered an independent contractor, and its employees and the employees of COUNTY shall not be considered employees of the CITY.

G. Notices:

Any notices provided under this AGREEMENT shall be provided to the following, unless a party notifies the other party in writing of a change of contact:

(1) For the CITY:
Director of Public Works

40 Severance Circle
Cleveland Heights, OH 44120

(2) For the COUNTY:
Director of Public Works
Cuyahoga County Department of Public Works
2079 East 9th Street
Cleveland, Ohio 44115

H. Ownership and Construction of Sewers

(1) The CITY owns and operates all City Sewers, as defined herein, within its municipal limits.

(2) The CITY shall be responsible for the construction, extension or expansion of the City Sewers.

(3) Before the CITY constructs, extends or expands any City Sewers, the plans shall be reviewed and approved by the CITY's Engineer. COUNTY shall review the plans, if requested by the CITY, per the established rate structure. The parties agree that the design for such work will be in accordance with the Uniform Standards for Sewage Improvements dated December 1998 and the County Rules and Regulations dated October 2010, and as such standards, rules and regulations may be hereafter amended.

(4) Except as otherwise provided herein, any construction, extension or expansion of any sanitary and/or storm sewer main lines, catch basins, catch basin laterals, manholes, culverts and storm water detention and retention basins shall be paid for, permitted, performed, and inspected by the CITY. COUNTY shall inspect new work or construction, if requested by the CITY; COUNTY shall invoice the CITY for the costs of such inspection in accordance with the established rate structure.

IN WITNESS WHEREOF, authorized representatives of each party to this AGREEMENT, indicating their party's approval of the terms herein, have signed as of the dates set forth below.

COUNTY OF CUYAHOGA, OHIO

By: _____
Armond Budish – County Executive

Date: _____

The legal form and correctness of the within instrument is approved.

Gregory G. Huth
Law Director
Cuyahoga County

By: _____
Anka M. Davis
Assistant Law Director

Date: _____

CLEVELAND HEIGHTS, OHIO

By: _____
Susanna Niermann-O'Neil, City Manager

Date: _____

The legal form and correctness of the within instrument is approved.

_____
William R. Hanna
Law Director
City of Cleveland Heights

Date: _____

EXHIBIT A

2022
HOURLY RATE SHEET

		2022 RATE
100	ADMINISTRATIVE	**60.00**
120	ENGINEERING - GENERAL SANITARY	**120.00**
124	ENGINEERING - GENERAL STORM	**120.00**
200	TV INSPECTION - SANITARY SEWERS	**300.00**
201	TV INSPECTION - STORM SEWERS	**300.00**
222	JETTING -HOUSE LATERALS	**300.00**
223	JETTING CATCH BASINS	**260.00**
225	JETTING - PS/WWTP: TANKS/WELLS	**300.00**
226	JETTING & VAC SAN	**300.00**
227	JETTING & VAC STORM	**300.00**
228	JETTING - OTHER	**300.00**
300	HOUSE LATERAL MAINTENANCE/LATERAL T.V.	**275.00**
400	I/I - METERING, SMOKE, DYE, MANHOLE	**250.00**
404	I/I - OTHER/ OUPS	**150.00**
406	I/I - METERING MONTHLY RATE - EQUIPMENT	**150.00**
500	CONSTRUCTION/REPAIR - SANITARY MAIN	**390.00**
501	CONSTRUCTION/REPAIR - STORM MAIN	**390.00**
502	CONSTRUCTION/REPAIR/LOCATE - SANITARY LATERAL, M.H, C.B	**390.00**
503	CONSTRUCTION/REPAIR/LOCATE - STORM LATERAL, M.H., C.B.	**390.00**
511	CONSTRUCTION/REPAIR - LANDSCAPING	**390.00**
512	CONSTRUCTION REPAIR - OTHER	**390.00**
513	CONSTRUCTION REPAIR - PUMPING ACTIVITIES	**390.00**
514	CONSTRUCTION REPAIR - FORCE MAIN	**390.00**
700	PS - O&M (1-MAN CREW)	**150.00**
702	PS - O&M (2-MAN CREW)	**220.00**
800	WWTP - O&M (1 MAN CREW)	**150.00**
802	WWTP - O&M (2 MAN CREW)	**220.00**
900	PERMITS/RECORDS	**70.00**
901	INSPECTION - GENERAL	**70.00**
902	INSPECTION - PRIVATE/COMMERCIAL	**70.00**
903	INSPECTION - HOUSE/V-MEASUREMENTS	**70.00**
906	INSPECTION - MAIN LINE CONSTRUCTION	**70.00**
	STREET SWEEPING - CITY DISPOSAL	**200.00**
	STREET SWEEPING - COUNTY DISPOSAL	**300.00**
	MATERIAL LUMP SUM - CONSTRUCTION EXTRA ITEMS	**COST**

CLEVELAND HEIGHTS

Monday, November 1, 2021 Minutes

CITY COUNCIL

7:34 – 8:13 p.m.

President Stein presiding

Roll Call: Present: Cobb, Hart, Russell, Seren, Stein
Absent: Ungar

Staff present: Hanna, Himmelein, Niermann O'Neil, Zamft

Approval of the minutes of the Council meetings held on October 4 and October 18, 2021

Minutes were approved without any objections.

Matter of Record

Personal communications from citizens

President Stein introduced Myra Orenstein, representative from Cedar Fairmount SID, and assured everyone that City staff is aware of Council's wishes to help the City's business districts recover from the COVID-19 pandemic. They are currently working on a plan to provide financial assistance whether it's through ARP funds or a loan. The goal is to have this plan prepared and presented to Council within this month.

Jeanette Velez, a Cleveland Heights property owner and resident, informed Council that she used to own property at 3202 Tullamore and around 1996, she was forced to move out of her former home to make way for a City parking garage. She said she was recently approached by Fran with her petition for a park and signed the petition believing that this green space will be wonderful for the community. She heard about the plan to build condominiums on this property and hopes the City reconsiders this plan in favor of a park in order to preserve green space within Cleveland Heights.

John Fleshin thanked Council for allowing him to speak and wished them luck in the election tomorrow. He stressed that Council should "hurry slowly" with this project and does not agree with passing emergency legislation in connection with the Cedar Lee Meadowbrook project. He noticed the 100-year anniversary sign when he walked into

the meeting and said he's been a Cleveland Heights resident for nearly half of that time. Mr. Fleshin said when he was looking to purchase a home in Cleveland Heights nearly fifty years ago, he had issues obtaining a loan because the area was redlined. He asks that Council keep an eye on what is going on in that area and trusts them to do what is best for all involved.

Fran Mentch asked Council if the Cedar Lee Meadowbrook legislation that is on the agenda for tonight could be passed as an emergency and President Stein confirmed this to be true. She said she feels disconcerted after seeing this on the agenda when many Council members have spoken and campaigned on the need for transparency and open communication with citizens. She questions whether this needs to be passed as an emergency and hopes Council reconsiders passing this legislation as an emergency and instead follow the usual protocol for a project of this magnitude. Ms. Mentch has questions regarding the timing of this amendment and the need to pass it as an emergency. Is this due to the parking problems near the Cedar Lee Theatre caused by removing the surface parking lot behind that area and having the tenants of the proposed apartments parking in the parking garage? Is it a problem with the two properties that are part of the expanded site area? She requests that Council and the City government be transparent about the nature and the dollar amounts of that negotiation. Is this MOU being amended because of the problems that have surfaced with the current F & C construction at the Top of the Hill project? Council Members had been concerned about the issues with water in the parking garage that were brought to their attention by residents of the Buckingham Condominiums. Ms. Mentch said the City Manager was mistaken when she said since it is an open parking garage design, water is intended to come in at the sides. She visited the garage herself and the water is coming in through the center of the parking garage. Is the delay due to the poor relationship and the issues between the people in the community near the Top of the Hill project and the developer? Is part of the delay due to the lack of a guarantee from the developers as to the money that will be provided to the City? Is this amendment due to the fact that none of the retail properties at the Top of the Hill have been rented?

Ms. Mentch said that people go out to socialize, not just to eat and drink and Cleveland Heights needs a variety of parks. She said what would be offered at the Meadowbrook Lee Park would be very different than what is offered at other parks in the City. This area is ideal for hosting events and music festivals. She believes our preferences have changed due to COVID and the architecture of the proposed mixed-use buildings are a stale idea. She believes we need new thinking to manage what is going on economically. Ms. Mentch said she has spoken to many local merchants and restaurateurs and many of them would like to have an activity park in this location. Post-COVID, many people have a new set of values and a new awareness of the value of outdoor space. She requests that

Council not pass this legislation as an emergency and that they explain the rationale behind the extension and the emergency.

Report of the City Manager

Requested permission to issue an RFP for Heating Ventilation and Air Conditioning (HVAC) Preventative Maintenance and Repair Services

Matter of Record

City Manager Niermann O'Neil also reminded everyone that there will be two topics for next week's Committee of the Whole Meeting including Horseshoe Lake and the Code update that will be implemented starting January 1, 2022.

She also encouraged residents to recycle their political signs and said they can be brought to the Public Works building on Superior Avenue and the City's recycling crews will take care of them.

Report of the Clerk of Council

Nothing to report at this time.

PLANNING AND DEVELOPMENT COMMITTEE

ORDINANCE NO. 70-2021 (PD), *Second Reading*. An Ordinance amending various sections of Part Eleven, Zoning Code, of the Codified Ordinances of the City of Cleveland Heights.

Introduced by Council Member Hart, Seconded by Council Member Cobb

Roll Call: Ayes: Hart, Russell, Seren, Stein, Cobb
Nays: None

Legislation Passed

Vice President Seren wanted to express the rationale behind the passage of this legislation and why it will be made effective immediately. There are currently zoning applications that are in the process of being heard by the City and this amendment will help expedite the process. The Zoning Code will continue to be looked at periodically and improved upon.

President Stein thanked Director Zamft and his staff for all the time they have put into this.

RESOLUTION NO. 137-2021 (PD), *First Reading*. A Resolution authorizing the City Manager to enter into a second amendment to the Memorandum of Understanding with

F&C Development, Inc. concerning the "Cedar-Lee Meadowbrook" development; and declaring an emergency

Introduced by Council Member Hart

Legislation Introduced

Law Director Hanna explained that the reason this legislation is being passed as an emergency is because the deadline to negotiate a development agreement currently expires on November 9, 2021 and Council does not have another regularly scheduled Council meeting until November 9th. This amendment is only to extend the period of time to work with F&C to finalize the terms of the development agreement.

President Stein decided that Resolution No. 137-2021 should be withdrawn from the agenda since Council Member Russell is not comfortable voting on this legislation tonight and Council Member Ungar is absent. Five votes are required to pass emergency legislation. Council intends to have a Special Council meeting next week to vote on the legislation. This will provide time for Council Member Russell to have her questions answered before voting on the legislation.

PUBLIC SAFETY AND HEALTH COMMITTEE

Nothing to report at this time.

ADMINISTRATIVE SERVICES COMMITTEE

Vice President Seren encourages everyone to vote in tomorrow's election. He hopes voter turnout is high and represents the will of the community.

COMMUNITY RELATIONS AND RECREATION COMMITTEE

Nothing to report at this time.

FINANCE COMMITTEE

ORDINANCE NO. 138-2021 (F), *First Reading*. An Ordinance to amend certain subparagraphs of Ordinance No. 127-2020 (F) and subsequent amending ordinances, relating to appropriations and other expenditures of the City of Cleveland Heights, Ohio for the fiscal year ending December 31, 2021; and declaring an emergency.

Introduced by Council Member Hart, Seconded by Vice President Seren

Roll Call: Ayes: Russell, Seren, Stein, Cobb, Hart
Nays: None

Legislation Passed

ORDINANCE NO. 139-2021 (F), *First Reading*. An Ordinance to make appropriations for the current expenses and other expenditures of the City of Cleveland Heights, Ohio, for the period of January 1, 2022 through December 31, 2022; and declaring an emergency.

Introduced by Council Member Hart

Legislation Introduced

Council Member Hart said this will not be voted on at tonight's meeting and there will be a future Finance Committee meeting where there will be the opportunity for council members to bring up any issues they see or any changes they would like to see in the budget. There will eventually be a Third Reading and the public can comment on it as well.

ORDINANCE NO. 140-2021 (F), *First Reading*. An Ordinance authorizing the allocation, appropriation and expenditure of ARPA funds for sewer infrastructure improvement projects; and declaring an emergency.

Introduced by Council Member Hart

Legislation Introduced

MUNICIPAL SERVICES COMMITTEE

Nothing to report at this time.

Consent Agenda

Motion to suspend rules by Council Member Hart, Seconded by Vice President Seren

Roll Call: Ayes: Seren, Stein, Cobb, Hart, Russell
Nays: None

ORDINANCE NO. 141-2021 (PSH), *First Reading*. An Ordinance authorizing the renewal of an agreement with the Cuyahoga County General Health District for the provision of public health services to the City and its residents; providing compensation therefor; and declaring an emergency.

RESOLUTION NO. 142-2021 (CRR), *First Reading*. A Resolution declaring November 27, 2021, "Small Business Saturday;" and declaring an emergency.

RESOLUTION NO. 134-2021 (MS), *Second Reading*. A Resolution authorizing the Ohio Department of Transportation ("ODOT") to complete a project improving sidewalks and pedestrian crossing facilities within Cleveland Heights; and declaring an emergency.

Motion to adopt by Council Member Hart, Seconded by Council Member Russell

Roll Call: Ayes: Stein, Cobb, Hart, Russell, Seren
Nays: None

Legislation Passed

Report of the Council President

President Stein encourages everyone to vote in tomorrow's election.

NEXT MEETING OF COUNCIL: MONDAY, NOVEMBER 15, 2021

Respectfully submitted,

_____
Jason S. Stein
President of Council

_____
Amy Himmelein
Clerk of Council

CLEVELAND HEIGHTS

Monday, November 8, 2021 Minutes

SPECIAL CITY COUNCIL MEETING

6:26 – 6:30 p.m.

President Stein presiding

Roll Call: Present: Stein, Seren, Russell, Hart, Cobb
Absent: Ungar

Staff present: Hanna, Niermann O'Neil

Report of the City Manager

Nothing to report at this time.

Report of the Clerk of Council

Nothing to report at this time.

PLANNING AND DEVELOPMENT COMMITTEE

RESOLUTION NO. 137-2021 (PD), *Second Reading*. A Resolution authorizing the City Manager to enter into a second amendment to the Memorandum of Understanding with F&C Development, Inc. concerning the "Cedar-Lee Meadowbrook" development; and declaring an emergency

Introduced by Council Member Hart, Seconded by Council Member Russell

Roll Call: Ayes: Seren, Russell, Hart, Cobb, Stein
Nays: None

Legislation Passed

Council Member Hart and Law Director Hanna both clarified that this legislation is on Second Reading tonight. The legislation and agenda that originally went out had it listed as First Reading but that was corrected.

President Stein reiterated that this legislation is only to extend the negotiating period of time.

Council Member Russell said that the City Manager has arranged for F&C to attend the next Council meeting on November 15 and they will be able to answer questions.

Report of the Council President

Nothing to report at this time.

NEXT MEETING OF COUNCIL: MONDAY, NOVEMBER 15, 2021

Respectfully submitted,

_____

Jason S. Stein
President of Council

_____

Amy Himmelein
Clerk of Council

CLEVELAND HEIGHTS

Monday, November 15, 2021 Minutes

CITY COUNCIL

8:09 – 9:46 p.m.

President Stein presiding

Roll Call: Present: Russell, Ungar, Stein, Seren, Hart, Cobb
Absent: None

Staff present: Hanna, Niermann O'Neil

Report of the Council President

President Stein began the meeting with the Report of the Council President instead of waiting until the end of the meeting.

Vice President Seren thanked President Stein for allowing him to speak and said the people of Cleveland Heights voted overwhelmingly in support of Josie Moore to serve the remainder of Mary Dunbar's unexpired term on City Council. He supports Josie Moore's begin appointed early and saw no reason to delay her appointment, as she would make Council whole again for the remainder of 2021.

***MOTION** to appoint Josephine Moore to the seat vacated by Council Member Mary Dunbar

Moved by Vice President Seren, Seconded by Council Member Hart

Roll Call: Ayes: Seren, Cobb, Russell, Ungar, Stein, Hart
Nays: None

Motion Passed

Josie Moore was sworn in as a Council Member by Law Director Hanna.

Personal communications from citizens

Korbi Roberts, a trustee of the Cleveland Heights Historical Society, is here to represent the citizens of this region who are concerned that one of their great parks is in danger of being destroyed. She requests that Council ensure the preservation of Shaker Lakes for future generations. Ms. Roberts said these lakes span over 200 years of history and went

on to summarize the history of the region and these lakes. She said the Sewer District uses the park land for storm water drainage and the creek does not flow naturally anymore due to the storm water and waste water that runs into the creek. She said the NEORSD has the responsibility to contribute to the site and to honor the Shaker Lakes as a federally protected historic site. It is their obligation to work around protected historic sites for the benefit of everyone. Since the lake has been drained and secured, there should not be a rush to vote on this legislation. Instead, they should allow residents the time to find other funding if that is what is necessary to maintain the historic dam and beautiful lake. Ms. Roberts understands that maintaining these parks can be expensive but there are alternatives for funding.

Penny Allen urged Council not to rubber stamp the NEORSD's plan to destroy Horseshoe Lake. She said citizens love this area and wish to save it. We should not listen to fear mongering and environmental lies. She believes Council should be proactive and creative with this problem and come up with a different solution from the ones provided.

Ms. Allen also brought a statement to read from her neighbor Mike Madorsky regarding Horseshoe Lake. Mr. Madorsky urged Council to delay any vote on the plan proposed by NEORSD for Horseshoe Lake. He is a member of the newly formed organization "Friends of Horseshoe Lake" and they have retained their own independent engineer to seek solutions that would satisfy the concerns of public safety while maintaining Horseshoe Lake. They hope Council will hold off on voting until this independent engineer has a chance to complete their study and they can examine any new proposal with members of Council, NEORSD, and the citizens of Cleveland Heights and Shaker Heights. The lakes were threatened fifty years ago and were it not for concerned citizens, the lakes would not exist today. Horseshoe Lake is an amenity that Cleveland Heights residents value tremendously and future citizens will be thankful it was preserved.

Christine Heggie wanted to comment on the Horseshoe Lake legislation that will be voted on by council members next week. She thanked Council Member Hart for asking the difficult questions at last Monday's meeting during the discussion concerning Gannett Fleming's report regarding their independent assessment of Horseshoe Lake. She appreciates the council members who were willing to represent the residents who desire the preservation of Horseshoe Lake. Ms. Heggie found it concerning that the NEORSD answered most of the questions at that meeting instead of Gannett Fleming. She is worried about NEORSD playing such a dominant role in the discussions about the future of Horseshoe Lake. She said that alternative narratives and priorities expressed by constituents are frequently dismissed or omitted from the conversation. This practice misleads the public into believing that most constituents agree with the NEORSD's recommendations and Ms. Heggie does not believe this is the case. She encourages the

community to continue exploring alternatives that would provide the necessary safety at Horseshoe Lake while supporting its preservation.

Alan Federman posted a petition on NextDoor regarding having an ordinance that would mandate restaurants and bars to require proof of vaccination for admittance. He emailed this petition to Council last week and is here tonight to explain his reasoning behind the petition. He is concerned about the rising number of COVID-19 cases in the area and believes that the vaccination rates are not the issue but instead it is where people are gathering. Based on an article from NPR, he surmises that people who frequent bars and restaurants regularly are more likely to catch COVID-19 and spread it. Mr. Federman does not believe the State of Ohio will do anything about this so it is up to Cleveland Heights to implement measures that will protect a lot of people. He believes our City is a progressive leader and this will set an example for other cities in the area.

Sal Russo, President of the SID for Cedar Fairmount, said there is legislation on the agenda for tonight approving a loan for the SID and he wants to show his appreciation. He thanked everyone and said it will help them get through the next six to eight months.

Myra Orenstein, Executive Director of the SID, wanted to thank Council and Amy Himmelein for supporting their business district.

Gwendolyn Solomon wanted to express a personal concern she has regarding a City tree on her tree lawn that has grown very large roots over the past several decades. She and her husband were initially told not to trim the tree because it was on City property so they left it alone and now the roots are lifting up the sidewalk in front of their house. In July 2020, they received a notice of a code violation from the City Housing Department regarding the sidewalk not being level. As responsible homeowners, they repaired the sidewalk but they believe this is a temporary fix since the large roots continue to grow underneath the sidewalk. Initially, this was a lovely tree but it now appears diseased and is covered with moss. Ms. Solomon requests that the City remove the tree and its problematic roots in the interest of public safety and so she does not incur future costs as the homeowner.

City Manager Niermann O'Neil asked that Ms. Solomon provide her with her contact information so she can ensure the problem is resolved.

John Fleshin welcomed new Council Member Josie Moore and thanked Director of Planning Zamft for setting up all the meetings this week regarding Cedar Lee Meadowbrook. Mr. Fleshin brought in red maple leaves as a visual aid and described how he enjoyed driving past a beautiful red maple tree on his way to work everyday when he was a teacher, especially during the fall season. He would like to save the red maple

trees that are near his house. With this new development, he would like to see some real numbers and drawings. He is wondering what the return on investment will be and hopes that the public can see the final plans before a decision is made on this project.

Charece McGregor lives next to a house that caught on fire and should have been torn down. The homeowners did not have insurance so an investor purchased the property. She wants to know what is the protocol is in Cleveland Heights for having a house torn down since this house was a nuisance and has been an eyesore for 18 months. There are houses that look to be in better condition than this house that have been torn down by the City.

City Manager Niermann O'Neil requested that Ms. McGregor provide her contact information so she can follow up with this issue.

Ms. McGregor is also a business owner in the Noble neighborhood and knows Council Member Russell has been fighting to obtain funding to beautify this area. She hopes that more council members support Council Member Russell in this endeavor because these areas have been neglected.

Sara Olson wanted to speak at tonight's meeting regarding the conduct of the peace officers in Cleveland Heights and her recent experience with them this past Saturday. In her opinion, their conduct was excessive, they used intimidation, and they averted due process. A police chase had ended in their backyards and she said she saw multiple officers running with AR-15s through sleet. The officers quickly detained the person who had been driving the car and he had never left the vehicle. She forced the police to get a warrant because they wanted to search a garage because they believed a gun had been thrown by the suspect into the garage. She alleges that the officers were disrespectful and mocked her and her neighbors because they were scared. She said they threatened to arrest her when she tried to enter the garage. She said they threatened to write her a citation after she cursed at them. Ms. Olson alleges that they never wrote an incident report for this incident despite being on her property for six hours. She claims a car was getting stolen on a nearby street but the officers did nothing because they said they needed to watch the garage to ensure no one tampers with evidence. Ms. Olson does not understand why our officers have AR-15s and did not understand why they didn't immediately put them away once the suspect was detained. She moved to Cleveland Heights because she believed it was a progressive city with parks and diversity but she did not anticipate the experience she had on Saturday. As a taxpayer in the community, she does not believe the police officers should get raises and they only solve 36% of crimes. She said they are building trauma in our community and not making reports.

City Manager Niermann O'Neil assured Ms. Olson that she and the Police Chief will meet with her this week to discuss everything that happened.

Odies Grant has lived in Cleveland Heights for 36 years and raised six children here in the city. He has concerns about public safety on his street because the curb is very low and there are children walking down the sidewalk every day. Years ago, he saw a car jump the curb and hit a pole in front of the house. They propped up the pole with another pole to support it and it remained unsightly for fifteen years. He has spoken to the City Manager several times throughout the years about putting in a high curb but no action has been taken. In the winter, the snow plows throw ice up against his house and he's had windows broken on two occasions. He was told that the City would not put in a higher curb near his house because the curbs need to be uniform. However, there is a house nearby that has a curb that is 4-5 inches higher and that is permitted. Why are certain people able to get a curb like this but he hasn't been able to despite years of trying? He is a taxpayer and would like to see something done about this issue. Mr. Grant also says he supports keeping Horseshoe Lake because he loves having a beautiful place to take his children and grandchildren. He said he will be at more Council meeting in the future now that he is retired.

President Stein requested that Mr. Grant provide the City Manager with his contact information so the City can look into the issue and the history.

Cindy Evans is concerned because she feels that the City has stopped investing in her neighborhood, especially the Caledonia area. She has lived there for nearly 30 years and feels as though there is two Cleveland Heights and they are not treated equally. She would like her neighborhood to be restored to its former glory. For example, they don't have trees on the tree lawns. Hearing other residents complain about the damage trees cause over time is frustrating because the people in her neighborhood understand the value of trees. Also, there are a lot of vacant lots and the City stopped cutting the grass on these lots during the summer so it looked terrible. There was also a waterline break in front of her house and they fixed the break but the asphalt was left broken for three months afterwards. Ms. Evans believes that if she lived in an affluent part of Cleveland Heights, this would not have been tolerated. This is hurtful because they pay their taxes and invest in their homes just like everybody else. She wants the City to begin investing in her neighborhood again because it seemed to stop once the demographics of the area changed. She thanked Council Member Russell for speaking up for the residents in her neighborhood. Before that, she had just watched and accepted it but now she wants something done about this. One of the vacant lots has dead trees and she's emailed three people about the trees and nothing has happened. One of these trees or their branches could fall and injure someone. Just because the people who live in the area are older and

don't complain, does not mean this is okay. Ms. Evans plans to speak out about this as much as she can until her neighborhood gets some of the things they deserve.

Fran Mentch thanked everyone who has helped by signing and circulating the petition to put on the ballot in May for the City to put a park on the 1.07 acres on Lee Road between Meadowbrook and Tullamore. They have until November 29th and they only need 489 more signatures. Their organization, People for the Park, believe "what is green, stays green." They started this initiative to put the park on the ballot because they felt they had no choice and that citizens were excluded from participating in the development process. She said they asked eight different times to put the park on the agenda. She specifically asked Council Member Ungar, as he is the chair of the Planning & Development Committee, but never received a response. Speaking about the development plan with F&C like it is a done deal is a tactic that is used to discourage people from engaging in discussion. Council refused to wait to vote until January, when the new Elected Mayor form of government would begin. Ms. Mentch is troubled by the MOU with F&C being passed as an emergency and the numerous executive sessions that were held that excluded the public. She said it is fortunate that they are able to do a petition and this is an example of direct democracy. This park will be a public square like the ones that civilization has produced for centuries and will increase the success of anything built in the area. This includes the development planned in the nearby area. Ms. Mentch said the merchants in the Cedar Lee area are not unanimous in their support of the development and it has been misrepresented in the past. Many of them believe in the power of the park and have seen the economic benefits that comes from people being on the street. Also, there is not unanimous support for this development from the board of Future Heights. She is also hoping the structural issue with water coming in through the center of the parking garage at Top of the Hill will be addressed in the near future. She reminded everyone that F&C are the same developers working on the Top of the Hill project. Ms. Mentch encouraged everyone to sign the petition and help circulate it amongst family and friends.

Report of the City Manager

Nothing to report at this time.

City Manager Niermann O'Neil assured everyone that all of the concerns brought up at tonight's meeting will be followed up by herself, the Police Chief, and/or City staff.

Report of the Clerk of Council

Nothing to report at this time.

PUBLIC SAFETY AND HEALTH COMMITTEE

RESOLUTION NO. 143-2021 (PSH), *First Reading*. A Resolution to suspend enforcement of Section 351.09 of Part Three (Traffic Code) of the Codified Ordinances of the City of Cleveland Heights for the period ending December 31, 2022, or such earlier date as Council may hereafter prescribe on specified streets in the City; providing for on-street overnight permit parking on specified portions of Kensington, Hillcrest, Belmar, Glenmont, Eddington, and East Overlook Roads; and declaring an emergency.

Introduced by Council Member Cobb, Seconded by Council Member Russell

Roll Call: Ayes: Russell, Ungar, Stein, Seren, Hart, Cobb, Moore
Nays: None

Legislation Passed

RESOLUTION NO. 144-2021 (PSH), *First Reading*. A Resolution authorizing the City Manager to enter into an agreement with FARO Technologies, Inc. for the purchase of Three-Dimensional Focus Laser Scanners and associated materials and equipment for the Police Department through the United States General Services Administration; and declaring an emergency

Introduced by Council Member Cobb, Seconded by Council Member Hart

Roll Call: Ayes: Ungar, Stein, Seren, Hart, Cobb, Moore, Russell
Nays: None

Legislation Passed

ADMINISTRATIVE SERVICES COMMITTEE

ORDINANCE NO. 145-2021 (AS), *First Reading*. An Ordinance amending Ordinance No. 20-2021, "Wage and Salary Ordinance," providing for salary schedules, position classifications, and other compensation and benefits for officers and employees of the City, to add a salary schedule, position classification, and other compensation and benefits for a City Administrator.

Introduced by Vice President Seren

Legislation Introduced

Vice President Seren explained that this legislation will create and provide for the wages and salary for the newly created City Administrator position that is part of the Charter change that created the elected mayor position. This legislation will replace the Vice-City Manager position in the Wage and Salary Ordinance. This is First Reading only and there will be further discussion regarding the specifics of this legislation.

Vice President Seren also announced that City Council is looking for residents who would like to fill vacancies on Boards and Commissions. He encourages those who are interested to check out the City's website for more details.

COMMUNITY RELATIONS AND RECREATION COMMITTEE

Council Member Russell said she's been calling residents and asking what their position is on COVID-19 and encouraging people to get vaccinated.

Council Member Russell announced that she intends to be either President or Vice President of Council in 2022. She believes the voters have spoken and she received the most votes of any candidate in this last election. She will be one of the few remaining senior members of Council and the only one who lives north of Mayfield Road. The majority of council members live south of Mayfield and council leadership should reflect all areas of Cleveland Heights.

FINANCE COMMITTEE

ORDINANCE NO. 146-2021 (F), *First Reading*. An Ordinance to amend certain subparagraphs of Ordinance No. 127-2020 (F) and subsequent amending ordinances, relating to appropriations and other expenditures of the City of Cleveland Heights, Ohio for the fiscal year ending December 31, 2021; and declaring an emergency.

Introduced by Council Member Hart, Seconded by Council Member Cobb

Roll Call: Ayes: Seren, Hart, Cobb, Moore, Russell, Ungar, Stein
Nays: None

Legislation Passed

ORDINANCE NO. 139-2021 (F), *Second Reading*. An Ordinance to make appropriations for the current expenses and other expenditures of the City of Cleveland Heights, Ohio, for the period of January 1, 2022 through December 31, 2022; and declaring an emergency.

Introduced by Council Member Hart

Legislation Introduced

Council Member Hart said there will be a Third Reading and this legislation will not be voted on during this meeting. She encouraged all members of Council to attend the Finance Committee meeting to discuss the budget.

Council Member Hart encouraged everyone to attend the Special Council Meeting on November 22nd during which they will be discussing the Cedar Lee Meadowbrook

project as well as Horseshoe Lake. The Horseshoe Lake legislation will be up for a vote during that meeting.

ORDINANCE NO. 140-2021 (F), *Second Reading*. An Ordinance authorizing the allocation, appropriation and expenditure of ARPA funds for sewer infrastructure improvement projects; and declaring an emergency.

Introduced by Council Member Hart, Seconded by Council Member Ungar

Roll Call: Ayes: Hart, Cobb, Moore, Russell, Ungar, Stein, Seren
Nays: None

Legislation Passed

Council Member Hart explained that they need to allocate ARPA funds for sewer infrastructure improvement projects to allow for Public Works to apply for grants to hopefully reduce the City's costs.

MUNICIPAL SERVICES COMMITTEE

Council Member Moore thanked Council for appointing her at tonight's meeting. She said she has a lot of ideas and energy but also a lot to learn. She is looking forward to being part of this reinvigorated Council with clear leadership from the Mayor.

RESOLUTION NO. 147-2021 (MS), *First Reading*. A Resolution authorizing the City Manager to enter into an agreement with Wade Trim, Inc. of Ohio, for professional engineering services relating to the City's Sanitary Sewer Overflow Control project and the EPA Consent Decree; providing compensation therefor; and declaring an emergency.

Introduced by Council Member Moore, Seconded by Council Member Ungar

Roll Call: Ayes: Cobb, Moore, Russell, Ungar, Stein, Seren, Hart
Nays: None

Legislation Passed

RESOLUTION NO. 148-2021 (MS), *First Reading*. A Resolution authorizing the City Manager to enter into an agreement with Valley Freightliner & Western Star, for the acquisition of a Freightliner 114SD Tandem Axle Cab and Chassis for the Department of Public Works; providing compensation therefor; and declaring an emergency.

Introduced by Council Member Moore, Seconded by Council Member Ungar

Roll Call: Ayes: Moore, Russell, Ungar, Stein, Seren, Hart, Cobb
Nays: None

Legislation Passed

RESOLUTION NO. 149-2021 (MS), *First Reading*. A Resolution authorizing the City Manager to enter into an agreement with Advantech Services and Parts LLC, for the acquisition of a 2022 E-One HR 100ft Aerial Ladder Truck for the Fire Department; providing compensation therefor; and declaring an emergency.

Introduced by Council Member Moore

Legislation Introduced

This legislation is First Reading only because Council requested a memo regarding this purchase.

RESOLUTION NO. 150-2021 (MS), *First Reading*. A Resolution authorizing the City Manager to enter into an agreement with Gledhill Road Machinery Company, for the acquisition of a 14-Foot Stainless Steel Dump Body with Salt Spreader and Plow Package for the Department of Public Works; providing compensation therefor; and declaring an emergency.

Introduced by Council Member Moore, Seconded by Council Member Russell

Roll Call: Ayes: Stein, Seren, Hart, Cobb, Moore, Russell, Ungar
Nays: None

Legislation Passed

PLANNING AND DEVELOPMENT COMMITTEE

RESOLUTION NO. 151-2021 (PD), *First Reading*. A Resolution to concur in the proposal of the Northeast Ohio Regional Sewer District (NEORSD), as a part of its regional stormwater management program, and at its cost, to remove Horseshoe Lake Dam and return the lake bed to its naturalized state, including streams, plantings, trees, and other amenities, following a public planning process undertaken in concert with the cities of Cleveland Heights and Shaker Heights; and meet Ohio Department of Natural Resources (ODNR) standards for a Class I dam; and declaring an emergency.

Introduced by Council Member Ungar

Legislation Introduced

Council Member Ungar reiterated that this has not been a rushed process and they've heard thoughtful and articulate arguments from both sides regarding the NEORSD's recommendations. Furthermore, Council wisely sought out an independent second opinion from Gannett Fleming regarding these recommendations. Ultimately, Gannett Fleming concurred with the NEORSD's recommendations. Council Member Ungar assured everyone that there will be further opportunity to comment on this legislation at the next meeting.

RESOLUTION NO. 152-2021 (PD), *First Reading*. A Resolution authorizing the City Manager to enter into a loan agreement with the Cedar Fairmount Special Improvement District under the City's Economic Development Loan Fund Program to assist the SID with a temporary budgetary shortfall due to the COVID-19 pandemic and its resulting effects; and declaring an emergency.

Introduced by Council Member Ungar, Seconded by Council Member Hart

Roll Call: Ayes: Hart, Cobb, Moore, Russell, Ungar, Stein, Seren
Nays: None

Legislation Passed

Council Member Ungar congratulated his colleagues and the councilmember-elects on the recent historic election. He also congratulated Vice President Seren on his victory and wants everyone to know that despite their disagreements in the past, he supports Vice President Seren 100% and couldn't be happier with the outcome of the election. He's looking forward to seeing Vice President Seren and his new administration leading the City to success.

NEXT MEETING OF COUNCIL: MONDAY, DECEMBER 6, 2021

Respectfully submitted,

_____
Jason S. Stein
President of Council

_____
Amy Himmelein
Clerk of Council