

# MIDDLETOWN CITY COUNCIL AGENDA

**TUESDAY, April 2, 2013**

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## **I. WORK SESSION – COUNCIL CHAMBERS – LOWER LEVEL**

**5:30 p.m. Weatherwax Golf Course Discussion**

## **II. BUSINESS MEETING – COUNCIL CHAMBERS – LOWER LEVEL**

### **1. MOMENT OF MEDITATION/PLEDGE OF ALLEGIANCE TO THE FLAG**

### **2. ROLL CALL**

### **3. CITIZEN COMMENTS**

### **4. CITY MANAGER REPORTS**

Kathy Edelen, Outdoor Educator, Metroparks of Butler County, Community Gardens

### **5. CONSENT AGENDA.** . . Matters listed under the Consent Agenda are considered to be routine and will be enacted by one motion and one vote of consent. There will be no separate discussion of these items. If discussion is desired, that item will be removed and considered separately.

(a) **Approve City Council Minutes:** March 19, 2013

(b) **Receive and File Board and Commission Minutes:**

Middletown Cemetery Board- February 20, 2013

Architectural Review Board – March 14, 2013

Civil Service Commission – January 18, 2013

Middletown Public Housing Agency – March 19, 2013

Park Board- March 20, 2013

(c) **Confirm Personnel Transactions:**

Appointment: Corrections Officer – Dee Rossi

(d) **Appoint Park Board Member** – Carolyn Kieffer

(e) **Receive and File Oath of Office:** Gerry Burris

(f) **Proclamation:** April 7 -14, 2013 as Days of Remembrance

### **6. MOTION AGENDA**

(a) To request authorization to purchase a Sutphen S1 Shield Pumper Vehicle per the State of Ohio STS Contract in the amount of \$387,627.08

### **7. COUNCIL COMMENTS**

## **III. LEGISLATION**

- 1. Resolution No. R2013-07**, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2013 (Downtown Fund) (2<sup>nd</sup> Reading).

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2. **Ordinance No. O2013-18**, an ordinance approving an amendment to an agreement with Steam Systems, Inc. providing for the expansion of a manufacturing facility as a Development Project and Tax Exemption pursuant to the State Urban Jobs and Enterprise Zone Program, and making determination in connection therewith. (2<sup>nd</sup> Reading)
3. **Ordinance No. O2013-19**, an ordinance approving an amendment to an agreement with Pilot Chemical Company providing for the expansion of a manufacturing facility as a Development Project and Tax Exemption pursuant to the State Urban Jobs and Enterprise Zone Program, and making determination in connection therewith. (2<sup>nd</sup> Reading)
4. **Ordinance No. O2013-20**, an ordinance authorizing the City Manager to enter into a Job Creation Incentive Grant Agreement with Avure Technologies Inc. and declaring an emergency.
5. **Ordinance No. O2013-21**, an ordinance establishing a procedure for and authorizing and ratifying a contract with Lake Erie Electric for emergency electrical repairs and declaring an emergency.
6. **Resolution No. R2013-08**, a resolution declaring the intent of the City of Middletown to appropriate the fee simple interest and a permanent drainage easement in certain real property owned by T. E. Products Pipeline, Co. located at the northeast and northwest corners of Yankee Road and Todhunter Road and declaring an emergency.
7. **Ordinance No. O2013-22**, amending Chapter 1041 of the codified ordinances.(1<sup>st</sup> Reading)
8. **Resolution No. R2013-06**, a resolution strongly opposing the passage of HB5 by the Ohio General Assembly which proposes uniformity measures for municipal income tax in the form of unfunded mandates and a substantial loss of revenue (1<sup>st</sup> Reading).
9. **Resolution No. R2013-09**, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2013. (Pool Fund) (1<sup>st</sup> Reading).

It is the policy of the City of Middletown to make all public hearings and meetings accessible to all persons, in accordance with state and/or federal laws. If you have a disability which requires accommodation in order for you to attend and/or participate in this meeting, please contact us at 425-7831 at least forty-eight hours prior to the time of the meeting to advise us of the need for accommodation, and reasonable efforts shall be made to provide the same. This agenda may be accessed on the City of Middletown website at:

<http://www.cityofmiddletown.org>

# WORK SESSION

# **BUSINESS MEETING**

# **CITIZEN COMMENTS**

**CITY  
MANAGER  
REPORTS**

# CONSENT A GENDA

	<b>MIDDLETOWN, OHIO</b>	<b>March 19, 2013</b>
<b>ROLL CALL</b>	Mayor Mulligan called the Council Meeting to order at 5:40 P.M. in the City Council Chambers, Lower Level of the City Building. Members present: A. Scott Jones, A. Mort, J. Mulligan, L. Mulligan, D. Picard and A. J. Smith. Staff Present: City Manager J. Gilleland, Law Director L. Landen, Clerk Parr, N. Begley, D. Adkins, P. Combs, D. Hamet, M. Kohler, S. Tadych, D. Tieman, J. Terrill, J. Lawson, N. Wilson and R. Dalton.	
<b>EXCUSE LAUBACH</b>	Ms. Scott Jones moved to excuse the absence of Mr. Laubach. Mr. Smith seconded and the motion carried. Ayes: Mort, J. Mulligan, Picard, Smith, L. Mulligan and Scott Jones.	
<b>CITIZEN COMMENTS</b>	<p><b>Charles Byrd</b>, 708 Elwood Street. He said he was asking council for an act of humanity to save his home. He and his sister recently bought a home here in Middletown. He explained Middletown is his home. He's been a good citizen. He got hurt a couple years ago. They bought a fixer upper home and started renovations. They've been working on this home and had installed brand new carpet, flooring, sink, toilet, bath tub, electric meter box and a brand new front door.</p>	
<b>Laubach arrives</b>	<p>At 5:42 P.M., Mr. Laubach joined the meeting.</p> <p>Mr. Byrd said that last Friday he went there and the front door was kicked in. He said he understands things happen, but please don't punish his family. They came to the city building last Friday and did not like the way his sister was belittled. A man told her not to be concerned about this home because she didn't have enough money to renovate this house. Mr. Byrd said that was wrong, he just won a settlement over the workplace accident. He gestured to his hands stating they were crushed by a forklift three years ago while he was working for Blair Heating and Air. He said he lost everything. He worked three jobs, 80 hours a week. He said the house is livable right now. He has family members that have trades. He used to be a master craftsman, plumber, HVAC worker. He can no longer do the work, but he knows a lot and can tell others what has to be done. He said they'll make a beautiful home if the city doesn't destroy it.</p> <p><b>Chrie Byrd</b>, 1918 Winona. Ms. Byrd said the home in question was purchased and they paid cash, \$5000 so you know it was a fixer-upper. But there is an order for demolition. She said her questions of the Department of Revitalization were for a list of things that were needed to bring it up to standards. The exact words she was told from Mr. Adkins was don't worry about it you don't have the money. It's going to cost in the thousands. She still wants that list and what it will take for them to reconsider. She said the water was turned off on August 20<sup>th</sup>, 2012. Electric was turned off in April, 2012. It was purchased by Home America, who failed to respond to the demolition order. They are supposed to call her back. She said she has retained an attorney, Brian Green. She told them she is going to pursue charges because this was falsifying documents. It has cost her three days minimum so far not including the stress over the weekend. She said Home American got the deed to the property on 10/10/12 and got an order two months later for demolition. It only sat there a few months and others have been sitting for years. The utilities were on just a period of five months ago. She has talked to DUKE Energy. A friend told her to make a plan on how long it would take to get the electric on. It will take 3 days after the inspections, 7 to 10 days for the meter to be reinstalled. Mr. Adkins said she would have two to four weeks to make her decision and let them know what they were going to do, but still saw fit to take the electric meter out today, only 24 hours after she spoke to him. The interior and exterior could be completed in two to four weeks. She asked council to please let them have a true home.</p>	
<b>MANAGER REPORTS</b>	<p>Ms. Gilleland introduced Jamie Schwartz and Patrick Maloney with Ohioans Against Illegal Gambling for a presentation. Jamie Schwartz said Ohioans Against Illegal Gambling is a broad coalition of groups and individuals that support HB 7. HB7 would regulate the over 800 illegal gambling parlors across the state. These illegal gambling parlors or internet cafes prey on consumers and operate without oversight and are suspected of other criminal activity. There are no regulations or restrictions and if consumers feel they are ripped off they have no recourse. Owners and managers are not subject to background checks and many are convicted felons. There are no minimum payouts. Internet cafes do not post odds. These facilities operate outside of all state laws. Other legal gambling facilities have strict restrictions. Patrons pay to play games of chance with no protection. He asked Council to support their efforts and join Ohioans Against Illegal Gambling and to contact Senators' Coley and Jones asking them to support House Bill 7.</p> <p>Mr. Smith asked who they were, if they were a task force from the Attorney General's office.</p>	



Ms. Gilleland

Mr. Schwartz responded they are an individual group with backing from the Sheriff's Association and Ohio voter approved gaming institutions. They are not associated with the Attorney General's Office.

Mayor Mulligan asked for the time line for Senate consideration and if council would have time to consider a resolution of support from council.

Mr. Schwartz responded that the bill just left the House and will probably be in committee before going to the Senate within the next month.

Mayor Mulligan said council then would have time to consider a resolution or time to individually contact members of the Senate.

Ms. Gilleland said since the citizen comment portion of the agenda is not set up for dialogue between citizens and council, she asked Doug Adkins to come down and share information regarding the comments made by the Byrd's.

Mr. Adkins told council this was one of those unfortunate things that happen when you go through a foreclosure crisis with all the different banks and property owners and foreclosures that have happened the last three years. The city has adopted a process to get rid of the most blighted housing in Middletown. The first step in that process is for code enforcement and building inspection officials to recognize properties that appear to be demolition candidates. They take photos and do a cost estimate justification to see what it would take to bring the property back to code compliance. The Chief Building Official goes through all the data and makes determination on each house. At that point we do a full title report to make sure all potential lien holders are notified. Lien holders and those with any potential interest in the property are notified by certified mail and the property is posted with demolition orders. Demolition orders are posted on the door of the property. The certified notice on the property in question was sent out on January 7<sup>th</sup> and the house was posted on January 9<sup>th</sup>. There is a 20 day appeal period for lien holders. There is a whole statutory scheme on the appeal process. No one appealed. After that time, the city has the ability to access the home. They did kick in the door. They do a survey for asbestos removal, and the demolition contractors have the opportunity to go through the property to bid on the demolition of the properties. The City and staff have followed our procedures. Council has been sent photos of the house. We should not stop the demolition of this property. The City is trying to get rid of 300 of our most blighted homes through the Moving Ohio Forward Grant Program. He said the Byrd's may have had a fraud committed against them. The mortgage company in California signed for the certified mail with the demolition notice. If that was not disclosed, they possibly have had a fraud committed against them.

Discussion ensued and many questions were asked of Mr. Adkins. The door to the property was kicked in on Friday, March 15<sup>th</sup> and that is when the City became aware of the Byrd's. They were not listed on any court records as having an interest in the property. Within the past couple of weeks the mortgage company in Huntington Beach, California sold the home to the Byrd's. That mortgage company signed the certified mail with the notice of demolition back on January 10<sup>th</sup>. Mr. Adkins said either the mortgage company signed for it and did disclose that fact, or they signed for it and did not disclose the fact. If they did not disclose the fact that they had received demolition orders, it's possible the Byrd's have been defrauded. This is a civil matter between that mortgage company and the Byrd's. He had not been inside the property to notice if there had been renovations made. He has seen the outside of the property. The Byrd's say they have some tools and things in the property. The appraisal on the property is \$22,000 and the cost estimate to bring the home to code compliance is nearly \$27,000. To bring it back to code compliance was over 100% of the value of the home. The home is 1710 Glenwood. The Auditor's Records still show the lien holder as the mortgage company in Huntington Beach.

There was much discussion. The house is vacant, in poor condition and needs to be demolished. There is a process in place that is well defined. If demolition is postponed, it sets a terrible precedence. You will have everyone appealing to the city or appealing to Common Pleas Court. The Byrd's are also in foreclosure in the house they are currently in. If they could not afford the house they are in, they won't be able to afford the renovations to this house and the upkeep to keep it in compliance. Staff has put the Byrd's in touch with the Homeless Coalition for assistance for housing and Legal Aid. Mr. Adkins advised that we should move forward.

Mr. Smith felt this home should be left standing until we can figure this out. There are 299 more houses that can be torn down.

	<p>Ms. Mort said staff has done well to refer them to the help that you have. She didn't feel it was our right to get into the middle of it. It is a matter between the Byrd's and that mortgage company. She said we need to move forward.</p> <p>Ms. Scott Jones did not want to move forward with this piece of property. She wanted to ask questions of the Byrd's.</p> <p>Mr. Adkins advised that was not a good idea. They Byrd's have contacted legal counsel. The City has turned this case over to our insurance company. There could be possible litigation.</p> <p>The mayor polled the remaining council members for their opinions on whether to move forward with the demolition process.</p> <p>Mr. J. Mulligan felt the city should move forward.</p> <p>Mr. Picard said we should move forward.</p> <p>Mr. Laubach said he understands the city process, but could not justify moving ahead under these circumstances.</p> <p>Mayor Mulligan said he is in favor of moving forward. That was four in favor of moving forward giving staff and the City manager the direction to move forward.</p>
PRESENTATION	<p><b>PRESENTATION OF AWARD – <i>Ohio City Management Association (OCMA)</i></b></p> <p>Ms. Gilleland introduced Tom Carroll, City Manager of Loveland and Board Member of the Ohio City Management Association. Ms. Gilleland introduced the representatives and partners from Cincinnati State, Warren County Career Center, Atrium, Miami University, Mike Robinette former Economic Development Director and staff from the City of Middletown for presentation.</p> <p>The Mayor expressed his appreciation to all the partners on this impressive effort and this award recognizes this state-wide maybe nation-wide novelty of a partnership on Greentree and the educational impact on the region.</p> <p>Mr. Carroll commented this was quite an accomplishment and it was truly an honor to present this award. He acknowledged that Middletown was collaborating and working together long before the state told us to. Others commented and praised the efforts of Atrium Medical Center, Miami University, Cincinnati State, Warren County Career Center and the City of Middletown who brought the Greentree Health Academy to the campus of Atrium Medical Center to fruition; this facility is now a thriving educational center for medical careers and serves as a state-wide model.</p>
CONSENT AGENDA	<p>The Consent Agenda issues were presented for action:</p> <p><b>Approve City Council Minutes:</b> <del>March 2, 2013</del> and March 5, 2013</p> <p><b>Receive and File Board and Commission Minutes:</b></p> <p>Board of Zoning Appeals – July 5, 2012 and January 2, 2013</p> <p>Civil Service Commission – October 16 and November 20, 2012</p> <p>Historic Commission – November 29, 2012</p> <p>Airport Commission – December 5, 2012 and January 2, 2013</p> <p>Library Board of Trustees - December 18, 2012; January 15, 2013</p> <p>Architectural Review Board – December 27, 2012</p> <p>City Planning Commission – January 9, 2013 and Feb 13, 2013</p> <p>Board of Health &amp; Environment – February 12, 2013</p> <p><b>Confirm Personnel Transaction:</b></p> <p>Appointment – Finance Director – Michelle Greis</p> <p>Appointment – Part Time Bus Cleaner – Brandon Oliver</p> <p><b>Receive and File Oath of Office:</b> Penny Sargent</p>
MOTION AGENDA	<p>Mr. Smith asked that the Council minutes from March 2, 2013 be moved to the motion agenda for consideration.</p> <p>Mr. Smith moved to approve the remaining issues and actions as presented on the Consent Agenda. Mr. J. Mulligan seconded. Motion carried. Ayes: Laubach, Mort, J. Mulligan, Picard, Smith, L. Mulligan and Scott Jones.</p> <p>Ms. Scott Jones moved to approve the March 2, 2013 City Council minutes. Mr. J. Mulligan seconded. Motion carried. Ayes: Scott Jones, Laubach, Mort, J. Mulligan, Picard, and L. Mulligan. Abstain: Smith.</p>

<b>MOTION AGENDA</b>	<p><b>Receive, File and Approve the Tax Incentive Review Council Minutes, Report and Recommendations of 3/4/13.</b></p> <p>Ms. Hamet presented information regarding the TIRC meeting. She stated the review showed all companies were meeting the terms of their agreements and some are planning additional growth opportunities for the future. There are two amendments on council's agenda tonight from the recommendations of the TIRC review.</p> <p>Mr. J. Mulligan moved to Receive, File and Approve the Tax Incentive Review Council Minutes, Report and Recommendations of 3/4/13. Ms. Mort seconded. Motion carried. Ayes: Laubach, Mort, J. Mulligan, Picard, L. Mulligan, Smith and Scott Jones.</p>
<b>COUNCIL COMMENTS</b>	<p>Mr. J. Mulligan had no comments.</p>
<b>D. Picard</b>	<p>Mr. Picard commented this was one of those evenings when council was presented with a difficult situation. He said his heart goes out to the Byrd's. He said there was nothing to put the city on notice as to what was going on. It doesn't appear the deed has even been filed. The city followed all rules and regulations and did everything it was supposed to do. It dotted all I's and crossed all the T's. Unfortunately, we are presented with a heart wrenching situation. He feels the proper course of action is to move forward. He said the City has been threatened with a lawsuit, but since no lawsuit has been filed, he felt the proper course of action was to move forward. If a lawsuit were to be filed and filed correctly, he said he might be of a different opinion. Given what's occurred he made the decision to move forward. He said that's not to say he wouldn't change his mind if the circumstances were different. He said he is unaware of any way we can prevent this happening in the future. He doesn't think the city can be a gate keeper. We can't take care of all citizens in all matters. We need to move forward until something is filed of record. He again said he might reconsider if other things occur.</p>
<b>J. Laubach</b>	<p>Mr. Laubach said he continues to caution his colleagues and the city from getting involved in property. We need to get away from acquiring, demolishing, holding, renovating or selling property. He said no offense to city staff, but this is what happens when you get bureaucracy involved. He felt it made matters worse in the long run. We did not have a free market. We are in this situation with blighted housing because of previous councils being heavily involved in housing and subsidized housing and it changed the direction of our city. It changed the makeup of our housing for the worse. It created a culture of dependency that we are worse off for if we had not gone down that road. He said his heart goes out to these people, he doesn't think the right thing to do is move forward. The harder thing to do would be not to move forward.</p>
<b>A.S. Jones</b>	<p>Ms. Scott Jones read an announcement regarding an artist and athlete that is coming to the Middletown Art Center on Friday, May 3<sup>rd</sup>. The artist will unveil a bronze sculpture of Cris Carter. She reminded the public of her Meet and Greet that is scheduled for Thursday, March 28<sup>th</sup> here in the council chambers, 5 to 6 p.m. She also commented on the incident this evening before them. She said they have the right to agree or disagree on this dais. She doesn't agree that you have the right to say when someone is out of line or not when they are inquiring. We have home rule, we don't know all the circumstances behind this situation and she doesn't understand the hastiness of taking this house down. Sometimes doing the right thing is the hardest thing to do. She is all for tearing down blighted, dilapidated housing and for cleaning up this city. There would be no laws on the books if someone didn't set precedence. She doesn't understand the rush to judgment on this particular situation.</p>
<b>A.Mort</b>	<p>Ms. Mort attended the Chamber Business Expo and she complemented all who participated. She complemented the Middletown Show Choir who performed at the Expo. She announced an upcoming visit by two Cuban artists the first of April. They will attend the First Friday event and will work with children to create a mural. She announced April 20<sup>th</sup> as Earth Day. There will be a lot of work around town. There will be two parts to the cleanup that day. There will be a hazardous waste drop off at Middletown High School. She encouraged all to bring their paint, chemicals and batteries. She attended the Library Board meeting today. They are celebrating 100 years this year and she announced upcoming celebratory events in July.</p>
<b>Scott Jones left</b>	<p>At 6:40 p.m. Ms. Scott Jones departed from the meeting room.</p>
<b>A.J. Smith</b>	<p>Mr. Smith said he doesn't think we should proceed down this course of action on the Byrd property. There are 300 properties slated for demolition this year. It doesn't hurt to put one off for a later date until we work some things out. Depending on who it is, how they dress, how much money they have or don't have, we may grant a variance or not. He said just a couple of weeks ago we had folks come before council regarding decorative lighting and we gave them ample time and we even helped them. That was lights versus a home. He said he didn't understand. What's right isn't always popular. He felt four members of council made the wrong decision tonight in allowing administration to move forward.</p>

<b>L. Mulligan</b>	<p>Mayor Mulligan reported on the SunCoke Community Advisory Panel meeting. SunCoke announced an upcoming scheduled shut down for maintenance. They had good discussion and a presentation by a SW OH air quality agency that explained the process used for reporting. They have a 24 hour hot line 513-946-7777 or toll free 800-889-0474. They do investigate all complaints, so phone in right away with any concerns or complaints. He stated his appreciation to SunCoke for their ongoing commitment. He extended thanks and admiration to Greg Rasmussen on his new job opportunity. He wished him well in his future career. He acknowledged Middletown Christian on their anniversary celebration this past weekend. They touch 25 different school districts and have quite a campus. He said Planning Commission met last Wednesday and approved a couple of variances in support of some local businesses. He commended the Planning Commission for all their work and efforts in balancing needs of the community with the zoning ordinances. He also stated his heartfelt concerns for the Byrd's' and their situation. There are many different frauds and scams that occur and he asked citizens to do their due diligence. He respectfully disagreed with some council members that feel we should pause and go with an easier decision. It would create challenges with future situations. We can be compassionate and offer assistance as far as we can. Working with staff in the process and being fully informed with the process we need to be sure we do the right thing for all of the community.</p> <p><b>Law Director Landen</b> reported that Resolution Number R20013-06 will be pulled from legislative agenda tonight and he anticipates bringing that back to a future meeting.</p>
<b>Ord. No. O2013-16 Fisher Easement</b>	<p><b>Ordinance No. O2013-16</b>, an ordinance authorizing the City Manager to grant an access easement to Trustees of the Fischer Family Foundation was read for the second time and presented for action.</p> <p>Mr. J. Mulligan moved for the adoption of Ordinance No. O2013-16. Mr. Laubach seconded and the motion carried. Ayes: Mort, J. Mulligan, Picard, Smith, L. Mulligan and Laubach.</p>
<b>Ord. No. O2013-17 Mowing Contracts</b>	<p><b>Ordinance No. O2013-17</b>, an ordinance authorizing a contract with Hickman Lawn Care for grounds maintenance for the three year period from 2013 through 2015 and declaring an emergency was presented for action.</p> <p>Mr. J. Mulligan moved that the Charter provision requiring reading on two separate days be suspended and that Ordinance No. O2013-17 be declared an emergency measure and read one time only. Mr. Smith seconded and the motion carried. Ayes: J. Mulligan, Picard, Smith, L. Mulligan, Laubach and Mort.</p> <p>The ordinance was read one time only.</p> <p>Ms. Mort moved for the adoption of Ordinance No. O2013-17 as an emergency measure. Mr. J. Mulligan seconded and the motion carried. Ayes: Picard, Smith, L. Mulligan, Laubach, Mort, and J. Mulligan.</p>
<b>Res. No. R2013-04 Purchase of Ligon</b>	<p><b>Resolution No. R2013-04</b>, a resolution authorizing a contract with Elizabeth Ligon for the purchase of real property located at 42 North Main Street was read for the second time and presented for action.</p> <p>Ms. Mort moved for the adoption of Res. No. R2013-04. Mr. J. Mulligan seconded.</p> <p>Mr. Laubach said we have done a lot of good things downtown. He continued to urge his colleagues to exercise restraint when dealing with and purchasing property. He felt it continues to put the city in a negative position and exposes the city in areas that it doesn't need to be exposed. We need to move away from these types of things.</p> <p>Mr. Picard said in this situation it presents an opportunity to get rid of a blighted property and turn it into something which will be productive.</p> <p>Motion carried. Smith, L. Mulligan, Mort, J. Mulligan, and Picard. Nays: Laubach.</p>
<b>Res. No. R2013-05 Release Bond</b>	<p><b>Resolution No. R2013-05</b>, a resolution to release a performance bond submitted by Sawyers Mill LLC for public improvements as part of Sawyers Mill Subdivision was read for the second time and presented for action.</p> <p>Ms. Mort moved for the adoption of Resolution No. R2013-05. Mr. J. Mulligan seconded and the motion carried. Ayes: L. Mulligan, Laubach, Mort, J. Mulligan, Picard and Smith.</p>

**Res. No. R2013-07  
App. Downtown**

**Resolution No. R2013-07**, a resolution to make adjustments to appropriations for to current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2013. (Downtown Fund) (City Building Renovations) was read for the first time.

Preston Combs presented the request for legislation. He said Council approved staff to begin work for renovations within the building with regards to the school board occupying the fourth floor. Original estimates were at \$150,000, he recommended Council approve an amount not to exceed \$200,000 in case they run into some issues with electric or plumbing as they are moving walls. The appropriation will come from the Downtown Fund.

Mayor Mulligan asked when the lease revenue begins to come in in a couple of years, will those payments go back into Downtown Fund.

Mr. Combs said yes, that fund would be replenished.

**Ord. No. O2013-18  
Agreement Steam  
Systems**

**Ordinance No. O2013-18**, an ordinance approving an amendment to an agreement with Steam Systems, Inc. providing for the expansion of a manufacturing facility as a Development Project and Tax Exemption pursuant to the State Urban Jobs and Enterprise Zone Program, and making determination in connection therewith was read for the first time and was the subject of the previous TIRC Report.

**Ord. No. O2013-19  
Agreement Pilot  
Chemical**

**Ordinance No. O2013-19**, an ordinance approving an amendment to an agreement with Pilot Chemical Company providing for the expansion of a manufacturing facility as a Development Project and Tax Exemption pursuant to the State Urban Jobs and Enterprise Zone Program, and making determination in connection therewith was read for the first time and was the subject of the previous TIRC Report.

**EXEC. SESSION**

The Mayor said after the executive session council will recess until March 26<sup>th</sup> for the State of the City Address at Cincinnati State downtown. The next regular council meeting will be held on Tuesday, April 2, 2013. The Mayor wished all a pleasant Easter.

At 6:57 p.m. Ms. Mort moved to go into executive session under the authority of O.R.C. 121.22 (G) (1) To consider the appointment of a public official; and (2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage. Mr. J. Mulligan seconded and the motion carried. Ayes: Laubach, Mort, J. Mulligan, Picard, Smith, and L. Mulligan.

**ADJOURNMENT**

At 7:37 p.m. the meeting reopened and it immediately adjourned.

\_\_\_\_\_  
**Lawrence P. Mulligan, Jr. Mayor**

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

**MIDDLETOWN CEMETERY BOARD  
MINUTES  
FEBRUARY 20, 2013**

**CEMETERY BOARD:** Mitchell Ballard, Steve Bohannon, Deb Morrison, Josh Toms, Fred Tyson

**COUNCIL  
REPRESENTATIVE:** Joe Mulligan

**STAFF:** Donna Beauregard, Public Works Parks Leader – Parks & Grounds

**MEETING:** Called to order at 5:00 p.m.

**ROLL CALL**

Present: Steve Bohannon, Mitchell Ballard, Deb Morrison, Josh Toms, Fred Tyson

Also present was City Council Representative, Joe Mulligan, and City Staff Representative, Donna Beauregard

**APPROVAL OF MINUTES**

Deb Morrison made a motion to approve the January 30<sup>th</sup> Minutes, Fred Tyson seconded. Motion passed.

**OLD BUSINESS**

Sub-Committee Updates:

Steve Bohannon, on behalf of the Board, thanked Deb Morrison for the nice article in the Middletown Journal and on the Middletown USA website she did for the Cemetery.

Update on Automatic Gate:

Donna Beauregard gave an update on the problems that are happening with the newly installed automatic gate. Steve Bohannon mentioned John Brooks suggestion for a separate gate to access the Cemetery when the gate is not working.

Financial Report from Finance Department:

Donna Beauregard distributed updated Financial Report. Discussion followed about how Board should go about paying for gutters and downspouts, and dealing with possible wiring problems with the gate. Josh Toms made a motion that if a Board member pays for the wiring upgrade for the gate, the Board member would be reimbursed at a later date when funds are available in the account. Deb Morrison seconded. Motion passed. The Board then instructed Mitchell Ballard to give the go ahead to Bayless to install the gutters and downspouts. Mitchell gave required paperwork to Donna Beauregard in regards to Bayless. Mitchell Ballard reminded the Board he still has an outstanding bill of approximately \$525.00, for office supplies.

Procedural Guidelines:

Mitchell Ballard distributed copies of his new draft of the Procedural Guidelines. Discussion followed.

**NEW BUSINESS**

**ADJOURN**

Josh Toms motioned to adjourn the meeting, Deb Morrison seconded, motion passed. Middletown Cemetery Board adjourned at 6:32 p.m.

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Steve Bohannon, Chair

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Donna Beauregard, Secretary

**MINUTES**  
**ARCHITECTURAL REVIEW BOARD**  
**March 14, 2013**

TYPE: Regular Meeting

PLACE: Conference Room 4B

TIME: 4:00 PM

MEMBERS PRESENT: Chris Amburgey Joanne Mejias-Yancey Joe Mulligan

STAFF PRESENT: Marty Kohler

OTHERS PRESENT: Giles Patterson – Fischer Homes

The meeting was called to order at 4:00 pm by Chairman, Chris Amburgey. The roll was called. Three members were present which constitutes a quorum.

**Approval of Minutes**

Mr. Amburgey asked for corrections or comments on the minutes of the December 29, 2012 ARB meeting. There being none, a motion was made by Mr. Mulligan and seconded by Ms. Mejias-Yancey to approve the minutes. The roll was called. The minutes were approved unanimously.

**Case 1-13: Amendment to the Preliminary Development Plan for Renaissance I and II Dwelling Group**

Mr. Amburgey introduced the case, noting this meeting is a request by Fischer Homes for approval a variance request for Section 1225.03(c)(3) of the Housing and Architectural Standards pertaining to front wall plane and Section 1225.03(h)(1) pertaining to maximum garage width.

This comes to the Architectural Review Board as a developer's submission of revised front elevations for the "Designer" series of homes and deletes three previously approved models and adds six new models. The revised set of elevations contains 14 models with a total of 103 possible front elevation options. Of the 103 front elevations, 53 of the plans do not comply with the maximum allowable front wall plane. Also the six facades of the "Mercer" model do not comply with the maximum garage width provision if brick is used as the siding material or if and optional garage storage space is added to the plan.

Since the previous similar application for the "Masterpiece" series only contained four elevations that did not meet the maximum front wall plane provision, the review process was much easier. The "Designer" series of plans is less expensive and tends to be "boxier" in style resulting in

wider wall planes. Also the six new plans are all of the “boxier” style. The purpose of the maximum wall plane break is to require that the front of a house has more dimension. While architectural standards will never guarantee an architecturally pleasing style, the requirements tend to reflect qualities of a well designed house. Mr. Kohler showed the four “Masterpiece” houses that were granted variances which exhibited other architectural features which mitigated the effects of the continuous wall plane. These features included full width front porches, dormer windows which break the roof line, and front facing gables with attic windows that also provide additional dimension to the façade.

Mr. Kohler showed the elevation drawings of the “Mercer” model that would not meet the maximum garage width if brick is used as the siding material which adds 8 inches to the garage width, otherwise the garage would be exactly 50% of the façade width. Also Fischer offers an option of an extra option of a storage area which adds width to the garage and thereby exceeds 50% of the front elevation, even though the extra space is recessed further back on the façade. Mr. Kohler showed an elevation of a Cristo Home for which a similar request was made where the extra storage contained a window and gave the appearance of being living space rather than garage space. The variance request was approved for the Cristo home.

Mr. Patterson noted that the new elevations were developed by both Fischer’s in-house architects and national architectural firms. The floor plans of many of the homes are the same as the plans approved by the ARB and Planning Commission in 2011. Mr. Patterson also noted that their interpretation of the code was that a front porch provided a break in the wall plane, however staff’s interpretation is that the porch is not part of the wall and that the physical wall requires an offset. Mr. Kohler said that the initial package of plans contained well over 200 front elevations and were submitted only a few days prior to the report that was transmitted to Planning Commission. All elevations were reviewed with respect to 22 code requirements for architectural features. Due to the hurried review staff missed three front wall plane issues for three plans. Now that this is discovered and new plans are being submitted, all plans need to be reviewed as a new variance request.

Mr. Patterson explained that the Fischer plans are designed to be uniform for all of their developments and that they are looking to imitate classical designs that would not have wall plane breaks.

Mr. Kohler asked the ARB if the mitigating features considered in the previous request for the “Masterpiece” series applies to the current request. It was noted that the single features alone did not qualify for the variance, but the combination of features did provide a good result. Mr. Patterson said that Fischer Homes has usually updated the home plans about every seven years. Also the new homes sold in renaissance have sold for between \$270,000 and \$400,000 with four homes being sold within the last few weeks. The recent sales were of the new models and Mr. Patterson is uncertain as to which façade was selected for those homes.

Based on the large number of elevations to be considered, Mr. Kohler suggested that he prepare a spreadsheet of the models requiring variances and list the added architectural features which were considered in the preparation of the variance request for the Masterpiece series. Mr. Kohler would work with Mr. Patterson to edit and refine the list to have three categories of plans that



would clearly meet the intent of the code, some that may comply, and plans that would not meet the intent of the code. The ARB agreed that it would be helpful to categorize the plans in order to better deal with the magnitude of the request rather than to vote on each individual elevation.

Mr. Patterson noted that there may be additional options for dormer windows that are not shown on the elevation drawings. It would be helpful to know if these features are available and Mr. Patterson will confirm. These features are standard on the “Masterpiece” series. It is also helpful to know that many of the lots in Renaissance require side entry garages and all of the elevation drawings indicate front entry garages.

With respect to the “Mercer” plan that does not qualify for the 50% garage width maximum with the brick option, Mr. Amburgey noted that he would like to encourage the use of brick. Ms. Mejias-Yancey made a motion to approve a variance from section 1225.03(h)(1) to allow for an additional 8 inches of garage width on the “Mercer” with the brick siding. The motion was seconded by Mr. Mulligan and passed unanimously by roll call. Ms. Mejias-Yancey also made a motion to approve the variance from section 1225.03(h)(1) for the “Mercer” to allow for the garage expansion option based on the additional garage width is set back from the façade of the garage and is visually not a part of the garage. It was also noted that the benefit of the oversized garage is that the homeowner would have extra storage for trash cans and lawn equipment which is of value to the neighborhood. The motion was seconded by Mr. Mulligan and passed unanimously by roll call.

After further discussion it was decided to have staff further sort the remaining models with respect to the architectural features that help mitigate the continuous front wall plane. This list will be compiled in consultation with Mr. Patterson and will be e-mailed to the members prior to the meeting. It was decided that the meeting would be continued in one week on March 21 at 4:00 pm to further discuss the front wall plan issue.

### **Adjournment**

Mr. Amburgey asked if there were any questions or comments. Hearing none, he asked for a motion to adjourn. A motion was made by Mr. Mulligan, seconded by Ms. Mejias-Yancey to adjourn at 5:10 pm. The motion passed by acclamation.

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Chris Amburgey, Chairman

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Martin D. Kohler, Planning Director

**MIDDLETOWN CIVIL SERVICE COMMISSION  
MINUTES – JANUARY 18, 2013 – 8:00 A.M.  
CONFERENCE ROOM “B”  
2<sup>ND</sup> FLOOR OF CITY BUILDING**

**ROLL CALL**

Chair Nancy Nix called the meeting to order.

Members present: James Sherron, Member  
Tom Brickey, Member

Staff Present: Kay Sauer, Civil Service Secretary  
Doug Adkins, Community Revitalization Director

**APPROVAL OF MINUTES**

**Motion:** Moved by Mr. Sherron to approve the minutes of the meetings held on October 16, 2012 and November 20, 2012. Mr. Brickey seconded the motion. **Motion passed.**

**NEW BUSINESS**

1. **Exceptional Appointment – Assistant Golf Professional**  
Doug Adkins, Community Revitalization Director, was present to discuss the appointment of Jordan Lawson, Clubhouse Supervisor, to the position of Assistant Golf Professional at Weatherwax Golf Course. Mr. Adkins advised that Dave Tieman, Golf Director, was retiring and due to his retirement, they are recommending staffing changes at the golf course that include bringing Mr. Tieman back on a seasonal basis after retirement to allow Mr. Lawson to complete his college degree and PGA certifications required to become the Golf Director.  
**Motion:** Moved by Mr. Brickey to approve the exceptional appointment of Jordan Lawson to the position of Assistant Golf Professional at Weatherwax Golf Course. Ms. Nix seconded the motion. **Motion passed**
  
2. **Position Descriptions – Assistant Golf Professional & TP Lead Mechanic**  
**Motion:** Moved by Ms. Nix to approve the position descriptions for the positions of Assistant Golf Professional and Treatment Plant Lead Mechanic. Mr. Sherron seconded the motion. **Motion passed.**
  
3. **Eligibility Lists – Squadperson & Fire Apparatus Operator**  
**Motion:** Moved by Ms. Nix to approve the eligibility lists for the positions of Squadperson and Fire Apparatus Operator. Mr. Brickey seconded the motion. **Motion passed.**
  
4. **Dismissal of Firefighter Lay-off Appeals**  
**Motion:** Moved by Ms. Nix to dismiss the appeal with prejudice, pursuant to the appellants' withdrawal of their appeal. Mr. Brickey seconded the motion. **Motion passed.**
  
5. **Update on Job Postings/Examinations**  
Kay Sauer updated Commission on the upcoming examination for Corrections Officer.

Meeting adjourned.

# Middletown Public Housing Agency Meeting Minutes

March 19, 2013

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## **Roll Call**

At 5:30 p.m. Mayor Mulligan called the meeting to order in the Council Chambers of the City Building. Members present: A. Mort, J. Mulligan, L. Mulligan, and D. Picard. Staff Present: City Manager J. Gilleland, Clerk Parr, Comm. Revitalization Director D. Adkins, N. Powers, L. Landen, K. Back, C. Strayer, L. Landen, D. Hamet, M. Greis, R. Dalton, N. Wilson and N. Begley.

## **Excuse Smith, Scott Jones and Laubach**

Ms. Mort moved to excuse the absence of Ms. Scott Jones, Mr. Laubach and Mr. Smith. Mr. J. Mulligan seconded and the motion carried. Ayes: Mort, J. Mulligan, Picard, and L. Mulligan.

## **Approval MPHA Minutes from December 18, 2012 & February 19, 2013**

Ms. Mort moved for approval of the MPHA Minutes from December 18, 2012 and February 19, 2013. Mr. J. Mulligan seconded and the motion carried. Ayes: Mort, J. Mulligan, Picard and L. Mulligan.

## **Public comments - none**

**Quarterly Reports** – Mr. Adkins asked if there were any questions about the reports that were distributed in the packet that went out to the Board on Friday. He explained that added to those reports were the police calls and nature of the calls regarding Section 8 properties. Staff will continue to keep council apprised of what is happening at those properties. Mr. Adkins noted that the City is currently down about 320 vouchers. A draft of the rent reasonableness study was received today. As that draft gets fine-tuned in the next two to four weeks, we will begin getting rents adjusted to reflect those numbers.

Mr. L. Mulligan asked if the data on rent reasonableness would be distributed.

Mr. Adkins responded positively, stating as soon as the software spreadsheet comes to final form.

Mr. L. Mulligan also asked if there were any issues with water billing.

Mr. Adkins said there was one landlord that was behind on several properties and they have been given notice to comply.

## **Motion to Pass Administrative Plan and Agency Plan**

Mr. Adkins explained this past December the Board passed the Agency Plan and the Updated Administrative Plan. Since 1978 they have not required a public comment period, but when this batch was forwarded to HUD, staff received back a certification that we have not been asked to fill out in 37 years. He reported that number five (5) on the certification that the City Manager would have to sign states that we made the program available for forty-five (45) days and held a public hearing. Staff discussed this internally and decided the cleanest way to correct the issue, was to start the process over. There was a public hearing with no public comments received and the plan has been available for public inspection or comments for forty-five (45) days. The Board needs to re-adopt the same documents that passed in December.

**Motion:** Ms. Mort moved to pass the Administrative Plan and Agency Plan. Mr. J. Mulligan seconded and the motion carried. Ayes: Mort, J. Mulligan, Picard and L. Mulligan.

**Adjournment** - At 5:35 p.m. the meeting adjourned until the next quarterly meeting of the Board.

**MIDDLETOWN PARK BOARD/TREE COMMISSION  
MINUTES FROM RETREAT TO COMBINE BOARDS  
MARCH 20, 2013**

**PARK BOARD:** Jason Jones, Jay Evans, Ralph Connor, Steve Lewis

**COUNCIL  
REPRESENTATIVE:** Dan Picard

**STAFF:** Donna Beauregard, Public Works Leader Parks & Grounds  
Doris Baden, Grounds Technician

**LIASIONS:** Jeff Michel, President of KMB

**MEETING:** Called to order at 7:10 p.m.

**ROLL CALL**

Present: Jay Evans, Jason Jones, Steve Lewis

Absent: Ralph Connor

Also present was City Law Director, Les Landon, Donna Beauregard, Public Works Parks Leader – Parks & Grounds, Doris Baden- Grounds Tech. Invited participant: Carolyn Keiffer

**GOAL:**

Les Landen explained he was there to facilitate the group with defining the structure and functions of the new combined boards since he knew the charter and ordinances and could rewrite them the way the group felt best. He would answer any questions and point the group in a direction to facilitate the merge.

**STRUCTURE:**

Les explained that the Park Board was set up in the Charter voted in by the constituents and there were three things that could not be changed unless it was put before a vote of all the electors, they were:

1. Name, must remain Park Board
2. Number of members must remain 5 appointed by City Council.
3. Term of the members must remain 5 years

The Tree Commission was set up by an ordinance and this could be changed. He explained we are looking to combine chapters 268 and 269. Les went on to explain that most all boards including the Park Board and Tree Commission are advisory groups to City Council and Staff and not charged with spending City monies. Carolyn stated that the Tree Commission had in the past had worked with the City and written and received grants. Was that still appropriate? Les answered yes. Other questions asked were:

1. How many for a quorum? 3
2. Did the word Tree need to be in the new Boards name to qualify for TCUSA? No
3. Is there a minimum number of meetings required? Yes you must meet at least six times to qualify for Tree City USA.

After a lengthy discussion by all members present it was unanimously decided by all to structure the new board in the following manner:

1. Five voting members per the Charter plus four non-voting liaisons consisting of a representative from KMB, a tree expert, a facilities expert and a recreational expert. With the exception of the KMB representative the other three liaisons should be appointed by the Board to a three year term. All liaisons would be non-voting and not required to be a resident.
2. Add language to the ordinance that says the Board will meet as needed but not less than six times a year to qualify for TCUSA.
3. Add language to the ordinance stating Council will endeavor to appoint one tree expert and one facilities expert to the new combined Board.

**FUNCTION:**

It was unanimously decided by all members present to simply combine sections 268.01 and 269.02 to define the duties of the new group.

**CONCLUSION:**

It will take Les a week or so to get the new ordinance written. It will state that the Board is an advisory group and this is what we are doing. He will then e-mail it to all members. He will also let Ralph Connor who wasn't present know that all present agreed on this. He will then take it before City Council possibly sometime in late May or June. At that time he would need all the Members to be present showing Council that they do indeed support this.

**OTHER:**

Les ask Carolyn if she wanted to serve on the new Board and the Members present if they would agree to this. It was decided that Les would take to the City Manager and Council the recommendation that Council appoint Carolyn to the Board to serve out the term left vacant by a previous Park Board member.

He also requested that when the Boards meet again that they decided internally the day and time they are going to meet, so Doris can inform the media.

Because of scheduling conflicts of some of the members the April 1<sup>st</sup> meeting will be postponed until a later date in April. The members will get together by e-mail and decide when, and then let Doris know so she can send out a notice and agenda.

The meeting was adjourned at 8:55.

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**Jason Jones – Chairman**

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**Doris Baden - Secretary**

## PERSONNEL DIVISION

March 25, 2013

**TO:** Judith A. Gilleland, City Manager  
**FROM:** Noah Powers, Human Resources Director  
**SUBJECT: APPOINTMENT – CORRECTIONS OFFICER**

We are recommending the conditional appointment of **DEE ROSSI** to the position of Corrections Officer in the Division of Police. Ms. Rossi was selected from the eligibility list as a result of Civil Service testing procedures. She will fill the vacancy created by the resignation of Lisa McDonald.

Ms. Rossi will be assigned to the Probationary Range that provides a salary of \$1,197.76 bi-weekly, \$31,141.78 annually. The appointment is conditional upon the candidate successfully passing the required medical evaluations.

/ks

c: Betsy Parr, Clerk of Council  
David VanArsdale, Police Chief  
Personnel  
Finance (Payroll)  
File

ccmtg4/2/13

CORRECTIONS OFFICER

Authorized Strength - 11

Current Staff Level – 8

Ms. Rossi is related to Louis (Bud) Rossi, Municipal Court (husband).

OATH OF OFFICE

I, GERRY BURRIS, do solemnly swear

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

Gerry Burris  
Signature

WASTEWATER TREATMENT MANAGER  
Position

Sworn to before me and subscribed in my presence this 25<sup>th</sup>  
day of March, 2013.



KAREN L CAVERLY  
NOTARY PUBLIC - OHIO  
MY COMMISSION EXPIRES 04-12-2014

Karen L Caverly

# PROCLAMATION

**WHEREAS**, Holocaust Remembrance Days have been set aside for remembering the victims of the Holocaust and for reminding Americans of what can happen to civilized people when bigotry, hatred and indifference reign. The United States Holocaust Memorial Council, created by act of Congress in 1980, was mandated to lead the nation in civic commemorations and to encourage appropriate Remembrance observances throughout the country; and

**WHEREAS**, while there are obvious religious aspects to such a day, it is not a religious observance as such; history of the Holocaust offers an opportunity to reflect on the moral responsibilities of individuals, societies, and governments; and

**WHEREAS**, the Holocaust is not merely a story of destruction and loss; it is a story of an apathetic world and a few rare individuals of extraordinary courage. It is a remarkable story of the human spirit and the life that flourished before the Holocaust, the life that struggled during its darkest hours, and ultimately prevailed as survivors rebuilt their lives; and

**WHEREAS**, the people of the City of Middletown should always remember the terrible events of the Holocaust and remain vigilant against hatred, persecution, and tyranny and actively rededicate ourselves to the principles of individual freedom in a just society; and

**WHEREAS**, the U. S. Holocaust Memorial Council has designated the Days of Remembrance of the victims of the Holocaust as Sunday, April 7<sup>th</sup> through Sunday, April 14, 2013.

**NOW, THEREFORE, I**, Lawrence P. Mulligan, Jr., Mayor of the City of Middletown, do hereby proclaim the week of April 7 -14, 2013 as

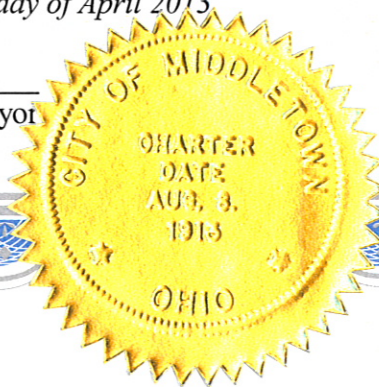
## *Days of Remembrance*

*in memory of the victims of the Holocaust and in honor of the survivors as well as the rescuers and liberators, and further proclaim that we, as citizens of the City of Middletown, should work to promote human dignity and confront hate whenever and wherever it occurs.*

**IN WITNESS WHEREOF, I**, hereby set my hand and affix the seal of the City of Middletown, this 2<sup>ND</sup> day of April 2013

\_\_\_\_\_  
Lawrence P. Mulligan, Jr., Mayor

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





**MOTION ITEM**

March 28, 2013

TO: Judy Gilleland, City Manager  
FROM: Steve Botts, Fire Chief  
Cindy Strayer, Purchasing Agent

**Purchase of Sutphen Fire Pumper**

**PURPOSE**

To request authorization to purchase a Sutphen S1 Shield Pumper Vehicle per the State of Ohio STS Contract in the amount of \$387,627.08 from the Sutphen Corporation, Dublin, OH.

**BACKGROUND and FINDINGS**

The Division of Fire currently has a 1991 Sutphen pumper (Engine 4 – E86) that has been out of service with a cracked frame for the past four years. The pumper has met and exceeded our point system for replacement. The vehicle to be purchased is a fairly basic model. The vehicle has a shorter wheelbase to allow maneuvers through the downtown area, since it will be housed in the downtown area at Station 81 (Clinton Street).

**ALTERNATIVES**

Do not purchase the truck at this time.

**OTHER CONSIDERATIONS**

The Ohio Department of Administrative Services has a cooperative purchasing contract available for the purchase of a fire truck from the Sutphen Corporation. The City has evaluated the truck that is available on the State contract, is satisfied with the specifications, and is recommending the purchase of the truck through the contract.

**FINANCIAL IMPACT**

The CDBG Revolving Loan Fund has \$400,000 available for the purchase of this truck.

**RECOMMENDATION**

It is recommended the truck be purchased from the Sutphen Corporation, Dublin, Ohio, in the amount of \$387,627.08.

**CONFORMITY TO CITY POLICY**

This purchase conforms to all City Purchasing policies and procedures.

**EMERGENCY/NON EMERGENCY**

Motion Agenda item.

**DEPARTMENTAL CLEARANCES**

Division of Fire  
Municipal Garage  
Community Revitalization

cc: Les Landen, Director of Law  
Steve Botts, Fire Chief  
Preston Combs, Interim Public Works Director  
Michelle Greis, Director of Finance  
Keith Back, Municipal Garage  
File

k:/agenda/staffrep/Fire Truck

**LEGISLATION**

**ITEM 1**

**RESOLUTION NO. R2013-07**

**A RESOLUTION TO MAKE ADJUSTMENTS TO APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF MIDDLETOWN, COUNTIES OF BUTLER AND WARREN, STATE OF OHIO, FOR THE PERIOD ENDING DECEMBER 31, 2013. (DOWNTOWN FUND)**

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

**Section 1**

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

FROM: Unappropriated Downtown Fund (Fund #481)	\$200,000.00
TO: <u>Accounts of 990 (481.990.52480)</u>	<u>\$200,000.00</u>
<b>TOTAL DOWNTOWN FUND</b>	<b>\$200,000.00</b>

**Section 2**

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

**Section 3**

All legislation inconsistent herewith is hereby repealed.

**Section 4**

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

\_\_\_\_\_  
Lawrence P. Mulligan, Jr., Mayor

1<sup>st</sup> Reading: March 19, 2013  
2<sup>nd</sup> Reading: April 2, 2013  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

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

**STAFF REPORT**  
For the Business Meeting – March 19, 2013

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March 8, 2013

TO: Judith A. Gilleland, City Manager

FROM: Preston M. Combs, Interim Public Works & Utilities Director

<b>**SUPPLEMENTAL APPROPRIATION**</b> <b>CITY BUILDING REMODEL ASSOCIATED WITH</b> <b>4<sup>TH</sup> FLOOR LEASE TO MIDDLETOWN SCHOOL BOARD</b>
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**PURPOSE**

We received permission from City Council to expend funds from the Downtown Fund for remodeling of the City Building. This remodel is necessary for the leasing of the 4<sup>th</sup> floor to the Middletown School System. The funds need to be encumbered by Ordinance.

**BACKGROUND AND FINDINGS**

We had estimated \$150,000 would be needed for the relocation effort but would recommend that the appropriation be made in an amount not to exceed \$200,000 to cover unforeseen obstacles we may find in moving walls, lighting, HVAC, etc.

**FINANCIAL IMPACT**

The Downtown Fund has a total unencumbered fund balance is \$739,615.10.

**RECOMMENDATION**

Recommend a supplemental appropriation in an amount not to exceed \$200,000 from the Downtown Fund (481.990.52480).

**ALTERNATIVES**

We have already entered into an agreement with the schools to lease the 4<sup>th</sup> floor. We need to proceed.

**CONFORMITY TO CITY POLICY**

Conforms

**EMERGENCY/NON-EMERGENCY**

Non-Emergency

**DEPARTMENTAL CLEARANCES**

Judy Gilleland, City Manager  
Michelle Greis, Director of Finance  
Leslie S. Landen, Director of Law  
Betsy Parr, Clerk of City Council  
Denise Hamet, Director of Economic Development  
File

**ATTACHMENTS**

N/A

**LEGISLATIVE ITEMS**  
**2 & 3 ARE**  
**SECOND READINGS**  
**AND SHARE A STAFF**  
**REPORT**



**ORDINANCE NO. O2013-18**

**AN ORDINANCE APPROVING AN AMENDMENT TO AN AGREEMENT WITH STEAM SYSTEMS, INC. PROVIDING FOR THE EXPANSION OF A MANUFACTURING FACILITY AS A DEVELOPMENT PROJECT AND TAX EXEMPTION PURSUANT TO THE STATE URBAN JOBS AND ENTERPRISE ZONE PROGRAM, AND MAKING DETERMINATION IN CONNECTION THEREWITH.**

**WHEREAS**, City Council authorized a tax abatement agreement with Steam Systems, Inc. on December 7, 2010 in Ordinance No. O2010-82; and

**WHEREAS**, an Enterprise Zone Agreement was executed in accordance with Chapter 5709 of the Ohio Revised Code; and

**WHEREAS**, Section 5709.85(C) requires that a tax incentive review council shall review the compliance of each recipient of a tax exemption under this program; and

**WHEREAS**, a duly appointed Tax Incentive Review Council met on March 4, 2013, it reviewed this Enterprise Zone Agreement and has recommended that the Enterprise Zone Agreement be modified to increase the total investment from \$150,000.00 to \$350,000.00 and increasing the new jobs created by an additional seven (7) by December 31, 2013; and

**WHEREAS**, the City Council accepted the report and recommendation of the Tax Incentive Review Council by motion at its March 19, 2013 meeting;

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

**Section 1**

The City Manager is hereby authorized to enter into an amendment of the Enterprise Zone Agreement entered into by and between the City of Middletown and Steam Systems, Inc. The Amendment shall be in a form and substance approved by the City Manager and the Law Director.

**Section 2**

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

**Section 3**

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

\_\_\_\_\_  
Lawrence P. Mulligan, Jr., Mayor

1<sup>st</sup> Reading: March 19, 2013

2<sup>nd</sup> Reading: April 2, 2013

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

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

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

Clerk of City Council

## **STAFF REPORT**

For the Business Meeting of March 19, 2013

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March 5, 2013

TO: Judy Gilleland, City Manager  
FROM: Denise Hamet, Economic Development Director  
PREPARED BY: Matt Eisenbraun, Economic Development Program Manager

<p style="text-align: center;"><b>Tax Incentive Review Council Report of Annual Meeting, March 4, 2013</b></p>
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### **PURPOSE**

The purpose of this report is to provide City Council with the recommendations of the Tax Incentive Review Council (TIRC) regarding the performance of tax incentives during the 2012 calendar year.

### **BACKGROUND and FINDINGS**

Ohio Revised Code Section 5709.85 requires that the legislative authority of a city that grants tax exemptions shall create a TIRC. The purpose of this body is to review the status and performance of all agreements granting exemption from property taxation, as well as all tax increment financing (TIF) districts, as of the end of the previous year. On the basis of this review, the TIRC must submit to City Council written recommendations for continuation, modification, or cancellation of each agreement. The TIRC typically meets once a year to perform these tasks. Its most recent meeting was March 4, 2013. The TIRC membership includes County Auditors, representatives of affected school districts, City staff and elected officials, and interested citizens.

During 2012, Middletown had 10 active Enterprise Zone agreements for tax exemption and 14 TIF districts (8 commercial and 6 residential). As indicated in the attached minutes of the March 4, 2013 meeting, the TIRC reviewed annual performance information presented by Economic Development Department staff for the 2012 calendar year. The receiving and filing of the TIRC Report will be done by Motion. The State of Ohio requires Annual Report to be submitted to the Ohio Department of Development by no later than March 31, 2013.

TIRC members reviewed the investment and employment status of each of the agreements. Most of the companies reflected improved performance during 2012.

The TIRC voted for the following actions for Enterprise Zone Agreements:

- Continue the following agreements: Akers, Aeronca; Compartir/Pac National; Middletown Coke (Suncoke); Quaker Chemical; Ventilex; Paychex/ East Pointe; and Pledger.

- Modify Pilot Agreement to correct language: within the agreement, change language of ‘schedule for new employment’ section to match the ‘total job creation commitment’ section. Current schedule of 2013:5, 2014:7, 2015:11 would change to 2013:5, 2014:5, 2015:5.
- Modify Steam Systems Agreement to include additional investment of \$200,000 for a total of \$350,000. Steam Systems must obtain Certificate of Occupancy by December 31, 2013. The new job requirement changes from 5 to 12.

TIRC members voted for the following actions for Tax Increment Financing Agreements:

- Continue all agreements.

### **ALTERNATIVES**

Alternatives include the following:

- 1) Accept the recommendations of the TIRC.
- 2) Do not accept the recommendations of the TIRC. City Council must recommend to continue, amend, or terminate abatements and/or TIF districts.

### **OTHER CONSIDERATIONS**

None.

### **FINANCIAL IMPACT**

#### Steam Systems Amendment

	Existing Agreement	Amended Agreement
Additional Annual Payroll	\$180,000	\$480,000
Additional Annual Payroll Taxes	\$3,150	\$8,400
Total payroll taxes (10 years)	\$31,500	\$84,000
New Jobs	4.5	12
Retained Jobs	16	16
Total FTE's at location 12/2013	20.5	28
Investment	\$150,000	\$350,000
Abatement percent	75%	75%
Agreement Terms	10	10
Annual Property Tax Abatement	\$2,414	\$5,634
Total Property Taxes Abated	\$24,145	\$56,338
Total Property Taxes Paid	\$8,050	\$18,780

### **RECOMMENDATION**

Staff recommends acceptance of the TIRC recommendations as follows:

## **ENTERPRISE ZONES**

Continue Akers, Aeronca, Compartir/Pac Worldwide; Middletown Coke; Quaker; Ventilex, Paychex /East Pointe and Pledger LLC.

Modify Steam Systems and Pilot as stated above

## **TAX INCREMENT FINANCING DISTRICTS**

Continue all TIF Districts.

## **CONFORMITY TO CITY POLICY**

This project is consistent with the City's 2005 Master Plan recommendation to obtain support from local school districts for tax incentive policies, as representatives from all local school districts are invited attend the TIRC meetings. This recommendation falls under Objective ED2: "Establish an economic development entity with the authority and accountability to effectively attract and retain jobs and businesses".

## **EMERGENCY/NON EMERGENCY**

Non-Emergency.

- The receiving and filing and acceptance of TIRC recommendations by City Council will be by motion.
- The ordinances modifying the Enterprise Zone agreement will be non-emergency.

## **DEPARTMENTAL CLEARANCES**

Law

## **ATTACHMENTS**

Attachment (2):

2012 Enterprise Zone Agreement and Tax Increment Financing Agreement Project Status Report

Minutes from the March 4, 2013 meeting of the TIRC.

# City of Middletown 2012 Tax Incentive Review

City of Middletown  
 Enterprise Zone Agreements  
 Project Status for Year Ending 12/31/12

Status

	Investment Committed (Millions)	Investment Actual (Millions)	Total Committed Positions	Total Actual Positions	Retained Positions	Created Positions	New Payroll
<b>Butler County</b>							
Akers	\$15.0	\$15.0	177	155	150	5	\$208,000
Aeronca	\$4.4	\$8.0	121	122	118	4	\$212,000
Compartir/Pac National	\$15.1	\$33.2	207	250	157	93	\$3,138,708
Middletown Coke, LLC	\$354.1	\$402.0	86	94	0	94	\$6,224,575
Pilot Chemical	\$32.5	\$16.0	61	47	46	1	\$32,500
Quaker Chemical	\$20.0	\$20.0	77	74	37	37	\$1,798,210
Steam Systems, Inc.	\$0.2	\$0.2	21	25	16	9	\$100,772
Ventilex	\$0.9	\$0.9	5	7	5	2	\$118,000
<b>Warren County</b>							
Paychex/East Pointe	\$6.9	\$7.1	84	72	72	All Positions new to Middletown	\$4,520,000
Pledger Orthopedic	\$2.0	\$2.4	17	20	8	12	\$685,000
<b>Total</b>	<b>\$451.1</b>	<b>\$504.8</b>	<b>856</b>	<b>866</b>	<b>609</b>	<b>257</b>	<b>\$17,037,765</b>

City of Middletown 2012 Tax Incentive Review

**WARREN COUNTY**

**Paychex North America and Neyer East Pointe 200 LLC**

<i>Contact:</i>	David Martin/ Chris Johnson	<i>Date of Execution:</i>	2/26/08
<i>Term:</i>	10-years	<i>Amendments/Assignment:</i>	2012
<i>Personal Property:</i>	N/A	<i>Real Property Abatement :</i>	75%
<i>Expiration:</i>	2019	<i>Investment Commitment:</i>	\$6,920,000
<i>Investment PP:</i>	-\$0-	<i>Investment RP:</i>	\$7,056,766
<i>RP Taxes Paid:</i>	\$27,670	<i>RP Taxes Abated:</i>	\$69,822
<i>Cumul. RP Pd:</i>	\$72,798	<i>Cumul. RP Abated:</i>	\$148,621
<i>Employment:</i>	72	<i>Jobs Created:</i>	-0*-
<i>Commitment:</i>	84	<i>*all positions are new to Middletown</i>	

**Notes:**

*Agreement was created jointly with the developer/builder (Al Neyer, Inc.) and Paychex North America to construct 50,000 square foot LEED certified office building. Construction is complete and investment meets expectations. Al Neyer sold the building to East Pointe 200 Office Equities, LLC in 2012 and consequently the agreement was modified to reflect the new owner.*

*Since original agreement, some employees were reclassified as part of Cleveland division, and overall company downsized, however, 72 employees remain at the Middletown operation generating \$4.3 million payroll. As reviewed in 2012, the project does continue to qualify for the 75% level of abatement based on the City's guidelines for project investment, jobs, and payroll. It also qualifies per state requirements: minimum of 75% of employment commitment must be maintained. Commitment is 85 jobs; 75% is 63.*

*Recommendation:*     **CONTINUE**

City of Middletown 2012 Tax Incentive Review

**Pledger Orthopedic LLC, Total Therapy Solutions, Allman Chiropractic, Renaissance Medical LLC**

<i>Contact:</i>	Anthony Maritato/ Debbie Jacobs	<i>Date of Execution:</i>	5/19/2009
<i>Term:</i>	10 years	<i>Amendments/Assignments:</i>	2012
<i>Personal Property:</i>	N/A	<i>Real Property Abat.:</i>	60%
<i>Expiration:</i>	12/31/2020	<i>Investment Commitment:</i>	\$2,015,250
<i>Investment PP:</i>	\$422,131	<i>Investment RP:</i>	\$1,990,221
<i>RP Taxes Paid:</i>	\$25,768	<i>RP Taxes Abated:</i>	\$10,208
<i>Cumulative RP Paid:</i>	\$34,523	<i>Cumulat. RPAbated :</i>	\$10,208
<i>Employment:</i>	20	<i>Jobs Created:</i>	12
<i>Commitment 2013:</i>	17	<i>New Payroll:</i>	\$685,000

**Notes:**

*The agreement was created to finish out a 10,000 square foot office condominium building with a medical quality tenant finish. The LLC was purchasing the shell building and adding the interior improvements. The purpose of the new venture was to include physical therapy and pain treatment.*

*On June 1, 2011, Dr. Pledger's practice was sold to Health Specialists of Dayton, doing business as Pledger Orthopedic Spine Center and Associates. This is part of Premier Health Partners (owner of Atrium). Subsequently, the name was changed to Premier Health Specialists dba Pledger Orthopedic and Spine Center.*

*Dr. Allman (chiropractor) separated from the group but remains located in the building with 2 staff. Tony Maritato and his staff also separated but remained in the building as Total Therapy Solutions. His practice has grown from 3.5 to 5.5. He is now controlling owner of the LLC owning the building (Renaissance Medical Group LLC). The agreement was modified to reflect all of the entities in the building.*

**Recommendation: CONTINUE**



City of Middletown 2012 Tax Incentive Review

**BUTLER COUNTY**

**Akers Enterprise Zone Agreement**

<i>Contact:</i>	Ken Knight/ Bill Akers	<i>Date of Execution:</i>	2012
<i>Term:</i>	10-years	<i>Amendments:</i>	none
<i>Expiration:</i>	2025	<i>Investment committed</i>	\$15,000,000
<i>Pers. Prop Abatement</i>	N/A	<i>Real Property abatement</i>	75%
<i>Invest. in PP:</i>	\$9,500,000	<i>Investment in RP:</i>	\$5,500,000
<i>Real Prop. Taxes Paid:</i>	N/A	<i>RP taxes abated:</i>	N/A
<i>Cum. RP Taxes Pd:</i>	N/A	<i>Cumulative abated:</i>	N/A
<i>Employment:</i>	155	<i>Commitment:</i>	177
<i>Jobs created:</i>	5	<i>New Payroll:</i>	\$208,000

**Notes:**

*Agreement was created in 2012 for an expansion of their facility. Forecasted total investment has grown from \$15 million to \$22 million. Purpose of expansion is to add state-of-the-art machinery, allowing them to maximize production. Construction not complete.*

**Recommendation: CONTINUE**

**Aeronca Enterprise Zone Agreement**

<i>Contact:</i>	Roger Rawe/ Rick Doyle	<i>Date of Execution:</i>	8/16/2000
<i>Term:</i>	10-years	<i>Amendments:</i>	2007, 2010
<i>Expiration:</i>	2013	<i>Investment committed</i>	\$4,400,000
<i>Pers. Prop Abatement</i>	50%	<i>Real Property abatement</i>	50%
<i>Invest. in PP:</i>	\$3,980,142	<i>Investment in RP:</i>	\$4,020,196
<i>Real Prop. Taxes Paid:</i>	\$84,761	<i>RP taxes abated:</i>	\$24,335
<i>Cum. RP Taxes Pd:</i>	\$926,167	<i>Cumulative abated:</i>	\$154,169
<i>Employment:</i>	122	<i>Commitment:</i>	121
<i>Jobs created:</i>	4	<i>New Payroll:</i>	\$212,000

**Notes:**

*Agreement was created in 2000 for an expansion of their facility. Construction is complete and investment exceeds expectations. Original employment target was dropped to 121 due to recession. Company hired during 2012 and targets additional growth.*

**Recommendation: CONTINUE**

## City of Middletown 2012 Tax Incentive Review

### Compartir/Pac National Enterprise Zone Agreement

<i>Contact:</i>	Ben McNary/ Jeff Snow	<i>Date of Execution:</i>	5/7/2007
<i>Term:</i>	10-years	<i>Amendments:</i>	No
<i>Expiration:</i>	2018	<i>Investment committed:</i>	\$15,100,000
<i>Pers. Property Abatement:</i>	N/A	<i>Real Property Abatement:</i>	75%
<i>Investment in PP:</i>	\$18,750,000	<i>Investment in RP:</i>	\$14,572,000
<i>Real Prop. Taxes Paid:</i>	\$130,563	<i>RP Taxes Abated:</i>	\$305,167
<i>Cum. RP Taxes Paid;</i>	\$372,126	<i>Cumulative abated:</i>	\$851,881
<i>Employment:</i>	250	<i>Commitment:</i>	207
<i>Jobs Created:</i>	93	<i>New Payroll:</i>	\$3,138,708

#### **Notes:**

*Agreement was created for construction of 350,000 square foot facility. Pac is now Middletown's 2<sup>nd</sup> largest industrial company based on number of employees. Since the creation of agreement, additional division was moved to Middletown at the site. Pac continues to explore growth opportunities and has added the design of specialized packaging equipment to their product line. Pac recently added recycling procedures for their employees. They emphasize community services.*

*Exceeds investment and employment commitments.*

**Recommendation: CONTINUE**

## City of Middletown 2012 Tax Incentive Review

### **Middletown Coke Company, LLC**

*Contact:* Bill Lias/ *Date of Execution:* 9/18/08  
Dovie Majors

*Term:* 10-years *Amendments:* 2010

*Expiration:* 2022 *Investment commitment:* \$354,100,000

*Personal Property Abatement:* N/A *Real Property Abatement* 50%

*Investment PP:* \$393,973,438 *Investment RP* \$7,983,245

*Real Prop. Taxes Paid:* N/A *RP Taxes Abated:* N/A

*Cumulative RP Paid:* N/A *Cum. RP Abated:* N/A

*Employment:* 94 *Commitment* 86

*Jobs created:* 94 *New Payroll:* \$6,224,575

#### **Notes:**

*Agreement was established for construction of new coke plant. Plant has been constructed and company continues to grow, emphasizing community contribution whenever possible.*

*Agreement was modified in 2010 to reflect revised construction timeframe and higher hiring projection. Company started re-organization legal work in 2012 to separate the co-gen facility into a new entity. The final paperwork was finalized in 2013 to execute a partial assignment of the agreement from Middletown Coke Company, LLC to Middletown Cogeneration Company, LLC. The assignment transferred a portion of the assets (relating to co-generation).*

*Investment and employment exceed expectations.*

**Recommendation: CONTINUE**

## City of Middletown 2012 Tax Incentive Review

### Pilot Chemical Company of Ohio Enterprise Zone Agreement

<i>Contact:</i>	Susan K. Leslie/ David Waizman	<i>Date of Execution:</i>	2012
<i>Term:</i>	10-years	<i>Amendments:</i>	None
<i>Expiration:</i>	2025	<i>Investment commitment:</i>	\$32,500,000
<i>Personal Property:</i>	N/A	<i>Real Property abatement:</i>	65%
<i>Investment PP:</i>	\$5,000,000	<i>Investment RP</i>	\$11,000,000
<i>Real Prop. Taxes paid:</i>	N/A	<i>RP Taxes Abated:</i>	N/A
<i>Cumul. RP Taxes Paid:</i>	N/A	<i>Cum. RP Taxes Abated:</i>	N/A
<i>Employment:</i>	47	<i>Commitment 12/31/15</i>	61
<i>Jobs Created:</i>	1	<i>New Payroll:</i>	\$32,500

**Notes:**

*Agreement was established to expand the existing facility in order to maximize inventory control and enhance nimbleness for response to customer demand. Phase I and II of the expansion are complete; the last phase will be complete June 2013. Pilot built a 2<sup>nd</sup> rail spur as part of their expansion. Pilot's business model includes ongoing research to create new chemical materials for consumer products, and growth by acquisition. Amendment would change language of 'schedule for new employment' section to match the 'total job creation commitment' section of agreement. Current schedule of 2013:5, 2014:7, 2015:11 would change to 2013:5, 2014:5, 2015:5.*

**Recommendation: AMEND**

### Quaker Chemical Enterprise Zone Agreement

<i>Contact:</i>	Tracey Tiller/ Matt Cranston/ Joel Garrett	<i>Date of Execution:</i>	5/12/2008
<i>Term:</i>	10-years	<i>Amendments:</i>	None
<i>Expiration:</i>	2020	<i>Investment commitment:</i>	\$20,000,000
<i>Personal Property:</i>	N/A	<i>Real Property abatement:</i>	75%
<i>Investment PP:</i>	\$17,400,000	<i>Investment RP:</i>	\$2,600,000
<i>Real Prop. Taxes paid:</i>	\$27,525	<i>RP Taxes Abated:</i>	\$5,740
<i>Cumul. RP Taxes Paid:</i>	\$61,361	<i>Cum. RP Taxes Abated:</i>	\$11,744
<i>Employment:</i>	74	<i>Commitment at 12/31/12</i>	77
<i>Jobs Created:</i>	37	<i>New Payroll:</i>	\$1,798,210

**Notes:**

*Agreement was established to expand the existing facility. Construction is complete. The annual property taxes paid include taxes on the main building, and \$2,001 pertaining to the expansion. Company continues to look at ways to maximize production and ensure efficiency of operation. Added 12 employees in 2012.*

**Recommendation: CONTINUE**

## City of Middletown 2012 Tax Incentive Review

### Steam Systems

<i>Contact:</i>	Mark Franks/ Tina Hatfield	<i>Date of Execution:</i>	12/31/10
<i>Term:</i>	10-years	<i>Amendments:</i>	No
<i>Personal Property:</i>	N/A	<i>Real Property abatement:</i>	75%
<i>Expiration:</i>	2022	<i>Investment Commitment:</i>	\$220,000
<i>Investment in PP:</i>	N/A	<i>Investment in RP:</i>	\$182,000
<i>RP Taxes Paid:</i>	\$10,392	<i>RP Taxes Abated:</i>	\$-tbd-
<i>Cumulative RP Paid:</i>	\$21,492	<i>Cumulative RP Abated:</i>	\$-tbd-
<i>Employment:</i>	25	<i>Commitment:</i>	21
<i>Jobs Created:</i>	9	<i>New Payroll:</i>	\$100,772

**Notes:**

*Abatement will apply to a 5,000 square foot expansion of industrial building. The auditor has not revalued it yet. Company continues to grow and is expanding again. Amendment would include additional investment of \$200,000 for a total of \$350,000 and an additional 4 new jobs created.*

**Recommendation: AMEND**

### Ventilex USA Enterprise Zone Agreement

<i>Contact:</i>	Daniel Blevin/ Michael Hadjinian	<i>Date of Execution:</i>	8/21/2007
<i>Length:</i>	10-years	<i>Amendments:</i>	2010
<i>Personal Property:</i>	N/A	<i>Real Property:</i>	40%
<i>Expiration:</i>	2018	<i>Investment Commitment:</i>	\$900,000
<i>Investment PP:</i>	\$64,443	<i>Investment RP:</i>	\$790,660
<i>RP Taxes Paid:</i>	\$12,438	<i>RP Taxes Abated:</i>	\$4,666
<i>Cumulative RP Paid:</i>	\$34,861	<i>Cumulative RP Abated:</i>	\$18,641
<i>Employment:</i>	7	<i>Commitment:</i>	Retain 5
<i>Jobs Created:</i>	2	<i>New Payroll:</i>	\$118,000

**Notes:**

*Agreement was created to construct 10,000 square foot building for international company to relocate to Middletown. Construction is complete and investment meets expectations. EZ abatement level was reduced to 40% in 2010 based on reduced hiring projections.*

**Recommendation: CONTINUE**

# City of Middletown 2012 Tax Incentive Review

**City of Middletown  
Tax Increment Financing Agreements  
Project Status for Year Ending 12/31/12**

County	TIF Fund	Ending Balance 12/31/11	Revenues 2012	Expenses 2012	Cumulative Revenues 12/31/12	Cumulative Expenses 12/31/12	Ending Balance 12/31/12
Butler	DOWNTOWN	\$ 16,462	\$ 14,600	\$ -	\$ 182,994	\$ 151,842	\$ 31,062
Butler	AERONCA	\$ 4,423	\$ -		\$ 9,508	\$ 5,085	\$ 4,423
Butler	AIRPORT/RIVERFRONT	\$ 3,834	\$ 583		\$ 6,299	\$ 1,882	\$ 4,438
Butler	MADE	\$ 287			\$ 287	\$ -	\$ 287
Butler	MILLER RD NORTH RID	\$ 30,295	\$ 13,024		\$ 65,754	\$ 22,435	\$ 43,319
Butler	MILLER RD SOUTH RID	\$ -			\$ -	\$ -	\$ -
Butler	GREENTREE INDUSTRIAL	\$ -			\$ -	\$ -	\$ -
Butler	MIDDLETOWN COKE	\$ -			\$ -	\$ -	\$ -
Warren	E. END/S. TOWNE BLVD	\$ 307,726	\$ 343,769	\$ 149,649	\$ 2,070,119	\$ 1,568,273	\$ 501,846
Warren	TOWNE MALL/HOSPITAL	\$ 110,414	\$ 624,339	\$ 475,890	\$ 1,793,325	\$ 1,534,462	\$ 258,863
Warren	MANCHESTER ROAD RID	\$ 378			\$ 1,190	\$ 812	\$ 378
Warren	RENAISSANCE NORTH RID	\$ 131,941	\$ 213,833	\$ 221,541	\$ 702,287	\$ 578,054	\$ 124,233
Warren	RENAISSANCE SOUTH RID	\$ 104,271	\$ 35,295	\$ 44,892	\$ 360,719	\$ 266,045	\$ 94,674
Warren	SAWYER MILL RID	\$ -		\$ -	\$ -	\$ -	\$ -

City of Middletown 2012 Tax Incentive Review

**TAX INCREMENT FINANCING DISTRICTS**

**BUTLER COUNTY**

**Downtown TIF District**

*Description: Parcels north and south of Central from Main Street to University Boulevard.*

<i>Date of Execution:</i>	6/6/2000	<i>Length:</i>	20 years
<i>Schools Harmless:</i>	No	<i>Amendments:</i>	No
<i>Real Property:</i>	50%	<i>Beginning Balance:</i>	\$16,462
<i>2012 Revenues:</i>	\$14,600	<i>2012 Expenses:</i>	\$0
<i>Revenues to Date:</i>	\$182,904	<i>Expenses to Date:</i>	\$151,842
<i>Ending Balance:</i>	\$31,062		

**Recommendation: CONTINUE**

**Aeronca TIF District**

*Description: 18 acres of land adjacent to Aeronca that were remediated through Clean Ohio Revitalization Fund. Remediation not complete yet.*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30 years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$4,422
<i>2012 Revenues:</i>	\$0	<i>2012 Expenses:</i>	\$0
<i>Revenues to Date:</i>	\$9,508	<i>Expenses to Date:</i>	\$5,085
<i>Ending Balance:</i>	\$4422		

**Recommendation: CONTINUE**

**Airport/Riverfront TIF District**

*Description: the area surrounding Middletown Regional Airport and also a portion of downtown west of Main Street including Wausau Paper.*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30 years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$3,855
<i>2012 Revenues:</i>	\$583	<i>2012 Expenses:</i>	\$0
<i>Revenues to Date:</i>	\$6,299	<i>Expenses to Date:</i>	\$1,882
<i>Ending Balance:</i>	\$3,834		

**Recommendation: CONTINUE**

## City of Middletown 2012 Tax Incentive Review

### MADE TIF District

*Description: 2 Magnode farm land parcels (CAUF), City owned parcels, and excess land owned by Worthington Steel.*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30 years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$287
<i>2012 Revenues:</i>	\$-0-	<i>2012 Expenses:</i>	\$-0-
<i>Revenues to Date:</i>	\$287	<i>Expenses to Date:</i>	\$-0-

***Recommendation:* CONTINUE**

### Miller Road North RID District

*Description: residential area around northern portion of Miller Road.*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30 years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$30,295
<i>2012 Revenues:</i>	\$13,024	<i>2012 Expenses:</i>	\$-0-
<i>Revenues to Date:</i>	\$65,754	<i>Expenses to Date:</i>	\$22,435
<i>Ending Balance:</i>	\$43,319		

***Recommendation:* CONTINUE**

### Miller Road South RID District

*Description: residential area around south Miller Road.*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30 years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$-0-
<i>2012 Revenues:</i>	\$-0-	<i>2012 Expenses:</i>	\$-0-
<i>Revenues to Date:</i>	\$-0-	<i>Expenses to Date:</i>	\$-0-
<i>Ending Balance:</i>	\$-0-		

***Recommendation:* CONTINUE**



## City of Middletown 2012 Tax Incentive Review

### **Greentree TIF District**

*Description: a portion of Greentree Industrial Park including Pac Worldwide, and 3415 Emerald Way undeveloped land. We filed DTE forms to set up the TIF but they cannot be located.*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$-0-
<i>2012 Revenues:</i>	\$-0-	<i>2012Expenses:</i>	\$-0-
<i>Revenues to Date:</i>	\$-0-	<i>Expenses to Date</i>	\$-0-

***Recommendation:* CONTINUE**

### **Middletown Coke TIF District**

*Description: parcels along Yankee Road including Middletown Coke parcels, Quaker Chemical, Pilot Chemical.*

<i>Date of Execution:</i>	4/21/2009	<i>Length:</i>	30 years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$-0-
<i>2012 Revenues:</i>	\$-0-	<i>2012 Expenses</i>	\$-0-
<i>Revenues to Date:</i>	\$-0-	<i>Expenses to Date</i>	\$-0-
<i>Ending Balance:</i>	\$-0-		

***Recommendation:* CONTINUE**

City of Middletown 2012 Tax Incentive Review

**WARREN COUNTY TIFS**

**East End (South Towne Boulevard) TIF District**

*Description: parcels along South Towne Blvd including Wal-Mart.  
Expenses include schools reimbursement and \$48,000 interest on bonds.*

<i>Date of Execution:</i>	6/6/2000	<i>Length:</i>	15 years
<i>Schools Harmless:</i>	No	<i>Amendments:</i>	No
<i>Real Property:</i>	66%	<i>Beginning Balance:</i>	\$314,477
<i>2012 Revenues:</i>	\$343,769	<i>2012 Expenses</i>	\$149,649
<i>Ending Balance:</i>	\$508,597		

**Recommendation: CONTINUE**

**Towne Mall/Hospital TIF District**

*Description: Towne Mall area and commercial/hospital development area in East Renaissance District;  
Expenses 2012 include \$50,000 bond principal.*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30 years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$117,163
<i>2012 Revenues:</i>	\$624,339	<i>2012 Expenses:</i>	\$475,890
<i>Revenues to Date:</i>	\$1,793,325	<i>Expenses to Date:</i>	\$1,534,462
<i>Ending Balance:</i>	\$265,612		

**Recommendation: CONTINUE**

**Manchester Road RID District**

*Description: 55 acres of residential land south of Manchester at Autumn Road.*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$378
<i>2012 Revenues:</i>	\$-0-	<i>2012 Expenses:</i>	\$-0-
<i>Revenues to Date:</i>	\$1,190	<i>Expenses to Date:</i>	\$812
<i>Ending Balance:</i>	\$378		

**Recommendation: CONTINUE**

## City of Middletown 2012 Tax Incentive Review

### **Renaissance North RID District**

*Description: Renaissance residential area south of SR 122.  
Expenses 2012 include \$85,000 debt service.*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30 years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$131,942
<i>2012 Revenues:</i>	\$213,833	<i>2012 Expenses:</i>	\$221,541
<i>Revenues to Date:</i>	\$702,287	<i>Expenses to Date:</i>	\$578,054
<i>Ending Balance:</i>	\$124,234		

***Recommendation:* CONTINUE**

### **Renaissance South RID District**

*Description: Renaissance residential area closest to Hendrickson Road;  
Expenses include \$15,000 debt service.*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance</i>	\$104,271
<i>2012 Revenues:</i>	\$35,295	<i>2012 Expenses:</i>	\$44,892
<i>Revenues to Date:</i>	\$360,719	<i>Expenses to Date:</i>	\$266,045
<i>Ending Balance:</i>	\$94,674		

***Recommendation:* CONTINUE**

### **Sawyer's Mill RID District**

*Description: Residential area west of Dixie Highway north of Manchester;*

<i>Date of Execution:</i>	12/20/2005	<i>Length:</i>	30 years
<i>Schools Harmless:</i>	Yes	<i>Amendments:</i>	No
<i>Real Property:</i>	100%	<i>Beginning Balance:</i>	\$-0-
<i>2012 Revenues:</i>	\$-0-	<i>2012 Expenses:</i>	\$-0-
<i>Revenues to Date:</i>	\$-0-	<i>Expenses to Date:</i>	\$-0-
<i>Ending Balance:</i>	\$-0-		

***Recommendation:* CONTINUE**

## **TAX INCENTIVE REVIEW COUNCIL**

City of Middletown  
Annual Review of Enterprise Zone Agreements Granted  
and  
Tax Increment Financing (TIF) Districts  
Period Ending 12/31/2012

**Monday, March 4, 2013**  
3:00 P.M.  
CITY COUNCIL CHAMBER

### **MEMBERS PRESENT**

JUDY GILLELAND, City Manager, City of Middletown  
MICHELLE GREIS, Finance Director, City of Middletown  
ANN MORT, City Council Representative  
JULIE LEPSKY, Butler County Deputy Auditor  
ED POKORA, CFO, Butler Tech  
KELLY THORPE, Treasurer, Middletown City Schools  
NICK NELSON, Warren County Auditor  
PETE DOBROZSI, Citizen

### **MEMBERS ABSENT**

KAREN ROYER, Warren County Career Center  
JANA BELLAMY, Treasurer, Franklin City Schools  
ERIC SOTZING, Treasurer, Lebanon City Schools  
CHRIS FIORA, Citizen

### **STAFF**

DENISE HAMET, Economic Development Director  
MATT EISENBRAUN, Economic Development Program Manager  
DEBBIE GARITSON, Administrative Assistant

### **GUESTS**

BEN MCNARY, PAC Worldwide  
BOB SIMPSON, Quaker Chemical Corporation  
MICHAEL HADJINIAN, DANIELLE BLEVINS, Ventilex USA  
TONY MARITATO, Total Therapy Solutions  
MIKE BIZZARRO, Pilot Chemical

### **CALL TO ORDER**

The meeting was called to order by Ms. Gilleland. A quorum was established via roll call.

**MINUTES**  
**March 12, 2012**

The minutes had been sent via e-mail to all TIRC Members along with the meeting agenda. Hard copies were distributed prior to the meeting along with the meeting agenda and TIRC information packets. Ms. Gilleland asked for a motion to accept the minutes as presented. Mr. Dobrozsi moved to accept the minutes. Ms. Lepsky seconded and the motion carried.

**ANNUAL REVIEW OF ENTERPRISE ZONE AGREEMENTS GRANTED**

Ms. Hamet described the status of Enterprise Zone tax abatement agreements within the City as of 12/31/12 individually beginning with those located in Warren County.

**WARREN COUNTY**

**PAYCHEX/ EAST POINTE**

Ms. Hamet said Paychex is in compliance with their commitment. Unfortunately, no one was present to give an update on their company. She recommends continuing the agreement.

A motion was made by Mr. Pokora to continue the agreement. Ms. Mort seconded and the motion carried.

**PLEDGER ORTHOPAEDIC LLC**

Ms. Hamet said the company has met their commitment and recommended to continue the agreement. Mr. Tony Maritato, Total Therapy Solutions, said the different businesses at this location continue to grow.

Mr. Pokora moved to modify the agreement. Mr. Dobrozsi seconded and the motion carried.

**BUTLER COUNTY**

**AKERS**

Ms. Hamet said Akers has made a commitment to Middletown for a \$15,000,000 expansion to their plant. They will add state-of-the-art machinery to allow them to maximize production. The construction is still underway. Ms. Hamet recommends continuing the agreement. Ms. Ken Knight gave a brief history and update of the company. He also gave a summary of how efficient the new equipment will be.

Mr. Dobrozsi moved to continue the agreement. Mr. Pokora seconded and the motion carried.

**AERONCA**

Ms. Hamet said this agreement was created in 2000 for an expansion of their facility. Construction is complete and investment exceeds expectations. The

company hired in 2012 and targets additional growth. Unfortunately, there was no one present to give an update on the company.

Ms. Hamet recommended continuing the agreement. Mr. Dobrozsi moved to continue the agreement. Ms. Thorpe seconded and the motion carried.

#### **COMPARTIR/ PAC WORLDWIDE**

Ms. Hamet said exceeds investment and employment commitments.

Mr. Ben McNary said PAC makes product protection materials, also known as bubble wrap. They continue to explore growing opportunities.

A motion was made by Ms. Mort to continue the agreement. Ms. Thorpe seconded and the motion carried.

#### **MIDDLETOWN COKE**

Ms. Hamet reported that company has exceeded their investment and employment commitment. The company continues to grow. No one was present to give a company update. Ms. Hamet recommends continuing the abatement.

A motion was made by Mr. Pokora to continue the agreement. Ms. Lepsky seconded and the motion carried.

#### **PILOT**

Ms. Hamet said this agreement was established to expand the Middletown Facility in order to maximize inventory control. Phases I and II of the expansion are complete; the last phase will be complete June 2013. Pilot built a second rail spur as part of their expansion. Pilot's business model includes ongoing research to create new chemical materials for consumer products, and growth by acquisition. Ms. Hamet said an amendment would change the language of "schedule for new employment" section to match the "total job creation commitment" section of the agreement. Mr. Mike Bizzarro gave a brief update of the company and the expansion.

Ms. Hamet recommended amending the agreement. Ms. Mort moved to amend the agreement. Mr. Pokora seconded and the motion carried.

#### **QUAKER CHEMICAL**

Ms. Hamet reported the construction is complete to expand the existing facility. The company has exceeded investment projections and is on target for new positions. Mr. Bob Simpson was present to give an update on the company. He said they will continue to hire as growth continues for the company.

Ms. Hamet recommended continuing the agreement. A motion was made by Mr. Dobrozsi and seconded by Ms. Thorpe to continue the agreement. Motion carried.

#### **STEAM SYSTEMS**

Ms. Hamet said the abatement applies to a 5,000 square foot expansion of industrial building which has yet to be revalued by the auditor. The company continues to grow

and is expanding again. She said an amendment would include additional investment of \$200,000 for a total of \$350,000 and an additional four new jobs.

Ms. Hamet recommends amending the agreement. Ms. Mort moved to approve the recommendation. Ms. Lepsky seconded and the motion carried.

#### **VENTILEX USA**

Ms. Hamet said the agreement was created to construct 10,000 square foot building for an international company to relocate to Middletown. The investment exceeded expectations. She introduced Mr. Michael Handijian who said Ventilex is a company based in Europe. Ventilex builds fluid bed dryers, very large pieces of capital equipment for food and minerals processing. They are an exclusive US distributor, sales and service for Ventilex VE, Ventilex European, that builds the world's finest food based energy saving equipment. They offer a wide range of product testing at the Middletown facility.

Ms. Hamet recommended continuing the agreement. Mr. Dobroszi moved to continue the agreement. Mr. Pokora seconded and the motion carried.

#### **BUTLER COUNTY PROPERTIES**

##### **DOWNTOWN IMPROVEMENT TIF DISTRICT**

Ms. Hamet turned the meeting over to Matt Eisenbraun, the Economic Development Program Manager. Mr. Eisenbraun reported that \$14,600 was deposited into the TIF fund during 2012 and there were no expenses. The current balance is \$31,062. He then recommended continuing the agreement. Mr. Dobroszi moved to continue the downtown TIF. Ms. Mort seconded and the motion carried.

##### **AERONCA TIF DISTRICT**

Mr. Eisenbraun reported there was no revenue or expenses in 2012. Balance is \$4,422. He recommended continuing the agreement. Mr. Pokora moved to continue the Aeronca TIF. Ms. Mort seconded and the motion carried.

##### **AIRPORT/RIVERFRONT TIF DISTRICT**

Mr. Eisenbraun reported that \$583 was deposited in 2012 and there were no expenses. The balance is \$3,834. He recommended continuing the agreement. Ms. Lepsky moved to continue the Airport/Riverfront TIF. Ms. Thorpe seconded and the motion carried.

##### **MADE TIF DISTRICT**

While there has been little activity to date, this district is available which will generate future revenue. The balance is \$287. Mr. Eisenbraun recommended

continuing the agreement. Ms. Thorpe moved to continue the MADE TIF. Mr. Pokora seconded and the motion carried.

#### **MILLER ROAD NORTH DISTRICT**

Mr. Eisenbraun reported the Revenue of \$13,024 was deposited in 2012 with no expenses. The balance is \$43,319. He recommended continuing the agreement. Ms. Thorpe moved to continue the Miller Road North TIF. Ms. Mort seconded and the motion carried.

#### **MILLER ROAD SOUTH DISTRICT**

There was no activity within this district we should see activity soon. Mr. Pokora moved to continue the Miller Road South TIF. Ms. Thorpe seconded and the motion carried.

#### **GREENTREE TIF DISTRICT**

Mr. Eisenbraun reported this is a portion of Greentree Industrial Park including 3415 Emerald Way undeveloped land. Improvement includes Cincinnati-Dayton Road improvements. DTE forms will be filed for undeveloped land along Cincinnati-Dayton Road improvements that will generate future TIF dollars. He recommended continuing the agreement. Mr. Dobrozsi moved to continue the Greentree TIF. Ms. Mort seconded and the motion carried.

#### **MIDDLETOWN COKE TIF DISTRICT**

Mr. Eisenbraun said these are parcels along Yankee Road include Suncoke, Quaker Chemical, and Pilot Chemical parcels. He recommended continuing the agreement. Mr. Pokora moved to continue the Middletown Coke TIF. Ms. Thorpe seconded and the motion carried.

#### **WARREN COUNTY PROPERTIES**

#### **EAST END (S. TOWNE BLVD.) TIF DISTRICT**

Mr. Eisenbraun reported that \$343,769 was deposited into the TIF fund in 2012. The current balance is \$508,597. He recommended continuing the agreement. Ms. Mort moved to continue the East End (S Towne Blvd) TIF. Ms. Thorpe seconded and the motion carried.

#### **TOWNE MALL/HOSPITAL TIF DISTRICT**

Mr. Eisenbraun reported the revenue was \$1,793,325 in 2012. The ending balance is \$265,612. He recommended continuing the agreement. Ms. Mort moved to continue the Towne Mall/ Hospital TIF. Mr. Pokora seconded and the motion carried.



**MANCHESTER RID DISTRICT (WARREN)**

Mr. Eisenbraun reported there was no revenue in 2012 and the balance is \$378. He recommended continuing the agreement. Mr. Pokora moved to continue the Manchester RID District. Ms. Thorpe seconded and the motion carried.

**RENAISSANCE NORTH and SOUTH RID DISTRICT**

Mr. Eisenbraun noted that revenues for 2012 were \$213,833 and the balance is \$124,234 for Renaissance North. The revenue for Renaissance South was \$35,295 and the balance is \$94,674. He recommended continuing both agreements. Mr. Dobrozsi moved to continue the Renaissance North RID. Ms. Thorpe seconded and the motion carried.

Ms. Thorpe moved to continue the Renaissance South RID. Mr. Pokora seconded and the motion carried.

**SAYWER'S MILL RID DISTRICT**

Mr. Eisenbraun noted there has been some recent construction activity and recommended continuing the agreement. Mr. Dobrozsi moved to continue the Sawyer's Mill RID. Ms. Thorpe seconded and the motion carried.

With no further comments, Ms. Gilleland adjourned the meeting at 3:48pm and thanked everyone for attending.

**LEGISLATION**

**ITEM 3**

**ORDINANCE NO. O2013-19**

**AN ORDINANCE APPROVING AN AMENDMENT TO AN AGREEMENT WITH PILOT CHEMICAL COMPANY PROVIDING FOR THE EXPANSION OF A MANUFACTURING FACILITY AS A DEVELOPMENT PROJECT AND TAX EXEMPTION PURSUANT TO THE STATE URBAN JOBS AND ENTERPRISE ZONE PROGRAM, AND MAKING DETERMINATION IN CONNECTION THEREWITH.**

**WHEREAS**, City Council authorized a tax abatement agreement with Pilot Chemical Company on April 3, 2012 in Ordinance No. O2012-12; and

**WHEREAS**, an Enterprise Zone Agreement was executed in accordance with Chapter 5709 of the Ohio Revised Code; and

**WHEREAS**, Section 5709.85(C) requires that a tax incentive review council shall review the compliance of each recipient of a tax exemption under this program; and

**WHEREAS**, a duly appointed Tax Incentive Review Council met on March 4, 2013, it reviewed this Enterprise Zone Agreement and has recommended that the Enterprise Zone Agreement be modified by correcting language regarding new employment to match the job creation commitment in the Agreement; and

**WHEREAS**, the City Council accepted the report and recommendation of the Tax Incentive Review Council by motion at its March 19, 2013 meeting;

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

**Section 1**

The City Manager is hereby authorized to enter into an amendment of the Enterprise Zone Agreement entered into by and between the City of Middletown and Pilot Chemical Company. The Amendment shall be in a form and substance approved by the City Manager and the Law Director.

**Section 2**

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

**Section 3**

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

\_\_\_\_\_  
Lawrence P. Mulligan, Jr., Mayor

1<sup>st</sup> Reading: March 19, 2013

2<sup>nd</sup> Reading: April 2, 2013

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

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

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

Clerk of City Council

**LEGISLATION**

**ITEM 4**

**ORDINANCE NO. O2013-20**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A JOB CREATION INCENTIVE GRANT AGREEMENT WITH AVURE TECHNOLOGIES, INC. AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City has established a Job Creation Incentive Grant Program to encourage the creation of new jobs in the City; and

**WHEREAS**, Avure Technologies, Inc. has proposed a project which will result in the creation of thirty (30) new full-time jobs and approximately One million nine hundred thousand dollars (\$1,900,000.00) in new annual payroll over a three year period, which qualifies for an incentive grant under the City's Program;

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

**Section 1**

The City Manager is hereby authorized to enter into a Job Creation Incentive Grant Agreement with Avure Technologies, Inc., not to exceed a forty percent (40%) incentive grant for a seven (7) year period of eligibility, subject to the terms and conditions of the Program. The agreement shall be in a form and substance substantially similar to Attachment "1", attached hereto.

**Section 2**

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to provide the company with a commitment of economic incentives and shall take effect and be in force from and after its adoption.

\_\_\_\_\_  
Lawrence P. Mulligan, Jr., Mayor

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

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

## ATTACHMENT "1"

### JOB CREATION INCENTIVE GRANT AGREEMENT

This agreement made and entered into by and between the **City of Middletown, Ohio**, a municipality, with its main offices located at One Donham Plaza, Middletown, Ohio 45042 (hereinafter referred to as "the City of Middletown") and **Avure Technologies, Inc.**, incorporated in the state of Ohio (hereinafter referred to as "Avure").

WHEREAS, the City of Middletown has encouraged the creation of new jobs in the City by establishing a Job Creation Incentive Grant Program; and

WHEREAS, Avure is desirous of expanding its operation in the City by bringing 30 jobs by the end of the three-year job creation period, with \$1,900,000.00 in new payroll; and

WHEREAS, Avure has submitted an application (attached as **Exhibit A**) to the City of Middletown (hereinafter referred to as "APPLICATION"); and

WHEREAS, the Finance Committee of the City of Middletown has investigated the application of Avure and has recommended to the Middletown City Council that Avure is qualified to receive a Job Creation Incentive Grant (JCIG) and that an agreement for the same should be entered; and

WHEREAS, in accordance with Ord. No. O2007-88, the parties hereto desire to set forth their agreement with respect to matters hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Avure intends to establish a manufacturing plant in the City of Middletown. This new plant is anticipated to bring 30 jobs within the three year job creation period. New payroll attributable to those new employees is projected to be \$1,900,000.00. These new jobs will be created by the end of 2015.
2. If Avure creates the new jobs (30) and the new payroll attributable to the new employees (\$1,900,000.00), it shall receive a JCIG as set forth below, subject to any limitations and conditions set forth in this Agreement and Ord. No. O2007-88.

An annual grant in an amount equal to forty (40%) of the income tax collected, on new payroll attributable to new employees placed in service during and after the "job creation period", in each of the seven (7) twelve (12) month following the completion of the job creation period. The grant shall be paid to Avure at the end of each of these seven (7) twelve (12) month periods. All grant payments are subject to the availability and appropriation of "non-tax revenues" to fund the grant payments, as set forth in Ord. No. O2007-88.

3. Avure shall provide to the City any information reasonably required by the City to evaluate Avure's compliance with the Agreement.

4. Continuation of this agreement is subject to Avure maintains the threshold amount of “new payroll attributable to new employees placed during the job creation period”. If, after formal approval of this agreement by the City of Middletown, the City discovers that such threshold amounts have not been maintained, Avure shall be deemed to have “materially failed to comply with this Agreement.”
5. If Avure “materially fails to comply with this agreement” or in any other manner fails to perform its obligations hereunder, the City may terminate or modify the amount of the grant under this agreement.
6. Avure hereby certifies that at the time this agreement is executed, Avure does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which (Avure) is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code, or, if such delinquent taxes are owed, (Avure) currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against Avure. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.
7. Avure affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.
8. Avure and the City of Middletown acknowledge that this agreement has been approved by formal action of the legislative authority of the City of Middletown as a condition for the agreement to take effect. This agreement takes effect upon execution by the parties.
9. The City of Middletown requires that recipients of incentives benefits practice non-discriminating hiring in its operations. By executing this agreement, Avure is committing to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
10. Avure affirmatively covenants that it has made no false statements to the City in the process of obtaining approval for the JCIG. If any representative of Avure has knowingly made a false statement to the City to obtain the grant, Avure shall be required to immediately return all benefits received under this Agreement and shall be ineligible for any future economic development assistance from the City. Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC 2921.13(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.



This agreement is not transferable or assignable without the express, written approval of the City of Middletown.

IN WITNESS WHEREOF, the City of Middletown, Ohio, pursuant to Resolution No. \_\_\_\_\_, has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2013 and Avure Technologies, Inc., has caused this instrument to be executed on this \_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF MIDDLETOWN**

By: \_\_\_\_\_  
Judith A. Gilleland  
City Manager

**AVURE TECHNOLOGIES, INC.**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Leslie S. Landen  
Law Director

**STAFF REPORT**  
**For the Business Meeting April 2, 2013**

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March 25, 2013

TO: Judy Gilleland, City Manager

FROM: Denise Hamet, Economic Development Director

<p><b>Job Creation Incentive Grant</b> <b>Avure Technologies, Inc.</b></p>
--------------------------------------------------------------------------------

**PURPOSE**

To authorize the City Manager to enter into a Job Creation Incentive Grant agreement with Avure Technologies, Inc. (Avure) of 40% for 7 years, associated with the company's proposed new location in the Mid-Cities facility at 2601 Verity Parkway. Avure would invest \$2.2 million in equipment and \$725,000 in their facility, and \$185,000 in IT infrastructure. The company projects 30 jobs and \$1.9 million in payroll.

**BACKGROUND and FINDINGS**

Avure Technologies, Inc. is a manufacturer of high pressure processing equipment for Industrial and Food manufacturing companies. Because of growing demand for their food processing equipment in the US, Avure intends to relocate its Food Press manufacturing from Vasteras, Sweden to the US. Their manufacturing process and technology are unique. They have two global competitors and are considered the global leader in high pressure equipment technology.

The company looked at locations in Georgia, South Carolina, Tennessee, and Texas.

Avure will bring high technology engineering jobs and highly skilled production technician positions to the US. They will also run a service operation out of the US plant, providing service parts to existing customers and acting as a home base for our US based Service Technicians.

**ALTERNATIVES**

The only alternative is not to provide for this incentive.

**OTHER CONSIDERATIONS**

- This company helps Middletown diversify its companies into the food sciences cluster.
- Improves an existing facility.
- They are trying to use local vendors when possible.
- They hope to add additional scope of operations and services.
- State of Ohio strongly supports this company.

**FINANCIAL IMPACT**

Additional annual payroll	\$1,930,000
New jobs	30 jobs
Annual Income Taxes on new jobs	\$33,775
Annual grant amount	\$13,510
Total Income Tax Grant over 7 Years	\$94,570
Total Taxes Paid over 7 years net of grant amount	\$236,425
Net	\$141,855
Investment in facility	\$725,000
Investment in equipment	\$2,200,000
Investment in IT	\$185,000

**RECOMMENDATION**

Staff recommends that City Council authorize the City Manager to enter into a 7 year, 40% Job Creation Incentive Grant for Avure Technologies, Inc. related to a proposed investment of \$3,110,000 in their facility, IT, and equipment, in their proposed location at 2601 Verity (Mid-Cities) and to creation of 30 positions with payroll of \$1,930,000.

**CONFORMITY TO CITY POLICY**

This project is consistent with the City’s 2005 Master Plan and falls under Objective ED2:

“Establish an economic development entity with the authority and accountability to effectively attract and retain jobs and businesses”.

**EMERGENCY/NON EMERGENCY**

Emergency. The company needs to start as soon as possible getting the new facility ready in order to start production.

**DEPARTMENTAL CLEARANCES**

Law Department  
Finance Department

**ATTACHMENTS**

Job Creation Incentive Grant Application

# BUSINESS ASSISTANCE: JOB CREATION INCENTIVE GRANT

## Overview

The purpose of the Job Creation Incentive Program is to encourage large-scale, employment and payroll growth in the City of Middletown.

## What Does the Program Offer?

Those companies creating a **minimum of 15 full-time jobs and \$750,000 million in payroll** are eligible to participate in the program.

Companies may receive a grant equal to 15% of the Middletown city income taxes collected annually for a period of up to 10 years. The maximum abatement is 50% and \$100,000 annually. For expansions of existing companies, a baseline year will be established based on the previous full year city income tax collections for that company.

**A suggested schedule is shown below.** Requests for grant assistance will be reviewed by the **Economic Development Incentive team and those requests receiving a positive recommendation will be forwarded to City Council for consideration.**

<u>New Payroll</u>	<u>Percentage</u>	<u>Maximum Abatement Period</u>
\$1million	15%	4years
\$2million	30%	6years
\$3million	45%	8years
\$4million & above	50%	10years

For any year a company does not meet the minimum threshold (\$1 million) in new payroll, no grant will be awarded.

## How Does a Company Apply for This Program?

Under this program, a company must contact the Economic Development Department to discuss the proposed project prior to hiring any additional employees. Based on meeting the minimum criteria set out above, a one-page application must then be completed outlining the number of employees and the expected amount of new payroll. Additionally, the company must agree to submit annual reports to the City of Middletown's Economic Development Department detailing employment and payroll. This information will be reviewed and confirmed by the City's Income Tax Superintendent.

## How Does a Company Receive the Grant?

The grant will be payable by June 30 of the year following the new payroll creation. For any year the new payroll does not meet the \$1 million in the new payroll, no grant will be awarded.

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City of Middletown  
Economic Development  
One Donham Plaza  
Middletown, OH 45042  
(513) 425-7847 (P)  
(513) 425-7792 (F)  
[www.cityofmiddletown.org](http://www.cityofmiddletown.org)

# BUSINESS ASSISTANCE: JOB CREATION INCENTIVE GRANT

## APPLICATION

DATE: 3/17/2013

COMPANY **Avure Technologies, Inc.**  
CONTACT/TITLE Mark Morgan/Director of Food Operations  
ADDRESS 210 Gothic Court, Suite 100  
CITY Franklin, TN 37067  
PHONE 615-224-2613  
615-944-4396 (cell)  
FAX  
EMAIL mark.morgan@avure.com  
WEBSITE [www.avure.com](http://www.avure.com)

### PROJECT DESCRIPTION

**Avure Technologies, Inc. is a manufacturer of high pressure processing equipment for Industrial and Food manufacturing companies. Because of growing demand for our Food processing equipment in the US, Avure intends to relocate its Food Press manufacturing from Vasteras, Sweden to the US. Our manufacturing process and technology are unique. We have two global competitors and are considered the global leader in high pressure equipment technology. We will bring high technology Engineering jobs and highly skilled Production Technician positions to the US. We will also run a service operation out of our US plant, providing service parts to existing customers and acting as a home base for our US based Service Technicians.**

---

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Economic Development  
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**APPLICATION CONT.,**

- 1. NEW JOBS 30 (15 jobs minimum)
- 2. JOB CREATION PERIOD 36 (36 mos. Maximum)
- 3. NEW PAYROLL \$1,930,000 (\$750,000 minimum)
- 4. OTHER PROJECT INVESTMENT \$2.2 million in equipment capital and \$725,000 in facility capital, and \$185,000 in IT infrastructure.
- 5. EXISTING JOBS IN MIDDLETOWN 0
- 6. EXISTING PAYROLL 0
- 7. ARE THERE OTHER INCENTIVES BEING CONSIDERED? Yes

State of Ohio Job Creation Tax Credit  
State of Ohio Workforce Training Grant  
State of Ohio Business Investment Grant

8. OTHER CONSIDERATIONS

None

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Applicant Signature

Date

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**\*\*ECONOMIC DEVELOPMENT INCENTIVE TEAM RECCOMENDATION\*\***

\_\_\_\_\_ % for \_\_\_\_\_ years.

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City of Middletown  
Economic Development  
One Donham Plaza  
Middletown, OH 45042  
(513) 425-7847 (P)  
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[www.cityofmiddletown.org](http://www.cityofmiddletown.org)

**LEGISLATION**

**ITEM 5**



**ORDINANCE NO. O2013-21**

**AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING AND RATIFYING A CONTRACT WITH LAKE ERIE ELECTRIC FOR EMERGENCY ELECTRICAL REPAIRS AND DECLARING AN EMERGENCY.**

**WHEREAS**, on January 31, 2013, serious electrical issues were discovered at the Wastewater Treatment Plant; and

**WHEREAS**, it was necessary to immediately replace an electrical cable to maintain power to the plant; and

**WHEREAS**, Lake Erie Electric performed the necessary work on a time and materials basis; and

**WHEREAS**, there is not existing authority to pay the contractor for this work,

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

**Section 1**

The City Manager without complying with the procedures of Chapter 735 of the Ohio Revised Code shall enter into a contract with Lake Erie Electric for emergency electrical repairs at the Wastewater Treatment Plant in accordance with the invoice on file in the office of the Director of Public Works and Utilities, and such contract is hereby ratified.

**Section 2**

For said purpose the Director of Finance is hereby authorized and directed to pay a sum not to exceed \$27,088.84 from the Wastewater Fund (Fund # 581)

**Section 3**

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

**Section 4**

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to assure payment to the contractor for these emergency repairs, and shall take effect and be in force from and after its adoption.

\_\_\_\_\_  
Lawrence P. Mulligan, Jr., Mayor

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

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

## **STAFF REPORT**

For the Business Meeting of April 2, 2013

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March 26, 2013

TO: Judith A. Gilleland, City Manager

FROM: Preston Combs, Interim Public Works & Utilities Director

<p><b>PAYMENT FOR EMERGENCY ELECTRICAL WORK AT THE WASTEWATER TREATMENT PLANT</b></p>
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### **PURPOSE**

To authorize payment of \$27,088.84 to Lake Erie Electric for emergency electrical repairs at the Wastewater Treatment Plant and to declare an emergency.

### **BACKGROUND AND FINDINGS**

Potentially disastrous major electrical issues at the Wastewater Treatment Plant on January 31, 2013, necessitated contracting an industrial electrical contractor on an emergency basis. Lake Erie was selected based on past service to the City and their ability to react immediately. It was determined that there was a power interruption in the 1500 feet of underground large electrical cable between Duke Energy's substation and the one inside the Treatment Plant. Without replacement of this cable, power to the treatment plant could not be restored. The cable replacement was \$27,088.84. Another \$13,591.98 in materials and contractor and \$2,625.94 in overtime for staff was spent for these repairs.

### **FINANCIAL IMPACT**

There are funds available in the operating budget to cover this expense and the other expenses associated with these power outages, assuming no other unknown major issues during the year. Continued power outage at the plant could have caused exponential fines and other negative compliance issues.

### **RECOMMENDATION**

Recommend waiving the formal bidding procedures and authorize payment to Lake Erie Electric from the 520.581.52980 Operating Budget in the amount of \$27,088.84 as an emergency since the work has been completed.

## **ALTERNATIVES**

As the work has already been completed on an emergency basis, no alternatives are available.

## **CONFORMITY TO CITY POLICY**

Conforms

## **EMERGENCY/NON-EMERGENCY**

Emergency

## **ATTACHMENTS**

Other costs associated with the two power outages.

## **DEPARTMENTAL CLEARANCES**

Les Landen, Director of Law  
Michelle Greis, Director of Finance  
Betsy Parr, Clerk of Council  
Pat Lovely, Wastewater Treatment Plant

## Power Outage Expenses

DATE	VENDOR NAME	PURPOSE	AMOUNT
2/1/2013	Ferguson	Spot Light	\$ 40.00
2/5/2013	Anixter Brothers, Inc.	Media Converter (NO CHARGE/Part was under warranty)	\$ -
2/4/2013	Grainger	Surge Arresters for GBT	\$ 475.20
2/4/2013	Harvest Land	Diesel for Generator	\$ 1,036.00
2/5/2013	Harvest Land	Diesel for Generator	\$ 2,274.76
2/6/2013	Harvest Land	Diesel for Generator	\$ 1,198.43
2/1 & 2/6/13	High Voltage Maintenance	Emergency call out to investigate. Testing of cables/switch.	\$ 3,835.44
2/6/2013	Lake Erie Electric	Installed 4160 Feeder from existing substation to the North 4160V Switch	\$ 27,088.84
2/4/2013	MCM Electronics, Inc.	Multi-Network Cable Tester, DWO Gearjuice Pocket Power, 7' Cable/Molded Connectors.	\$ 94.16
2/7/2013	Midwest Switchgear Services	Clean, repair & test Allis-Chalmers Circuit breaker. Replace Resistor, 2 puffer tubes & hose clamp.	\$ 1,255.00
2/1/2013	Ohio CAT	Generator rental	\$ 2,967.00
2/8/2013	Simpson Fence	Fence Repair	\$ 235.00
2/5/2013	UPS	Shipping of Media Converter for GBT	\$ 6.99
2/19/2013	Kemp Electric	Buss Midget Fuse	\$ 128.00
2/19/2013	Parts Express	Cabinet Cooling Fan	\$ 46.00
<b>TOTAL:</b>			<b>\$ 40,680.82</b>
		Updated 3/13/13	

**LEGISLATION**

**ITEM 6**

**RESOLUTION NO. R2013-08**

**A RESOLUTION DECLARING THE INTENT OF THE CITY OF MIDDLETOWN TO APPROPRIATE THE FEE SIMPLE INTEREST AND A PERMANENT DRAINAGE EASEMENT IN CERTAIN REAL PROPERTY OWNED BY T.E. PRODUCTS PIPELINE, CO. LOCATED AT THE NORTHEAST AND NORTHWEST CORNERS OF YANKEE ROAD AND TODHUNTER ROAD AND DECLARING AN EMERGENCY.**

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

**Section 1**

The City Council considers it necessary, and therefore, declares its intention to appropriate for the purpose of making a road open to the public, pursuant to Ohio Revised Code §163.06(B), a fee simple interest in and to the real property described in Exhibit "C", attached hereto, a fee simple interest in and to the real property described in Exhibit "B", attached hereto, and a permanent drainage easement in and to the real property described in Exhibit "A", attached hereto.

**Section 2**

The City Manager is authorized to cause written notice of the passage of this resolution to be given to the owners and persons in possession or having an interest of record in the premises. This notice shall be served and returned according to law.

**Section 3**

This resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: the timely completion of the improvement of Yankee Road, and shall take effect and be in force from and after its adoption.

\_\_\_\_\_  
Lawrence P. Mulligan, Jr., Mayor

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

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



Exhibit "A"  
Legal Description  
Drainage Easement  
TE Products Pipeline Company  
Containing 300.00 Sq Ft or 0.007 Ac.

Situated in the City of Monroe, Butler County, Ohio, being part of Lot 722 of the list of Lots for said City of Monroe, being part of the lands of TE Products Pipeline Company as recorded in Deed Book 1689, Page 328 of the Butler County Recorder's Office and being further described as follows:

Beginning at a point at the northwest corner of said tract of land and being the east Right of Way Line of Yankee Road;

Thence leaving said Right of Way Line, South 85°15'08" East, 10.00 feet, along the north line of said tract to a point;

Thence leaving said north line South 04°44'52" West, 30.00 feet to a point;

Thence North 85°15'08" West, 10.00 feet to a point on the east Right of Way Line of Yankee Road;

Thence North 04°44'52" East, 30.00 feet, along said Right of Way Line to the **Point of Beginning** containing 300.00 square feet or 0.007 acres of land.

Basis of Bearings: State plane coordinates Ohio South Zone NAD 83.



## EXHIBIT "B"

Date: October 3, 2012  
Description: Yankee Road  
0.017 acres  
Location: City of Monroe  
Butler County, Ohio



Situated in the City of Monroe, Butler County, Ohio, being part of Lot 721 of the list of Lots for said City of Monroe, being part of the lands of TE Products Company as recorded in Deed Book 1689, Page 328 of the Butler County Record's Office and being further described as follows:

Commencing at a found spike at the southwest corner of said Section 19, Town 2, Range 4 and being the intersection of the centerline of Yankee Road and Todhunter Road and being the southwest corner of said Lot 721; thence, leaving said centerline of Todhunter Road, with said centerline of Yankee Road, the west line of said Section 19 and the west line of said Lot 721, North 04°44'52" East, 20.00 feet to the north corporation line of the said City of Monroe; thence leaving said centerline of Yankee Road and said west line of Section 19 and said west line of Lot 721 and with said north corporation line of the City of Monroe, South 84°42'23" East, 25.00 to a set Magnail at the intersection of the east right of way of said Yankee Road and the north right of way of said Todhunter Road and being the **True Point of Beginning**;

thence, from the **True Point of Beginning** thus found, leaving said north right of way of Todhunter Road, with said east right of way of Yankee Road and the west corporation line of said City of Monroe, North 04° 44' 52" East, 59.43 feet to a set 5/8" iron pin;

thence, leaving said east right of way of Yankee Road and said west corporation line, on a new division line through said lands of TE Products Pipeline Company, with a curve to the left, having a central angle of 89° 27' 13", a radius of 60.00 feet, an arc length of 93.68 feet, and a chord bearing and a distance of, South 39° 58' 45" East, 84.45 feet to a set 5/8" iron pin on the north right of way of said Todhunter Road;

thence, with said north right of way of Todhunter Road, North 84° 42' 21" West, 59.43 feet to the **True Point of Beginning** containing 756 square feet or 0.017 acres of land, more or less, and being subject to all legal highways, easements, restrictions and agreements of record.

The above description was prepared based on a field survey by Bayer Becker, David Douglas Smith, Registered Surveyor #7121 in the State of Ohio, September 27, 2012.

Basis of Bearings: State plane coordinates Ohio South Zone NAD 83.

Prior Deed Reference: Deed Book 1689, Page 328.

## EXHIBIT "C"

Date: October 3, 2012  
Description: Yankee Road  
0.203 acres  
Location: City of Middletown  
Butler County, Ohio



Situated in the Fourth Ward, South Side, City of Middletown, Butler County, Ohio, being part of Lot 16075 of the list of Lots for said City of Middletown, being part of the lands of TE Products Pipeline Co. Ltd. Prt. as recorded in Official Record 6435, Page 1944 of the Butler County Record's Office and being further described as follows:

Commencing at a found spike at the southeast corner of said Section 25, Town 2, Range 4 and being the intersection centerline of Yankee Road and Todhunter Road; thence, leaving said centerline of Todhunter Road and with said centerline of Yankee Road and the east line of said Section 25, North 04°44'52" East, 20.00 feet to the south corporation line of said City of Middletown; thence leaving said centerline of Yankee Road and said east line of Section 25, North 84°47'17" West, 25.00 to a set Magnail at the intersection of the west right of way of said Yankee Road and the north right of way of said Todhunter Road and being the **True Point of Beginning**;

thence, from the **True Point of Beginning** thus found, leaving said west right of way of Yankee Road and with said north right of way of Todhunter Road and said corporation line, North 84° 47' 17" West, 35.00 feet to a set 5/8" iron pin;

thence, leaving said north right of way of Todhunter Road, said corporation line and on a new division line through said lands of TE Products Pipeline Co. Ltd. Prt., North 04° 44' 52" East, 251.56 feet to a found 5/8" iron pin on the south line of Lot 16071, and being the lands of Magnode Corporation as recorded in Official Record 6463, Page 151 of the Butler County Recorder's Office;

thence, with said south line of Lot 16071, South 86° 47' 48" East, (passing a found 5/8" iron pin at 29.98 feet), 35.01 feet to a set 5/8" iron pin on the west right of way of Yankee Road;

thence, thence leaving said south line of the Lot 16071 and with said west right of way of Yankee Road, South 04° 44' 52" West, 252.78 feet to the **True Point of Beginning** containing 8,826 square feet or 0.203 acres of land, more or less, and being subject to all legal highways, easements, restrictions and agreements of record.

The above description was prepared based on a field survey by Bayer Becker, David Douglas Smith, Registered Surveyor #7121 in the State of Ohio, September 27, 2012.

Basis of Bearings: State plane coordinates Ohio South Zone NAD 83.

Prior Deed Reference: Official Record 6435, Page 1944.

March 26, 2013

TO: Judy Gilleland, City Manager

FROM: Preston Combs, Interim Director of Public Works & Utilities  
Prepared by: Scott Tadych, Assistant City Engineer

**RESOLUTION OF INTENT TO APPROPRIATE RIGHT-OF-  
WAY FOR THE YANKEE ROAD PROJECT**

**PURPOSE**

To authorize the first step of the appropriation procedure for the acquisition of right-of-way and easement required to complete the Yankee Road Project.

**BACKGROUND and FINDINGS**

Improvements to Yankee Road between MADE Industrial Drive and Todhunter Road are scheduled as part of the 2013 Capital Improvements Plan. The project is 100% funded by an ODOT Jobs and Commerce grant and a Jobs Ohio grant totaling \$1.375 million in connection with the Pilot Chemical expansion project. Engineering staff has finalized construction plans and is in the process of acquiring right-of-way.

Staff has been in contact with T.E. Products Pipeline Co. about the project and right-of-way needed since the end of last year. T.E. Products Pipeline Co. has been in favor of the project and originally told staff they would be willing to donate the right-of-way and easements. However, because of recent internal issues T.E. Products Pipeline has told staff they do not have time now to handle the donation process and we should commence with the right-of-way appropriation process.

The property acquisition process requires the City to pass a resolution of intent to appropriate property followed by an ordinance to appropriate at a subsequent meeting. This resolution to appropriate includes two permanent right-of-way parcels and one drainage easement located on property owned T.E. Products Pipeline Co. located at the northeast and northwest corners of Yankee Road and Todhunter Road.

Right-of-way clearance is necessary prior to bidding and awarding a construction contract for the project. ODOT's project schedule requires the City to have the construction contract awarded by City Council in early June of 2013. To meet this deadline staff request passing both pieces of legislation as Emergencies at the April 2<sup>nd</sup> (Intent to Appropriate) and April 16<sup>th</sup> (Ordinance to Appropriate) City Council meetings. Once legislation is finalized the Law Department can file the appropriation with the County then the City has the right to proceed with the project.

## **FINANCIAL IMPACT**

The total fair market value for the parcels and easement needed totals \$8,300. The ongoing negotiations will determine the final cost of property acquisition. This cost was incorporated in the 2013 Capital Improvement Program and is eligible for reimbursement through the Jobs Ohio grant.

## **RECOMMENDATION**

Staff recommends approval of the Resolutions of Intent to appropriate as an Emergency in order to keep the project on schedule.

## **ALTERNATIVES**

- 1) Approve the resolution of intent to appropriation and ordinance to appropriate to keep the project on schedule. This action will not preclude further negotiations.
- 2) Continue to negotiate without filing the resolution of intent to appropriate. This may delay the project and risk losing the ODOT Jobs and Commerce grant if a mutual agreement cannot be reached.

## **CONFORMITY TO CITY POLICY**

Conforms.

## **EMERGENCY/NON-EMERGENCY**

Emergency. Right-of-Way clearance is needed by the end of April to meet ODOT's overall project deadline.

## **DEPARTMENTAL CLEARANCES**

Law Department  
Finance Department  
Clerk of Council

## **ATTACHMENTS**

Right-of-way Exhibit  
Legal Descriptions

cc: Les Landen, Director of Law  
Michele Greis, Director of Finance  
Betsy Parr, Clerk of Council

**LEGISLATION**

**ITEM 7**

**ORDINANCE NO. O2013-22**

**AN ORDINANCE AMENDING CHAPTER 1041 OF THE CODIFIED ORDINANCES.**

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

**Section 1**

Chapter 1041 of the Codified Ordinances is hereby combined and amended as set forth in full in Exhibit "A", attached hereto.

**Section 2**

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

\_\_\_\_\_  
Lawrence P. Mulligan, Jr., Mayor

1<sup>st</sup> reading: April 2, 2013

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

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

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

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

# EXHIBIT "A"

## CHAPTER 1041: WASTEWATER COLLECTION AND TREATMENT

### §1041.01 GENERAL PROVISIONS; PURPOSE AND POLICY.

(a) These regulations set forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment facilities for the City of Middletown, and enable the City to comply with all applicable local, State and Federal laws required by the Clean Water Act of 1977 and the General Pretreatment Regulations established by the U.S. Environmental Protection Agency (EPA). The objectives of these regulations are:

(1) To prevent the introduction of pollutants into the City's wastewater collection and treatment facilities which will interfere with the operation of the facilities or contaminate the resulting sludge;

(2) To prevent the introduction of pollutants into the City's wastewater collection and treatment facilities which will pass through the system, inadequately treated, into receiving waters or the atmosphere or are otherwise found to be incompatible with the facilities;

(3) To improve the opportunity to recycle and reclaim wastewaters and sludges from the system; and

(4) To provide for equitable distribution of the costs of the City's wastewater collection and treatment facilities.

(b) These regulations provide for the control of direct and indirect discharges to the City's wastewater collection and treatment facilities through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorize monitoring and enforcement activities, require user reporting, assume that existing customers' capacities will not be pre-empted, and provide for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(c) These regulations shall apply to the City of Middletown and to persons outside the City who are, by contract or agreement with the City, users of the City's wastewater collection and treatment facilities.

(d) These regulations are in addition to Chapter 1040 of these Codified Ordinances.

### §1041.02 DEFINITIONS.

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated.

(a) *ACT*. The Clean Water Act (33 U.S.C. 1251 et seq.), as amended.

(b) *BYPASS*. The intentional diversion of waste streams from any portion of a user's pretreatment facility.

(c) *CATEGORICAL PRETREATMENT STANDARDS*. National Pretreatment Standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced into the collection and treatment facilities by specific industrial users.

(d) *CITY*. The City of Middletown.

(e) *COLLECTION AND TREATMENT FACILITIES*. Sewers, pump stations and all wastewater and sludge treatment processes and equipment owned by the City of Middletown.

(f) ***AUTHORIZED REPRESENTATIVE OF THE DISCHARGER MAY BE:***

(1) **If the discharger is a corporation:**

**A. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy decision-making functions for the corporation; or**

**B. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, initiates and directs other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.**

**(2) If the discharger is a partnership or sole proprietorship; a general partner or proprietor, respectively.**

**(3) If the discharger is a Federal, State, or local governmental facility; a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.**

**(4) The individuals described in paragraphs 1 through 3, above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the authority.**

**(gf) INDIRECT DISCHARGE.** The discharge or introduction of non-domestic pollutants from a source regulated under Section 307(b) or (c) of the Act, into the collection and treatment facilities.

**(hg) INDUSTRIAL WASTE.** Solid, liquid or gaseous wastes resulting from any industrial, manufacturing, trade, or business process or from the development, recovery or processing of natural resources.

**(ih) INTERFERENCE.** A discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) inhibits or disrupts the City's wastewater treatment facility, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal as defined in 40 C.F.R. 403.31.

**(ji) mg/l.** Milligrams per liter.

**(kj) NEW SOURCE.** Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act and as defined by 40 C.F.R. 403.3(k).

**(lk) NPDES.** National Pollutant Discharge Elimination System permit program as administered by the U.S. EPA or the State.

**(m) O & M.** Operation and maintenance.

**(nn) OTHER WASTES.** Decayed wood, sawdust, shavings, bark, lime, refuse, ashes, garbage, offal, oil, tar, chemicals and all other substances except sewage and industrial wastes.

**(on) PASSTHROUGH.** A discharge which exits the City's wastewater treatment facility into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge from other sources, is a cause of a violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation).



- | (~~pe~~) *pH*. Logarithm (base ten) of the reciprocal of the hydrogen ion concentration.
- | (~~qp~~) *POLLUTANT*. Any substance listed in Appendix A or included in the City's NPDES permit, which is discharged into the collection and treatment facilities, or any substance which, upon exposure to or assimilation into any organism, will cause adverse effects such as cancer, genetic mutation or psychological manifestations as defined in standards issued pursuant to Section 307(a) of the Act.
- | (~~re~~) *POTW*. Publicly-owned treatment works.
- | (~~sf~~) *PRETREATMENT*. The reduction of the amount of pollutants, the elimination of pollutants, or the alternation of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the treatment facilities.
- | (~~ts~~) *SEWAGE*. Water-carried human wastes or a combination of water-carried wastes from residence, business building, institutions and industrial establishments, together with such ground, surface, storm or other water as may be present.
- | (~~ut~~) *SEWER*. Any pipe, conduit, ditch or other device used to collect and transport sewage or storm water from the generating source.
- | (~~vt~~) *SIGNIFICANT INDUSTRIAL USER*.
- (1) Except as provided in paragraph (v)(2) hereof, the term *SIGNIFICANT INDUSTRIAL USER* includes:
- A. All industrial users subject to categorical pretreatment standards; and
- B. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process waste stream to the POTW; discharges a process waste stream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW, or has a reasonable potential, in the opinion of the Director of Public Works & Utilities, to adversely affect the POTW's operation or to violate any pretreatment standard or requirement.
- (2) The office of the Director of Public Works & Utilities may at any time, on its own initiative or in response to a petition received from an industrial user, determine that a non-categorical industrial user is not a significant industrial user if the industrial user has no reasonable potential to adversely affect the POTW's operation or to violate any pretreatment standard or requirement.
- | (~~wv~~) *SIGNIFICANT VIOLATION*. A violation which remains uncorrected 45 days after notification of noncompliance; which is part of a pattern of noncompliance over a 12-month period; which involves failure to accurately report noncompliance; or resulted in the City exercising its emergency authority under §1041.06(a). (NOTE: This definition pertains to the annual publication requirements listed under §1041.06(g).)
- | (~~xw~~) *SLUGLOAD*. Any discharge which, by virtue of quantity or quality, is of such magnitude above the user's discharge limitation that it causes an incidence of interference or passthrough at the City's treatment facility.
- | (~~yx~~) *TOXIC POLLUTANT*. Any pollutant or combination of pollutants designated by Federal Regulations pursuant to Section 307 of the Act.
- | (~~zy~~) *UPSET*. An exceptional incident in which a user unintentionally and temporarily is in a state of noncompliance with applicable pretreatment standards due to factors beyond the reasonable control of the user and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation thereof.
- | (~~aa~~) *USER-INDUSTRIAL USER*. Any user of the City's wastewater collection and treatment facilities identified in the Standard Industrial Classification Manual of the U.S. Office of Management and Budget, as amended and

supplemented under the following divisions:

- (1) Division A - Agriculture, Forestry, and Fishing;
- (2) Division B - Mining;
- (3) Division D - Manufacturing;
- (4) Division E - Transportation, Communication, Gas, Electric, and Sanitary Service; and
- (5) Division I - Services.

### §1041.03 REGULATIONS.

(a) *General Discharge Prohibitions.* No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the City's wastewater collection and treatment facilities, or contaminate the sludge resulting therefrom such that its use or disposal by the City's chosen method is prevented. These general prohibitions apply to all such users of a City's wastewater collection and treatment facilities whether or not the user is subject to the National Categorical Pretreatment Requirements. A user may not contribute the following substances to the City's wastewater collection and treatment facilities:

(1) Pollutants which create a fire or explosion hazard in the City's wastewater collection and treatment facilities, including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F or 60°C using the test method specified in 40 C.F.R. 261.21.

(2) Solid or viscous substances which may cause obstruction to flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to: grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.

(3) Any wastewater having a pH less than 5.0 or higher than 12.0, unless the City determines that its treatment facilities are able to accommodate such wastewater, or hazard to structures, equipment, and/or personnel of the City's wastewater collection and treatment facilities.

(4) Pollutants which result in the presence of toxic gases, vapors, or fumes into the City's wastewater collection and treatment facilities in a quantity that: may cause acute worker health and safety problems; may injure or interfere with any wastewater treatment process; or may create a toxic effect in the receiving waters.

(5) Any noxious or malodorous liquids, gases, or solids which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life, or are sufficient to prevent entry into the sewers for maintenance and repair.

(6) Any substance which may cause the City's wastewater collection and treatment facilities effluent, or any other product of the City's wastewater collection and treatment facilities such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the City's wastewater collection and treatment facilities cause the City's wastewater collection and treatment facilities to be in noncompliance with:

A. Sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; or

B. Any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.

(7) Any substance which will cause the City's wastewater collection and treatment facilities to violate its NPDES and/or State disposal system permit or the receiving water quality standards.

(8) Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

(9) Any wastewater having a temperature which will inhibit biological activity in the City's wastewater treatment facilities resulting in interference, but in no case wastewater which causes a temperature at the introduction into the City's wastewater treatment facilities which exceeds 40°C (104°F).

(10) Any pollutants, including oxygen demand pollutants (BOD, ammonia, etc.), released at a flow rate and/or pollutant concentration which a user knows or has reason to know will cause interference to the City's wastewater collection and treatment facilities.

(11) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the City in compliance with applicable State or Federal regulations.

(12) Any wastewater which causes a hazard to human life or creates a public nuisance.

(13) Storm water, groundwater, rain water, street drainage, roof top drainage, basement drainage, subsurface drainage, or yard drainage if unpolluted, unless a storm sewer or other reasonable alternative for removal of such drainage does not exist, and then only when such discharge is permitted by the user's wastewater discharge permit and the appropriate fee is paid for the volume thereof.

(14) No person shall discharge any substance directly into a manhole or other opening in a community sewer other than through an approved building sewer, unless he or she shall have been issued a temporary permit by the Director of Public Works & Utilities. The Director of Public Works & Utilities shall incorporate in such temporary permit those conditions he or she deems reasonably necessary to ensure compliance with the provisions of this chapter, and the user shall be required to pay applicable charges and fees.

(15) No person owning vacuum or "cesspool" pump trucks or other liquid waste transport trucks shall discharge directly or indirectly such sewage into the City's wastewater collection and treatment facilities, unless such person shall first have applied for and received a truck discharge operation permit from the Director of Public Works & Utilities. All applicants for a truck discharge operation permit shall complete such forms as are required by the Director of Public Works & Utilities, pay appropriate fees, and agree in writing to abide by the provisions of this chapter and any special conditions or regulations established by the Director of Public Works & Utilities. The owners of such vehicles shall affix and display the permit number on the side of each vehicle used for such purposes. Such permits shall be valid for a period of one year from the date of issuance, provided that such permit shall be subject to revocation by the Director of Public Works & Utilities for a violation of any provision of this chapter or of any reasonable regulation established by the Director of Public Works & Utilities. Such permits shall be limited to the discharge of domestic sewage waste containing no industrial waste. The Director of Public Works & Utilities shall designate the locations and times where such trucks may be discharged, and may refuse to accept any truckload of waste in his or her absolute discretion where it appears that the waste could interfere with the effective operation of the treatment works or any sewer line or appurtenance thereto.

(16) No person shall discharge any other holding tank waste into the City's wastewater collection and treatment facilities unless he or she shall have applied for and have been issued a permit by the Director of Public Works & Utilities. Unless otherwise allowed under the terms and conditions of the permit, a separate permit must be secured for each separate discharge, the time of day the discharge is to occur, the volume of the discharge, and shall limit the wastewater constituents of the discharge. Such user shall pay any applicable charges or fees therefor, and shall comply with the conditions of the permit issued by the Director of Public Works & Utilities. However, no permit will be required to discharge domestic waste from a recreational vehicle holding tank, provided such discharge is made into an approved facility designed to receive such waste.

(17) When the Director of Public Works & Utilities determines that a user is contributing to the City's wastewater collection and treatment facilities, any of the above enumerated substances in such amounts as to

interfere with the operation of the City's wastewater collection and treatment facilities, the Director of Public Works & Utilities shall advise the user of the impact of the contribution of the City's wastewater collection and treatment system; and develop discharge limitation(s) for such a user to correct the interference with the City's wastewater collection and treatment facilities.

(18) Petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that can pass through or cause interference.

(19) No person shall access the City's wastewater collection and treatment facilities for any activity including discharge of hauled septic or industrial wastes, except at locations and at times as designated by the Director of Public Works & Utilities. Any removal of manhole lids, or other access to the sewer system for the purpose of discharging wastes at times and/or locations other than those designated by the Director of Public Works & Utilities, or without the express permission of the Director of Public Works & Utilities, shall be considered a violation and shall be subject to enforcement action including fines and penalties allowed under §1041.99.

(b) *Limitations on Wastewater Strength.*

(1) *National Categorical Pretreatment Standards.* National Categorical Pretreatment Standards, as promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the Act, shall be met by all dischargers of the regulated industrial categories. An application for modification of the National Categorical Pretreatment Standards may be considered for submittal to the Regional Administrator by the City, when the City's wastewater treatment system achieves consistent removal of the pollutants as defined by 40 C.F.R. 403.7.

(2) *State requirements.* State requirements and limitations on discharges to the treatment facilities shall be met by all users which are subject to such standards in any instance in which they are more stringent than Federal requirements and limitations or those contained in these or any other applicable regulations.

(3) *Right of revision.* The City reserves the right to amend these regulations to provide for more stringent limitations or requirements on discharge to the treatment facilities where deemed necessary to comply with the objectives set forth in §1041.01.

(4) *Dilution.* No user shall increase the use of potable or process water in any way, nor mix separate waste streams for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment, to achieve compliance with the standards set forth in these regulations.

(5) *Supplementary limitations.* No user shall discharge wastewater into the City's wastewater collection and treatment facilities containing concentrations of the following enumerated substances, exceeding the following values, unless a modified discharge agreement has been reached between the City and the user and has been incorporated in the user's permit. In those cases where conflicts arise between the following enumerated substances and their respective concentrations and the Categorical Pretreatment Standards, the **more stringent limit shall govern.** ~~Categorical Pretreatment Standards shall govern.~~ **The most recently Ohio EPA-approved local limits will apply.**

<i>Material</i>	<i>Concentration (mg/l)</i>
cyanide	5.0
cadmium	3.0
chromium	7.5
copper	5.0
mercury	0.2
nickel	15.0
zinc	10.0

The City may impose mass limitations on users which are using dilution to meet the pretreatment standards and requirements of these regulations, or in other cases where the imposition of mass limitations is deemed appropriate by the City or current limits established by the Ohio EPA in the City's NPDES permit for the City.

(c) *Accidental Discharges and Slug Discharges.*

(1) Each user shall provide protection from **slug discharges and** accidental discharges of prohibited materials or other substances regulated by these regulations. Facilities to prevent accidental discharge of prohibited materials ~~or~~ shall be provided and maintained at the owner or user's own cost and expense. Detailed plans showing facilities and operating procedures **adequate** to provide this protection shall be submitted to the City for review, and shall be approved by the City before construction of the facility. **If directed by the City**, existing users shall **prepare and submit complete an Accidental and Slug Discharge Control Plans** ~~such a plan~~ within ninety days from the effective date of these regulations. **Procedures detailed in the plan must include but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, employee training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.** No user who commences contribution to the City's wastewater collection and treatment facilities after the effective date of these regulations shall be permitted to introduce pollutants into the system until accidental **and slug** discharge procedures have been approved by the City. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of these regulations. In the case of an accidental **or slug** discharge (e.g., slugloads), it is the responsibility of the user to immediately telephone and notify the City's wastewater collection and treatment facility of the incident to enable countermeasures to be taken by the City to minimize damage to the treatment facility and its receiving waters.

(2) Within five days following an accidental discharge, the user shall submit to the Director of Public Works & Utilities a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the City's wastewater collection and treatment facilities, fish kills, or any other damage to persons or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this chapter or other applicable law.

(3) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall ensure that all employees who may cause or suffer from such an accidental discharge are advised of the emergency notification procedure.

(4) **A user is required to notify the POTW immediately of any changes at the user's facility that may affect the potential for a slug discharge. The user may contact the POTW by telephone. Within 5 days of notifying the City, the user must submit a written notice detailing the changes affecting the potential for an accidental of slug discharge.**

(d) *Bypass.*

(1) An industrial user may bypass all or part of its discharge past pretreatment units, providing the discharge meets permit or local limits and is essential for maintenance of such units.

(2) All other bypasses are prohibited, except where they are to prevent loss of life, personal injury or severe property damage. With the consent of the City, bypasses for which there is no favorable alternative action, may be allowed.

(3) Whenever possible, industry shall notify the City at least ten days prior to the anticipated date of bypass or, if such notice is impossible, within 24 hours after discovering a bypass is occurring. A written explanation of the cause of such emergency bypasses shall be delivered to the Director of Public Works & Utilities within five days of such emergency bypass. Such notification shall include steps to be taken to eliminate future occurrences.

(e) *Upset.*

(1) An upset condition shall be an affirmative defense for an industrial user where such upset causes

the violation of a Categorical Pretreatment Standard.

(2) An industrial user must report to the City's wastewater collection and treatment facility by telephone that an upset is occurring within 24 hours of becoming aware that an upset exists. Within five days after an upset, the industrial user will provide a written report to the Director of Public Works & Utilities stating the probable cause of the upset, the exact date and time the upset occurred, the type and quantity of pollutant released, and steps being taken to prevent such future violations. If the upset condition still exists, the industrial user will provide the earliest date to correct the upset and return to compliance.

#### §1041.04 FEES.

(a) *Purpose.* It is the purpose of this chapter to provide for the payment of fees from users to the City's Sewer Revenue Fund to compensate the City for the cost of the administration of the pretreatment program established herein.

(b) *Charges and Fees.* The City shall recover costs from users of the City's wastewater collection and treatment facilities in accordance with Chapter 1040.

(c) *Special Surcharges.* A special surcharge shall be levied on and collected from significant industrial users whose waste exceeds normal concentrations and causes additional operating cost to the City. These special surcharges shall be established by the City's User Fee Ordinance or specified as part of the user's discharge permit.

(d) *Recovery Costs Due to Damages Caused by the User.* Every user shall be responsible for assuring that no discharge from any source originating within his or her jurisdiction shall be of such a nature as to cause obstruction, damage, or any other impairment of the City's wastewater collection and treatment facilities. Damages or expenses incurred by the City as a result of any violation of this section shall be levied on and collected from such a user.

#### §1041.05 ADMINISTRATION.

(a) *Wastewater Discharge.* It shall be unlawful for a significant industrial user to discharge sewage, industrial wastes or other wastes without a permit issued by the City to any sewer within the jurisdiction of the City and/or to the treatment facility.

(b) *Wastewater Discharge Permits.*

(1) *General permits.* All significant industrial users proposing to connect to or to contribute to the City's wastewater collection and treatment facilities shall obtain a wastewater contribution permit before connecting to or contributing to the City's wastewater collection and treatment facilities. All existing significant industrial users connected to or contributing to the City's wastewater collection and treatment facilities shall obtain a wastewater contribution permit within 180 days after the effective date of these regulations. The Director of Public Works & Utilities may exempt selected classes of users from this requirement for two years following the effective date of these regulations.

(2) *Permit application.*

A. Users required to obtain a wastewater contribution permit shall complete and file with the City's Director of Public Works & Utilities an application in the form prescribed by the Director of Public Works & Utilities, and accompanied by a fee of three thousand dollars (\$3,000). Existing users shall apply for a wastewater contribution permit within 30 days after the effective date of these regulations, and proposed new sources shall apply at least 90 days prior to connecting to or contributing to the City's wastewater collection and treatment facilities. Proper completion of the wastewater contribution permit application may require the following information:

1. Disclosure of name, address, and location of user;
2. Disclosure of Standard Industrial Classification (SIC) number according to the

Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended;

3. Disclosure of wastewater constituents and characteristics, including, but not limited to, those mentioned in these regulations, including Appendix A, as appropriate, as determined by bona fide chemical and biological analyses. Sampling and analysis shall be performed in accordance with procedures established by the U.S. EPA and contained in 40 C.F.R., Part 136, as amended;

4. Disclosure of time and duration of discharges;

5. Disclosure of average daily and instantaneous peak wastewater flow rates, in gallons per day, including daily, monthly and seasonal variations, if any. All flows shall be measured unless other verifiable techniques are approved by the City due to cost or non-feasibility;

6. Disclosure of site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation;

7. Description of activities, facilities and plant processes on the premises, including all materials which are or may be discharged to the sewers or works of the City, including a sketch-level diagram of all proposed or existing pretreatment facilities, showing flow arrows and the location of all sampling points;

8. Disclosure of the nature and concentration of any pollutants or materials prohibited by these regulations in the discharge, together with a statement regarding whether or not compliance is being achieved with these regulations on a consistent basis, and, if not, whether additional operation and maintenance activities and/or additional pretreatment is required for the user to comply with these regulations;

9. Where additional pretreatment and/or operation and maintenance activities will be required to comply with these regulations, the user shall provide a declaration of the shortest schedule by which the user will provide such additional pretreatment and/or implementation of additional operational and maintenance activities.

a. The schedule shall contain milestone dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to comply with the requirements of these regulations including, but not limited to, dates relating to hiring an engineer, hiring other appropriate personnel, completing preliminary plans, executing contracts for major components, commencing construction, completing construction, and all other acts necessary to achieve compliance with these regulations.

b. Under no circumstance shall the City permit a time increment for any single step directed toward compliance which exceeds nine months.

c. Not later than 14 days following each milestone date in the schedule and the final date for compliance, the user shall submit a progress report to the City, including no less than a statement as to whether or not it complied with the increment of progress represented by that milestone date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the approved schedule. In no event shall more than nine months elapse between such progress reports to the City.

10. Disclosure of each product produced by type, amount, process and processes and rate of production;

11. Disclosure of the type and amount of raw materials utilized (average and maximum per day).

B. All permit applications for new or modified permits shall be signed by a principal executive officer of the user, and a qualified engineer, and all renewal applications for existing permits shall be

signed by a principal executive officer of the user.

C. The Director of Public Works & Utilities shall evaluate the adequacy of data furnished in the application form. If insufficient data have been furnished, the Director will notify the user to provide additional data within a specified time. After acceptance of data, the Director will issue the permit. The Director may stipulate special conditions and terms upon which the permit may be issued.

(3) *Permit conditions.* Granting of permits may require the following conditions:

A. Limits on rate, time and characteristics of discharge or requirements for flow regulation and equalization.

B. Installation and inspection, flow measurements and sampling facilities, including access to such facilities.

C. Specifications for a monitoring program which may include flow measurement, sampling, chemical and biological tests, recording of data, and reporting schedule. Costs for conducting the monitoring program would be the responsibility of the user.

D. Pretreatment requirements and a schedule for implementation, including schedules for reporting progress towards meeting these requirements.

E. Submission of discharge reports.

F. Schedule for the payment of industrial cost recoveries as required under ' 204 of the Act.

G. Special service charges or fees.

H. Prompt notification in the form of a letter written to the Director of Public Works & Utilities in advance of any substantial change in volume, concentration or nature of discharge.

I. Other conditions as deemed appropriate by the City to ensure compliance with these regulations and with applicable requirements of Federal or State law.

(4) *Permit modifications.* The City reserves the right to amend any wastewater contribution permit issued hereunder with applicable laws and regulations. Within nine months of the promulgation of a National Categorical Pretreatment Standard, the wastewater contribution permit of each user subject to such standards shall be revised to require compliance with such standards within the time frame prescribed by such standards. All National Categorical Pretreatment Standards adopted after the promulgation of these regulations shall be adopted by the City as part of these regulations. Where a user, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a wastewater contribution permit as required by division (b)(2) of this section, the user shall apply for a wastewater contribution permit from the City within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard by the U.S. EPA. In addition, the user with an existing wastewater contribution permit shall submit to the City, within 180 days after the promulgation of an applicable National Categorical Pretreatment Standard, the information required by division (b)(2)A.9. of this section. The user shall be informed of any proposed changes in his or her permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(5) *Permit duration.* Permits shall be issued for a specified period of time, not to exceed two years. The user shall apply for a permit re-issuance a minimum of 180 days before expiration, or whenever the conditions of discharge change.

(6) *Limitations on permit transfer.* Wastewater contribution permits are issued to a specific user for a specific operation and are not assignable to another user without prior written approval of the City, or transferable to any other location.



(7) ***Effluent Limits.*** Effluent limits are based on applicable general Pretreatment Standards in 40 CFR Part 403, Categorical Pretreatment Standards, local limits, Best Management Practices and State and local law;

(c) ***Reporting Requirement for Permittee.***

(1) ***New source compliance deadline.*** New sources shall install, calibrate and have in acceptable operating condition and shall start-up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge waste into the City's wastewater collection and treatment facilities. Within the shortest feasible time, not to exceed 90 days, new sources must meet all applicable pretreatment standards set forth in 40 C.F.R. 403.6(b).

(2) ***Baseline monitoring report.***

**A. Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under §403.6(a)(4), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (a)–(g) of this section.**

~~Existing sources shall submit a baseline monitoring report within 180 days of the promulgation of a new National Categorical Pretreatment Standard.~~

~~B. A new source shall submit a baseline monitoring report to accompany its permit application at least 90 days prior to the commencement of the introduction of wastewater into the City's collection and treatment facilities. The baseline monitoring report shall include information on pretreatment methods and provide the nature and concentration of all pollutants as set forth in 40 C.F.R. 403.12(b).~~

**B. At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1)–(5) of this section.**

New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in paragraphs (b) (4) and (5) of this section:

1. ***Identifying information.*** The User shall submit the name and address of the facility including the name of the operator and owners;

2. ***Permits.*** The User shall submit a list of any environmental control permits held by or for the facility;

3. ***Description of operations.*** The User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes.

4. ***Flow measurement.*** The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

a. **Regulated process streams; and**

b. Other streams as necessary to allow use of the combined wastestream formula of §403.6(e). (See paragraph (b)(5)(iv) of this section.) The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

5. *Measurement of pollutants.*

a. The user shall identify the Pretreatment Standards applicable to each regulated process;

b. In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Standards to determine compliance with the Standard;

c. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

d. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of CFR 40 Part 403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with CFR 40 Part 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;

e. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator;

f. The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

g. The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW;

h. For sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For other required reporting and assessment of compliance, the Control Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

i. All users reports must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable

**Pretreatment Standards and Requirements.** Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.

6. *Certification.* A statement, reviewed by an authorized representative of the Industrial User (as defined in paragraph (I) of this section) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional Pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and

7. *Compliance schedule.* If additional pretreatment and/or O and M will be required to meet the Pretreatment Standards; the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O and M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.

a. Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (§403.7), the combined wastestream formula (§403.6(e)), and/or a Fundamentally Different Factors variance (§403.13) at the time the User submits the report required by paragraph (b) of this section, the information required by paragraphs (b)(6) and (7) of this section shall pertain to the modified limits.

b. If the categorical Pretreatment Standard is modified by a removal allowance (§403.7), the combined wastestream formula (§403.6(e)), and/or a Fundamentally Different Factors variance (§403.13) after the User submits the report required by paragraph (b) of this section, any necessary amendments to the information requested by paragraphs (b)(6) and (7) of this section shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.

~~C. *Ninety day compliance report.* Within 90 days following the date for final compliance by the user with National Categorical Pretreatment Standards, or 90 days following the commencement of the introduction of wastewater into the City's collection and treatment facilities by a new source governed by National Categorical Pretreatment Standards, a report shall be submitted to the City indicating the nature and concentration of all prohibited or regulated substances contained in its discharge, and the average and maximum daily flow in gallons. The report shall state whether the National Categorical Pretreatment Standards are being met on a consistent basis and, if not, what additional O & M and/or pretreatment is necessary to bring the user into compliance with applicable Categorical Pretreatment Standards. This statement shall be signed by an authorized representative of the user, and certified to by a qualified engineer.~~

(3) *Periodic compliance reports.*

(4)A. Any Industrial User subject to a Categorical Pretreatment Standard (except a Non-Significant Categorical User as defined in 40 CFR 403.3(v)(2)), after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated

average and maximum daily flows for the reporting period for the Discharge reported in paragraph (2)(d) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may modify the months during which the above reports are to be submitted.

**B. ~~h)~~ Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.** The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical Industrial User. If a User subject to the reporting requirements of this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Control Authority, the results of this monitoring shall be included in the report.

~~A. Any user subject to a pretreatment standard set forth in these regulations, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge to the City, shall submit to the City during the months of June and December, unless required more frequently by the City, a semi-annual report, indicating the nature and concentration of prohibited or regulated pollutants in its discharge which are limited by pretreatment standards hereof. In addition, this report shall include a record of all measured or estimated average and maximum daily flows during the reporting period reported in division (e)(3) of this section. Flows shall be reported on the basis of actual measurement, provided, however, where that cost or feasibility considerations justify, the City may accept reports of average and maximum flows estimated by verifiable techniques. The City, for good cause shown, considering such factors as local high or low flow rates, holidays, budget cycles, or other extenuating factors, may authorize the submission of said reports on months other than those specified above.~~

~~B. Reports of permittees shall contain all results of sampling and analysis of the discharge, including the flow and nature and concentration, or production and mass where required by the City. The frequency of monitoring by the user shall be as prescribed in the applicable pretreatment standard of these regulations. All analyses shall be performed in accordance with 40 C.F.R. Part 136, and amendments thereto.~~

C. 1. If the results of periodic monitoring indicate noncompliance with any pollutant limit stipulated in the industrial user's discharge permit, or where such limits or permits do not exist, or where monitoring results exceed Federal categorical or local limits, the industrial user shall notify the Director of Public Works & Utilities in writing within 24 hours of becoming aware of this nonconforming discharge. The industrial user must then repeat the sampling and analysis and submit the results to the City within 30 days, unless the City samples the industrial user's discharge. If this re-sampling indicates continued noncompliance, then the industrial user shall continue weekly sampling until such time that the results of two repeat samplings indicate a return to compliance status. Results of all such re-sampling must be received by the City within 30 days following such re-sampling. **If the City conducts monitoring and becomes aware of a permit violation or parameter exceedance, the City will either conduct the resampling within 30 days or will require the industrial user to resample as described below.**

2. Re-sampling, as described above, may also be ordered when the City, as a result of its own sampling efforts, discovers a violation of discharge limits. The City will notify the industrial user of a violation and provide a re-sampling schedule to the industry as part of this notification.

3. The re-sampling, as described in this division, is not required of **any** industry

monitored on a daily basis by the City.

(d) *Monitoring Facilities.*

(1) Each **industrial** user shall provide and operate, at the user's expense, a monitoring facility to allow inspection, sampling and flow measurement of each sewer discharge to the City. Each monitoring facility shall be situated on the user's premises, except where such a location would be impractical or cause undue hardship on the user, in which case the City may concur with the facility being constructed in the public street or sidewalk area, provided that the facility is located so that it will not be obstructed by landscaping or parked vehicles.

(2) There shall be ample room in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

(3) All monitoring facilities shall be constructed and maintained in accordance with the applicable local construction standards and specifications.

(e) *Right of Entry for Inspection, Sampling and Records Examination.* The City may inspect the monitoring facilities of any user to determine compliance with the requirement of these regulations. The user shall allow the City or its representatives, upon presentation of credentials of identification, to enter upon the premises of the user at reasonable hours, for the purposes of inspection, sampling, or records examination. The City shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations.

(f) *Confidential Information.* Information and data furnished to the City with respect to the nature and frequency of discharge shall be available to the public or other governmental agency without restriction, unless the user specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information will divulge information or processor methods of production entitled to protection as trade secrets or proprietary information of the user. When requested by a user furnishing a report, the portions of a report which may disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to these regulations, the NPDES permit, the State disposal system permit and/or the pretreatment programs, provided, however, that such portions of a report shall be available for use by the State or any State agency in judicial review or enforcement proceedings involving the user in furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information. Information accepted by the City as confidential shall not be transmitted to any governmental agency or to the general public by the City until and unless a ten-day notification is given to the user.

(g) *Submittal of SIU List.* The City shall submit a list of all SIUs to the Ohio EPA, indicating in which criteria the industrial user meets the SIU definition. The City must also indicate all non-categorical significant industrial users it proposes to de-list.

(h) *Industrial User Notification.* The City must notify significant industrial users of their status and applicable requirements within 30 days of Ohio EPA approval.

(i) *Notification Requirements of Permittee.* All industrial users shall promptly notify the Director of Public Works & Utilities in advance of any substantial changes in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 C.F.R. 403.12(p).

§1041.06 ENFORCEMENT.

(a) *Emergency Suspension of Service and Contribution Permits.*

(1) The City shall have the authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants into the City's wastewater collection and treatment facilities which reasonably appears to present an imminent endangerment to the health or welfare of

persons. The City shall also have the authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the treatment facilities which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the treatment facilities.

(2) Any user notified of a suspension of wastewater treatment service and/or the wastewater contribution permit shall immediately stop or eliminate the contribution. In the event of a failure of the user to comply voluntarily with the suspension order, the City shall take such steps as are deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the City's wastewater collection and treatment facilities or endangerment to any individuals. The City shall reinstate the wastewater contribution permit and/or the wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the Director of Public Works & Utilities within 15 days of the date of occurrence.

(b) *Revocation of Permit.* Any user who violates the following conditions of these regulations, or applicable State and Federal pretreatment regulations, is subject to have his or her permit revoked in accordance with the procedures of this section:

(1) Failure of a user to factually report the wastewater constituents and characteristics of his or her discharge;

(2) Failure of the user to report significant changes in operation, or wastewater constituents and characteristics;

(3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or

(4) Material violation of conditions of the permit.

(c) *Termination of Service.* Any user who has his or her discharge permit revoked or any user who would be required by these regulations to obtain such a permit and fails to do so, shall have his or her sewer service terminated if he or she knowingly operates for 180 days without such discharge permit in force.

(d) *Notification of Violations.* Whenever the City finds that any user has violated or is violating these regulations, the wastewater contribution permit, or any prohibition, limitation or requirements contained herein, the City shall serve upon such person a written notice stating the nature of the violation. Within 30 days of the date of the notice, a plan for the satisfactory correction thereof shall be submitted to the Director of Public Works & Utilities by the user.

(e) *Administrative Orders.*

(1) Any user who operates without a discharge permit or is in continuing significant noncompliance with a current discharge permit shall be subject to administrative orders. These, at the discretion of the Director, may include any or all of the following administrative remedies:

A. Compliance schedule. A schedule issued by the City outlining progressive steps to achieve compliance.

B. Cease and desist order. An order requiring immediate action to halt a non-complying discharge.

C. Administrative fine. Authority to seek or assess a minimum penalty of at least one thousand dollars (\$1,000) per permit violation per day.

D. Show cause hearing. Where the violation of division (b) of this section is not corrected by timely compliance, the City may order any user who causes or allows an unauthorized discharge to enter the

City's wastewater collection and treatment system to show cause before the City Manager why the proposed enforcement action should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the City Manager regarding the violation, the reasons why the action is to be taken, and the proposed enforcement action, and directing the user to show cause before the City Manager why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days before the hearing. Service may be made on any agent or officer of a corporation. The City Manager may himself or herself conduct the hearing and take the evidence, or may designate any employee of the Department of Public Works to:

1. Issue, in the name of the City Manager, notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings.

2. Take the evidence.

3. Transmit a report of the evidence and hearing transcripts with other evidence, together with recommendations, to the City Manager for action thereon.

(2) At any hearing held pursuant to these regulations, testimony taken must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.

(3) After the City Manager has reviewed the evidence, he or she may issue an order to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

(f) *Legal Action.* If any user discharges sewage, industrial wastes or other wastes into the City's wastewater collection and treatment facilities contrary to the provisions of these regulations, Federal or State pretreatment requirements, or any order of the City, the City Law Director may commence an action for appropriate legal and/or equitable relief.

(g) *Enforcement Actions; Annual Publication.* The Director of Public Works & Utilities shall publish, prior to ~~March 31~~ **April 15<sup>th</sup>** of each year, a list of all industrial users, which, at any time during the previous twelve months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violations meet one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined herein as those in which 66% or more of all of the measurements taken during a six-month period exceed (by any magnitude) **a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(1)**~~the daily maximum limit or the average limit for the same pollutant parameter;~~

- (2) Technical review criteria (TRC) violations, defined herein as those in which 33% or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the **numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(1)** ~~daily maximum limit or the average limit~~ multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

- (3) Any other violation of a **Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(1)**~~pretreatment effluent limit~~ (daily maximum or longer term average, **instantaneous limit or narrative Standard**) that the Director of Public Works & Utilities determines has caused, alone or in combination with other discharges, interferences, or pass through (including endangering the health of the POTW personnel or the general public);

- (4) Any discharge of a pollutant that has caused imminent endangerment of human health, welfare or

to the environment or has ~~resulted~~ ~~resulted~~ in the POTW's exercise of emergency authority **under 40 CFR part 403.8(f)(1)(vi)(B)** to halt or prevent such a discharge;

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a **local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.** ~~wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;~~

(6) Failure to provide, within ~~4530~~ days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance;

(8) Any other violation or group of violations, which **may include a violation of Best Management Practices, which** the Director of Public Works & Utilities determines will affect or has adversely affected the operation or implementation of the City's pretreatment program.

(h) *Right of Appeal.* Any user or interested party shall have the right to request in writing an interpretation or ruling by the City on any matter covered by these regulations, and shall be entitled to a prompt written reply. In the event that such inquiry is by a user and deals with matters of performance or compliance with these regulations or deals with a wastewater contribution permit issued pursuant hereto for which enforcement activity relating to an alleged violation is the subject, receipt of a user's request shall stay all enforcement proceedings pending receipt of the aforesaid written reply. Appeal of any final administrative order or judicial order entered pursuant to this chapter may be taken in accordance with local and State law.

#### §1041.07 RECORDS RETENTION.

**Any Industrial User** ~~All significant industrial users~~ subject to these regulations shall retain and preserve, for no less than three years, any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating to monitoring, sampling and chemical analyses made by or in behalf of a user in connection with its discharge, **including documentation associated with Best Management Practices.** All records which pertain to matters which are the subject of administrative adjustment or any other enforcement or litigation activities brought by the City pursuant hereto shall be retained and preserved by the user until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

#### §1041.08 SPECIAL AGREEMENTS.

No provision contained in this chapter shall be deemed to prevent any special agreement or arrangement between the City and any person whereby wastewater of unusual strength or characteristic may be accepted by the City for treatment which will not violate or cause the City and/or the user to violate Federal or State pretreatment or discharge standards and which will not be harmful to the system.

#### §1041.99 PENALTY.

(a) *Civil Penalties.* Any user who is found to have violated an order of the City Manager or who willfully or negligently failed to comply with any provision of these regulations, and the orders, rules, regulations, permits or previously administered orders issued hereunder, shall be assessed a monetary penalty of not more than ten thousand dollars (\$10,000) per offense. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the City may recover reasonable attorney's fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the person found to have violated these regulations or the orders, rules, regulations, and permits issued hereunder.

(b) *Falsifying Information.* Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to these regulations, or a wastewater contribution permit, or who falsifies, tampers with, or knowingly renders



inaccurate any monitoring device or method required under this chapter shall, upon conviction, be punished by the imposition of a civil penalty of not less than one thousand dollars (\$1,000) or by imprisonment for not more than six months, or by both.

## APPENDIX A

### TOXIC POLLUTANTS (EPA PRIORITY POLLUTANTS)

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asbestos (fibrous)	carbon tetrachloride	endrin aldehyde
cyanide (total)	chlordan	ethybenzene
antimony (total)	4-chloro-3-methylphenol	fluoranthene
arsenic (total)	chlorobenzene	fluorene
beryllium (total)	chloroethane	heptachlor
cadmium (total)	2-chloroethylvinyl ether	heptachlor epoxide
chromium (total)	chloroform	hexachlorobenzene
copper (total)	chloromethane	hexachlorobutadiene
lead (total)	2-chloronaphthalene	hexachlorocyclopentadiene
mercury (total)	2-chlorophenol	hexachloroethane
nickel (total)	4-chlorophenylphenyl ether	indeno (1, 2, 2-cd) pyrene
selenium (total)	chrysene	isophorone
silver (total)	4, 4'-DDD	methylene chloride
thallium (total)	4, 4'-DDE	naphthalene
zinc (total)	4, 4'-DDT	nitrobenzene
	dibenze (a, h) anthracene	2-nitrophenol
acenaphthene	dibromochloromethane	4-nitrophenol
acenaphthylene	1, 2-dichlorobenzene	N-nitrosodimethylamine
acrolein	1, 3-dichlorobenzene	N-nitrosodi-n-propylamine
acrylonitrile	1, 4-dichlorobenzene	N-nitrosodiphenylamine
aldrin	3, 3'-dichlorobenzidine	PCB-1016
anthracene	1, 1-dichloroethane	PCB-1221
benzene	1, 2-dichloroethane	PCB-1232
benzidine	1, 1-dichloroethane	PCB-1242
benzo (a) anthracene	trans-1, 2-dichloroethene	PCB-1248
benzo (a) pyrene	2, 4-dichlorophenol	PCB-1254
benzo (b) fluoranthene	1, 2-dichloropropane	PCB-1260
benzo (g, h, i) perylene	(cis & trans) 1, 3-dichloropropene	pentachlorophenol
benzo (k) fluoranthene	dieldrin	phenanthrene
a-BHC (alpha)	diethyl phthalate	phenol
b-BHC (beta)	2, 4-dimethylphenol	pyrene
d-BHC (delta)	dimethyl phthalate	2, 3, 7, 8-tetrachlorodibenzo-p-dioxin
g-BHC (gamma)	di-n-butyl phthalate	1, 1, 2, 2-tetrachloroethane
bis (2-chloroethyl) ether	di-n-octylphthalate	tetrachloroethene
bis (2-chloroethoxy) methane	4, 6-dinitro-2-methylphenol	toluene
bis (2-chloroisopropyl) ether	2, 4-dinitrophenol	toxaphene
bis (chloromethyl) ether	2, 4-dinitrotoluene	1, 2, 4-trichlorobenzene
bis (2-ethylhexyl) phthalate	2, 6-dinitrotoluene	1, 1, 1-trichloroethane
bromodichloromethane	1, 2-diphenylhydrazine	1, 1, 2-trichloroethane
bromoform	endosulfan I	trichloroethene
bromomethane	endosulfan II	2, 4, 6-trichlorophenol
4-bromophenylphenyl ether	endosulfan sulfate	vinyl chloride
butylbenzyl phthalate	endrin	

## **STAFF REPORT**

For the Business Meeting of April 2 , 2013

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March 22, 2013

TO: Judith A. Gilleland, City Manager

FROM: Preston Combs, Interim Public Works and Utilities Director

<p style="text-align: center;"><b>LOCAL LIMIT MODIFICATION AND SEWER USE ORDINANCE STREAMLINING</b></p>
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### **PURPOSE**

To recommend approval of modifications to Chapter 1041 of the City's Codified Ordinances, i.e., Wastewater Collection and Treatment, to comply with mandated changes to the City's Industrial Pretreatment Program required by US EPA and Ohio EPA. These modifications include two items: (1) Updating local discharge limits for industrial users of the system and (2) "Streamlining" of Chapter 1041 (the Sewer Use Ordinance) to comply with EPA's Pretreatment Streamlining Rule.

### **BACKGROUND and FINDINGS**

The City currently regulates twelve (12) significant industrial users (SIUs) under an Ohio EPA approved industrial pretreatment program. Regarding item (1) above, local industrial discharge limits, the City has been required to evaluate the adequacy of these limits approximately every 5 years since 1985. Past evaluations never indicated the need for changes. The most recent evaluation was completed and submitted to Ohio EPA on April 26, 2010. The City received approval of the submittal on August 24, 2012. The only change to these limits is a reduction of the mercury limit from 0.2 to 0.003 parts per million.

Regarding item (2) above, streamlining of the sewer use ordinance, US EPA's Streamlining Rule became effective on November 14, 2005. Subsequently, Ohio EPA, being delegated authority by US EPA to administer pretreatment programs in Ohio, made changes to the Ohio Administrative Code (OAC) to parallel the federal rules. Ohio's changes to the OAC became effective on February 1, 2007. The City proposed modified language of its sewer use ordinance to comply with these requirements to Ohio EPA in April 2010. The City received EPA's approval August 24, 2012 to change the local industrial limits and certain language contained in Chapter 1041.

## **FINANCIAL IMPACT**

Any financial impact on the administration of the City's pretreatment program will be negligible. For the industries, most are already required to use a slightly more expensive low-level mercury test method for analyzing their discharges to the City.

## **RECOMMENDATION**

Staff recommends approval of the modifications to Chapter 1041 of the Codified Ordinances that EPA has already approved. This will also immediately make the Ohio EPA-approved local industrial limits effective.

## **ALTERNATIVES**

Both tasks are EPA requirements and have already been approved by EPA. There are no alternatives if the City is to remain EPA-compliant

## **CONFORMITY TO CITY POLICY**

Approval of these items conforms to all City policies and procedures.

## **EMERGENCY/NON-EMERGENCY**

Non-emergency

## **DEPARTMENTAL CLEARANCES**

Les Landen, Director of Law  
Pat Lovely, Wastewater Treatment Plant  
Betsy Parr, Clerk of Council

**LEGISLATION**

**ITEM 8**

**RESOLUTION NO. R2013-06**

**A RESOLUTION STRONGLY OPPOSING THE PASSAGE OF HB 5 BY THE OHIO GENERAL ASSEMBLY WHICH PROPOSES UNIFORMITY MEASURES FOR MUNICIPAL INCOME TAX IN THE FORM OF UNFUNDED MANDATES AND A SUBSTANTIAL LOSS OF REVENUE.**

**WHEREAS**, the Municipal Income Tax Uniformity Coalition, headed by the Ohio Society of CPA's, with business community membership including the Ohio Chamber of Commerce, with support from Representative Grossman, Representative Henne and Representative Barnes, met with members of the Ohio Municipal League and municipal income tax representatives; and

**WHEREAS**, the purpose of these Interested Parties meetings was to achieve consensus on issues regarding municipal income tax uniformity for the inclusion in legislation; and

**WHEREAS**, municipalities agree that revenue neutral uniformity on issues that will ease compliance burdens for businesses in and potentially locating in Ohio would be of great benefit to all of Ohio; and

**WHEREAS**, the Coalition has drafted and introduced language that is detrimental to the financial stability of municipalities, will drastically reduce revenue for all municipalities in Ohio, and includes "unfunded mandates" which will cripple the ability for municipalities to provide basic services to residents and resident businesses alike; and

**WHEREAS**, the recent reduction in the Local Government Fund has resulted in a loss of \$886,305 in annual revenue for the City of Middletown; and

**WHEREAS**, the elimination of the Estate Tax will result in a loss of \$861,000 in annual revenue for the City of Middletown; and

**WHEREAS**, the accelerated phase-out of promised reimbursement for the loss of revenues due to the repeal of the Tangible Personal Property Tax has resulted in a loss of \$1,312,368 in annual revenue for the City of Middletown; and

**WHEREAS**, the proposals in HB 5 will result in an additional annual estimated loss of \$600,000 in revenue for the City of Middletown; and

**WHEREAS**, HB 5 includes provisions that require State oversight of municipal income tax administration, administrative policies and procedures for municipal income tax collection and administration that dramatically hamper the ability to administer the tax in an effective manner; and

**WHEREAS**, the long term purpose of HB 5 is State oversight of municipal income tax operations, which could lead to a future push for forced State Centralized Collection of municipal income tax; and

**WHEREAS**, municipalities have been responsive in the past to efforts to streamline the rules and regulations and create uniformity in the overwhelming majority of local tax codes creating a streamlined process for all taxpayers; and

**WHEREAS**, only municipalities can ensure the prompt and proper auditing of local tax returns to ensure all applicable deductions and declarations are reported, thus also ensuring that all taxpayers pay their fair share without causing higher costs of compliance for all, and must be able to do so without burdensome and costly restrictions included in HB 5 created with the only purpose of restricting municipalities from correcting / auditing returns or making assessments; and

**WHEREAS**, provisions in this bill hamper every municipality's ability to audit and correct municipal income tax returns, to equitably enforce the municipal income tax laws, creates increased cost of administration due to burdensome notification requirements, reduces revenue due to "unfunded mandates" and elimination of compliance processes, and has been crafted as a vehicle to control the administrative process of municipal income tax to the benefit of specific taxpayer interests; and

**WHEREAS**, municipalities must fight to protect their single largest revenue source, which provides essential municipal services, promoting a positive quality of life that residents and businesses alike rely upon, and any forced reduction in this revenue will have a negative impact on residents and businesses, creating an environment detrimental to retaining and attracting business in Ohio.

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

**Section 1**

This Council does hereby declare its strong opposition to any effort by the Ohio General Assembly to pass legislation that creates "unfunded mandates" and a loss of revenue for municipalities.

**Section 2**

This Council urges its state legislators to reject HB 5 in the current form and any amendment to pending bills and opposes the introduction of new legislation that proposes to reduce municipal income tax revenue to municipalities in Ohio.

**Section 3**

The Ohio General Assembly should request the drafting of legislation that would address the multitude of issues that were agreed upon as a result of the Interested Parties meetings, which will bring uniformity to areas including (but not limited to) due dates for estimated tax payments, due dates of withholding payments, due dates and procedures for extension request filings, due dates for annual Reconciliation of Returns, all of which will simplify the compliance process for businesses and individuals alike.

**Section 4**

The Ohio General Assembly should focus on restoring previous funding levels to the Ohio Business Gateway and focus on correcting its multitude of programming problems and customer service issues to make that tool less cumbersome, more useful and relevant to municipalities and businesses as a simple, generic, one-stop method of filing local business income tax returns in one location.

**Section 5**

Members of the Ohio House and Senate should engage in constructive dialogue with local officials to gain consensus on correction of the perceived issues of potential revenue-neutral commonality and uniformity in those few remaining differences in municipal income tax provisions.

**Section 6**

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

\_\_\_\_\_  
Lawrence P. Mulligan, Jr., Mayor

1<sup>st</sup> reading: April 2, 2013  
2<sup>nd</sup> reading: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

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

March 25, 2013

TO: Judy Gilleland, City Manager  
FROM: Michelle Greis, Acting Finance Director

**HB 5 - Income Tax Uniformity**

**PURPOSE**

To pass a resolution in opposition to HB 5 (replaces HB 601 from 2012).

**BACKGROUND and FINDINGS**

The lack of uniformity in the tax codes of municipalities in the State of Ohio has resulted in confusion to taxpayers, cost to business and loss of revenue to municipalities.

Municipalities in Ohio have taken the initiative to identify areas of non-conformity in their tax codes and have worked diligently with local CPAs to resolve differences in code provisions. These meetings resulted in the desire to use our combined resources to help guide the State Legislature to adopt common sense changes to municipal tax law that would be revenue neutral.

The State Legislature has introduced HB 5 which adds unfunded administrative overhead along with rules that will impact our ability to collect local taxes.

**FINANCIAL IMPACT**

Unfunded mandates from this bill will negatively impact our tax collections. Our Income Tax Superintendent estimates this bill could cost the City \$600,000 per year.

**OTHER CONSIDERATIONS**

Recommend resolution to make sure the City's opinion is heard.

**RECOMMENDATION**

Staff recommends passing the resolution of intent.

**ATTACHMENTS**

Sample resolution.



- 200,000 Use Butler County clerk instead of municipal court; assessments sent via certified mail.  
*Written and verbal communication with taxpayers/preparers is key to collection tax. New law is formal and time consuming. We could no longer use criminal court which has proven effective. We mail out approximately 100 bills, corrections, penalty notices, etc. per day.*
  
- 100,000 Penalty on unpaid tax cannot exceed 10%, currently 50%  
*Our current penalty on unpaid tax is 2% per month, up to 50%. Our collections for penalty and interest for failure to file, failure to pay and estimated tax penalty in 2012 exceeded \$400,000.*
  
- 60,000 Must hire a resolution officer as part of tax staff  
*This individual is appointed by and reports to tax administrator to review taxpayer concerns that have been pending for an extended taxpayer or the taxpayer was not satisfied with answer. To comply with all the new administrative rules we would need this additional staff member.*
  
- 50,000 Changing to the states bright line test vs current domicile test  
*We currently use domicile, as defined by IRS, to determine whether or not someone is subject to city tax. Domicile takes into account maintaining a home, voting records, vehicle registration, etc. The bright line test is based strictly on the number of days spent within the state.*
  
- 50,000 Business return exempt <1% apport, <\$50 tax due, <wages \$50,000  
*Currently every company doing business in the city, must file a return. They would only file an affidavit exemption form if they meet the above criteria. All of the calculations previously done would have to be performed, but instead of filling out tax form, they would complete an affidavit. This will make it difficult to audit small companies and to find new companies. We would not have the opportunity to review their returns and determine if they have paid on wages correctly.*
  
- 50,000 Businesses not required to provide copy of 1099's  
*This is the only information we receive that lets us know that these individuals need to file with us. The IRS requires these forms, so why is there an issue with providing them to cities.*
  
- 10,000 20 day rule, no withholding until day 21.  
*Current law is a taxpayer has to work here a portion of 12 days and then wages are taxable retroactive to day one; new law would change this to 20 days worked mainly within city and would become taxable on day 21. Employers would still have to track all of the same information*
  
- 5,000 3rd party sick pay not qualifying wages  
*We currently tax income received from 3rd parties (insurance companies) for sick leave pay*
  
- (25,000) No deduction for 2106 expense  
*This would benefit cities and has been a problem area for many years.*

100,000 Miscellaneous time issues costing city money (see below)

600,000

Miscellaneous items amounting to approximately \$100,000  
 More frequent withholding payments - would add semi monthly requirements  
 Auto extensions - limited delinquent work until November of each year  
 Time related to additional information on letters - wording specific and returned mail rules  
 Postmark date rules would require us to scan every envelope-currently keep for 3 months

## **Municipal Income Tax Collections Dayton Mayors and Managers Association**

*The items below comprise a significant business friendly step forward to make more uniformity in municipal income taxes. The items below also accomplish revenue neutrality for local government.*

1. DUE DATES

Make all municipal return filings consistent with federal due dates.

2. EMPLOYER WITHHOLDING

Withholding frequencies and thresholds will be made uniform, same as HB 601.

3. ONE COMMON FORM

All municipalities will accept a common income tax form for filing annual return both for individuals and businesses.

4. PASS THROUGH ENTITIES AND S CORPORATION DISTRIBUTIVE SHARES

Requires the pass-through entities and S Corporations to report and file tax at the entity level on behalf of partners, owners and other members. The partners, owners and other members would be required to report pass through activity on their residency return, and credit would be permitted, subject to each municipality's credit limitations.

5. UNREIMBURSED BUSINESS EXPENSES

Unreimbursed employee expenses will not be permitted as a deduction on the municipal income tax return. Same as HB 601.

6. EXTENSION REQUESTS

Filing a federal extension will serve as automatic extension to the local return. A copy must be attached when filing the local return. The Tax Administrator will have the ability upon the return of the extended return to deny such an extension should a delinquency exist on the taxpayer account.

7. 12-DAY RULE

Will remain a 12-day rule, however language shall be extended to include the definition of a "day" as the location at which the "preponderance" of the employees day, when working in multiple jurisdictions.

8. QUALIFYING WAGES

Third party sick pay, included in qualified wages, is taxable and subject to withholding.

9. NET OPERATING LOSS CARRY FORWARD

A municipal corporation may allow a Net Operating Loss Carry Forward for a period of zero, one, three, or five years.

10. MINIMUM TAX LIABILITY/ REFUND

If the taxpayer has a final tax liability or overpayment / refund of \$5.00 or less, the amount will not be collected or refunded / carried forward. A tax return will still be required to be filed.

11. LOTTERY/ GAMBLING/ GAMES OF CHANCE

All municipalities would tax lottery, gambling, games of chance by the jurisdiction in which the player purchased/ won. Winner would also be required to report winnings on municipal return and pay any applicable taxes to the resident City.

12. MINIMUM AGE FOR EARNED WAGES

No age limits for qualifying wages earned.

13. DOMICILE

Domicile for purposes of municipal income tax will be defined, using IRS standards of "intent to return" with clarification.

14. BOARD OF TAX APPEALS

A three member panel comprised of citizen-appointees who are domiciled within the municipality, and may not be employees of the municipal jurisdiction.

15. WEBSITE INFORMATION REQUIREMENTS

The municipality shall post on their website (or the State's site if the municipality does not maintain a website) the section of the ORC 718 which explains a taxpayer's right to appeal a decision of the Tax Administrator. Also posted will be the Ordinance, Rules and Regulations, and tax forms for the municipality. The site shall state that a generic format will be accepted for the filing of any return with the municipality.

16. RENTAL PROPERTY REPORTED BY INDIVIDUALS

Reporting will be based on property location; common expenses will be allocated to the property where it is located and based on gross receipts allocated to multiple jurisdictions.

17. REPORTING BY REALTORS

Realtors shall be taxed based on location of property sold.

18. RECONCILIATION OF RETURNS

Employers who withhold local income tax for employees will submit/ file the annual Reconciliation of Returns and employee W-2 forms for the previous calendar year on or before February 28<sup>th</sup> of each year.

19. ALTERNATIVE ASSESSMENT PROCEDURE

Permits a third party administrator the ability to file legal action at the local municipal court and to establish an alternative procedure for pursuing a delinquency, based on the State Tax Commissioner's collection and assessment process.

20. INNOCENT SPOUSE RELIEF

Permits the separation of a joint return filing, similar to federal IRS requirements, in the case of death or divorce.

21. STATUTE OF LIMITATIONS

Language will be drafted to permit the freezing or tolling of the statute of limitations for pursuing the collection of an outstanding balance due or for the filing of a return through the duration of an appeals or legal or judicial process.

Southwest Ohio Uniform Income Tax Proposal Request for Resolutions of Support  
November 20, 2012

	County	Contact	Position	Municipality	Address 1	Address 2	City	Zip	Letter Sent	In Prog	Passage	Pop.
1.	Athens	Mr. Paul Wiehl	Mayor	City of Athens	8 E. Washington St.		Athens	45701			Jul 16	23832
2.	Butler	Mr. Joshua Smith	City Manager	City of Hamilton	345 High St.		Hamilton	45011	6/19		Jul 25	62477
3.	Butler	Ms. Judy Gilleland	City Manager	City of Middletown	One Donham Plaza		Middletown	45042	6/19		Jul 17	48694
4.	Butler	Mr. Douglas Elliott, Jr.	City Manager	City of Oxford	101 E. High St.		Oxford	45056	6/19		Jul 17	21371
5.	Clark	Ms. Kimberly Jones	City Manager	City of New Carlisle	331 S. Church St.	P.O. Box 419	New Carlisle	45344	6/19		Jul 2	5785
6.	Clark	Mr. Jim Bodenmiller	City Manager	City of Springfield	76 E. High St.		Springfield	45502	6/19		Jul 17	60608
7.	Darke	Mr. Mike Bowers	Mayor	City of Greenville	100 Public Square		Greenville	45331	**Yes		Aug 21	13227
8.	Greene	Ms. Deborah McDonnell	City Manager	City of Fairborn	44 W. Hebble Ave.		Fairborn	45324	*Yes		Jul 16	32352
9.	Greene	Ms. Laura Curless	Village Manager	Village of Yellow Springs	Bryan Community Center	100 Dayton St.	Yellow Springs	45387	6/19		Aug 6	3487
10.	Miami	Mr. Jon Crusey	City Manager	City of Tipp City	260 S. Garber Dr.		Tipp City	45371	*Yes		Aug 6	9689
11.	Miami	Mr. Patrick Titterington	City Manager	City of Troy	100 S. Market St.		Troy	45373	*Yes		Jul 2	25058
12.	Miami	Mr. Matt Kline	City Manager	City of West Milton	701 S. Miami St.		West Milton	45383	6/19		Jul 10	4630
13.	Mont	Mr. John Wright	City Manager	City of Brookville	301 Sycamore St.		Brookville	45309	*Yes		Aug 7	5884
14.	Mont	Mr. Greg Horn	City Manager	City of Centerville	100 W. Spring Valley Rd.		Centerville	45458	*Yes		Jun 18	23999
15.	Mont	Mr. David Rowlands	City Manager	City of Clayton	P.O. Box 280		Clayton	45315	*Yes		Nov 15	13209
16.	Mont	Mr. Tim Riordan	City Manager	City of Dayton	101 W. Third St.	P.O. Box 22	Dayton	45402	*Yes		Jul 11	141527
17.	Mont	Mr. Eric A. Smith	City Manager	City of Englewood	333 W. National Rd.		Englewood	45322	*Yes		Jun 26	12500
18.	Mont	Ms. Tom Sears	Village Administrator	Village of Farmersville	44 Maple St.		Farmersville	45325	*Yes		Sep 10	1009
19.	Mont	Ms. Annie Sizemore	City Manager	City of Germantown	75 N. Walnut St.		Germantown	45327	*Yes		Jul 16	5547
20.	Mont	Mr. Jim Borland	City Manager	City of Huber Heights	6131 Taylorsville Rd.		Huber Heights	45424	*Yes		Jul 23	38101
21.	Mont	Mr. Mark Schwieterman	City Manager	City of Kettering	3600 Shroyer Rd.		Kettering	45429	*Yes		Jul 24	56163
22.	Mont	Mr. Keith Johnson	City Manager	City of Miamisburg	10 N. First St.		Miamisburg	45342	*Yes		Aug 21	20181
23.	Mont	Mr. David Hicks	City Manager	City of Moraine	4200 Dryden Rd.		Moraine	45439	*Yes		Jul 12	6307
24.	Mont	Mr. George Markus	Municipal Manager	Village of New Lebanon	198 S. Clayton Rd.		New Lebanon	45345	*Yes		Jul 17	3995
25.	Mont	Mr. Norbert Klopsch	City Manager	City of Oakwood	30 Park Ave.		Dayton	45419	*Yes		Jul 16	9202
26.	Mont	Mayor Myers		Village of Phillipsburg	10868 Brookville-Phillipsburg Rd.	P.O. Box 172	Phillipsburg	45354	*Yes		Jul 24	557
27.	Mont	Mr. Bryan Chodkowski	City Manager	City of Riverside	1791 Harshman Rd.		Riverside	45424	*Yes		Jul 5	25201

**Southwest Ohio Uniform Income Tax Proposal Request For Resolutions of Support**  
November 20, 2012

	County	Contact	Position	Municipality	Address 1	Address 2	City	Zip	Letter Sent	In Prog	Passage	Pop.
28.	Mont	Mr. Mike Lucking	City Manager	City of Trotwood	3035 N. Olive Rd.		Trotwood	45426	*Yes		Sep 4	24431
29.	Mont	Mr. John Applegate	City Manager	City of Union	118 N. Main St.		Union	45322	*Yes		Jul 9	6419
30.	Mont	Mr. Rob Anderson	City Manager	City of Vandalia	333 Bohanan Dr.		Vandalia	45377	*Yes		Jul 16	15246
31.	Mont	Mr. Brad Townsend	City Manager	City of West Carrollton	300 E. Central Ave.		West Carrollton	45449	*Yes		Jun 26	13143
32.	Warren	Ms. Sherry Callahan	Village Administrator	Village of Carlisle	760 W. Central Ave.		Carlisle	45005	*Yes		Jul 24	4915
33.	Warren	Ms. Christine Thompson	City Manager	City of Springboro	320 W. Central Ave.		Springboro	45066	*Yes		Aug 2	17409

Population Represented: 756,155

**LEGISLATION**

**ITEM 9**

**RESOLUTION NO. R2013-09**

**A RESOLUTION TO MAKE ADJUSTMENTS TO APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF MIDDLETOWN, COUNTIES OF BUTLER AND WARREN, STATE OF OHIO, FOR THE PERIOD ENDING DECEMBER 31, 2013. (POOL FUND)**

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

**Section 1**

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

FROM: Unappropriated Pool Fund (Fund #257)	\$17,946.00
TO: <u>Accounts of 990 (257.990.52480)</u>	<u>\$17,946.00</u>
<b>TOTAL POOL FUND</b>	<b>\$17,946.00</b>

**Section 2**

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

**Section 3**

All legislation inconsistent herewith is hereby repealed.

**Section 4**

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

\_\_\_\_\_  
Lawrence P. Mulligan, Jr., Mayor

1<sup>st</sup> Reading: April 2, 2013  
2<sup>nd</sup> Reading: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

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

**STAFF REPORT**  
For the Business Meeting – April 2, 2013

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March 28, 2013

TO: Judith A. Gilleland, City Manager

FROM: Preston M. Combs, Interim Public Works & Utilities Director

**\*\*APPROPRIATION OF FUNDS\*\***  
**APPROPRIATE FUNDS FROM THE CURRENT POOL FUND**  
**#257 FOR PROPOSED UPGRADES TO SUNSET PARK**

**PURPOSE**

The Park Board and staff have made recommendations to utilize the remaining funds available in the Pool Fund account for various improvements in Sunset Park. Some of the improvements will be the rehabilitation of the tennis courts, sand volleyball court, picnic shelter, and incidental funds to support the donation of handicap playground equipment from the Berachah Church.

**BACKGROUND AND FINDINGS**

There is \$17,946.00 remaining in account #257 that was originally donated to support the operations and maintenance of Sunset Pool. The pool has since been demolished and the Park Board would like approval to use the remaining funds to support overall improvements in Sunset Park.

**FINANCIAL IMPACT**

Appropriating these funds that are not included in our current budget would supplement our current Parks funding to improve Sunset Park.

**RECOMMENDATION**

Recommend the appropriation in the amount of \$17,946.00 from fund #257 to (257.990.52480) for improvements to Sunset Park.



**ALTERNATIVES**

The monies remaining in account #257 were donations specific to Sunset Park.

**CONFORMITY TO CITY POLICY**

Conforms

**EMERGENCY/NON-EMERGENCY**

Non-Emergency

**DEPARTMENTAL CLEARANCES**

Judy Gilleland, City Manager  
Michelle Greis, Director of Finance  
Leslie S. Landen, Director of Law  
Betsy Parr, Clerk of City Council  
File

**ATTACHMENTS**

N/A