CITY OF MONTGOMERY

Providing superior services and engaging with you to enhance our community!

Memorandum

December 16, 2016

TO: Mayor and City Council Members

FROM: Wayne S. Davis, City Manager WSD

SUBJECT: City Council Work Session of Wednesday, December 21, 2016

As a reminder, City Council is scheduled to meet in Work Session on Wednesday, December 21, 2016 at 7:00 p.m.

Prior to the City Council Work Session, there will be three meetings held: The Montgomery Community Improvement Corporation (CIC) will meet at 5:45 p.m., followed by a Special Session of City Council at 6:00 p.m., and at 6:45 p.m. a Public Hearing will be held.

Montgomery Community Improvement Corporation

At 5:45 p.m., The Montgomery Community Improvement Corporation Board of Trustees (CIC) is scheduled to meet to discuss the Historic Preservation Matching Grant Program.

Special Session of City Council

At 6:00 p.m., a Special Session of City Council will be held to discuss matters related to personnel. It is anticipated that City Council will be moving into Executive Session.

Public Hearing

Prior to the City Council Work Session, a Public Hearing is scheduled at 6:45 to consider the recommendation of the Planning Commission on a request from Montgomery Presbyterian Church at 9994 Zig Zag Road for an expansion of their conditional use permit to allow Skyward Academy to increase the number of students enrolled from 45 to 60 students. Attached please find a public hearing packet prepared by Tracy Roblero, Community Development Director.

At the close of the presentation, City Council's options are to either Approve the Recommendation, Deny the Recommendation, Remand the matter to Planning Commission for more specific information, or take the matter under advisement and vote at another public meeting within thirty days. If City Council chooses this final option, it is suggested that City Council announce the date and time of the subsequent hearing when the matter will be discussed and considered for vote.

As a reminder, the Code does not allow additional new evidence to be submitted for review during the public hearing. City Council is to limit its consideration to the record from the Planning Commission, the arguments from the City and the applicant, and any comments, pro or con, from the public.

Work Session

1. **Call to Order**

2. **Roll Call**

3. **Special Presentation**

4. **Guests and Residents**

5. **Legislation for Consideration Tonight**

   a. An Ordinance to Amend Appropriations for Current Expenses and Other Expenditures of the City of Montgomery, State of Ohio, During the Fiscal Year Ending December 31, 2016—Please find attached correspondence from Katie Smiddy, Finance Director, requesting that City Council approve this Ordinance that will amend appropriations for current expenses and other expenditures during the fiscal year ending December 31, 2016. The year-end supplemental appropriations are necessary to reconcile line items which had expenditures exceed budget for various reasons, which need additional appropriations or are required to be reduced by law. The aggregate effect of the supplemental appropriations is to increase total appropriations by $929,102. Most of the increase is the result of transferring the ending cash balance in the Vintage Club Capital Construction fund to the Vintage Club TIF Fund. Furthermore, there are reductions in some appropriations as a result of actual revenues that were less than estimated. Under Ohio Revised Code, appropriations are required to be reduced in these funds.

   Add to the Agenda

   Voice Vote

   Assign to a City Council Member

   Move to read the Ordinance by title only

   Voice Vote

   Move to suspend the rules requiring reading of the Ordinance on three separate occasions.

   Roll Call Vote

   Move for passage of the Ordinance

   Roll Call Vote

6. **Establishing an Agenda for January 4, 2017**

Pending Legislation

   a. An Ordinance for The Allocation of Earnings Tax Revenues and Amending Section 44.14 of The Montgomery Code of Ordinances—(Mr. Suer, 3rd Reading) Information has been supplied previously on this Ordinance that will adjust the allocation of the City's Earnings Tax revenues. As you may recall, in the City's 2017 Operating and Capital Budget with Four Year Forecast, staff requested that City Council proceed with legislation which reallocates the City's Earnings Tax revenues effective February 1, 2017. The current allocation is: 76% of Earnings Tax revenues to the General Fund, 20% to the Capital Improvement Fund and 4% to the Debt Retirement Fund. The proposed reallocation would provide 80% of Earnings Tax revenues to the General Fund and 20% to the Capital Improvement Fund.

   Add this Ordinance to the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.

b. An Ordinance Amending the Land Usage Code to Regulate Sexually Oriented Businesses— (Mr. Margolis, 3rd Reading) Information has been supplied previously on this Ordinance to enact regulations governing Sexually Oriented Businesses. While such a business may not be compatible with the City's Business District and uses, the courts will not allow local communities to ban such businesses as they enjoy certain First Amendment freedoms. On the other hand, we are permitted to regulate the businesses through a licensing process and to allow separation of such businesses from protected uses such as residences, schools, and daycare centers. This Ordinance will enact the structure for the City to regulate the location and operation of these businesses in the City.

Add this Ordinance to the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.

c. An Ordinance Rezoning a Portion of the Vintage Club Development to L-B Limited Business District with A Planned Development Overlay—(Mr. Margolis, 3rd Reading) Information has been supplied previously on this Ordinance that will rezone the property located at PIN 620-0210-0723-00 from the current zoning classification to 'LB' – Limited Business District with a Planned Development Overlay. City Council held a Public Hearing on October 5, in which the recommendation from the Planning Commission was heard regarding a request from MB Land Company to consider a rezoning application of this property. The property was recently annexed into the City of Montgomery from Symmes Township. The property is currently zoned 'O' Residence with Subservient Office and Business Uses as it was zoned when located in the Township. Section 151.0104 states that for "all land that may hereafter be annexed to the City of Montgomery, the township zoning regulations existing at the time of annexation shall continue to govern the former township land until an amendment to the City of Montgomery Zoning Map is adopted in conformance with the procedures of this Zoning Code". Staff supports the rezoning of this property that would make the zoning consistent with the zoning of the Vintage Club.

Add this Ordinance to the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.

d. An Ordinance Amending the Statement of Conditions and Exceptions in The Vintage Club Planned Development Overlay District—(Mr. Margolis, 3rd Reading) Information has been supplied previously on this Ordinance that will modify the Vintage Club Planned Development List of Exceptions and Conditions. The proposed modifications to the Statement of Conditions and Exceptions were created by staff and the applicant working hand in hand to address the conflicts between the Zoning Regulations in the underlying LB District and the approved General Development Plan. These modifications are consistent with the approved General Development Plan and the intent of the Vintage Club Planned Development which has been communicated from the beginning of the project.

Add this Ordinance to the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.

New Legislation

a. A Resolution Authorizing the City Manager to Enter into a Contract with CT Consultants, Inc. for Professional Services Related to General Engineering and Architectural Services for Calendar Year 2017—Please refer to the attached correspondence from Brian Riblet, Public Works Director, and Tracy Roblero, Community Development Director, requesting that City Council authorize the City Manager to enter into a contract with CT Consultants, Inc. for professional engineering and architectural services for calendar year 2017. The City has contracted for approximately 25 years with CDS Associates Inc. which merged with CT Consultants, Inc., in 2014, to provide civil, traffic,

structural, electrical and storm water engineering services. CT Consultants has provided a competitive fee structure for 2017 including slight hourly rate increases for engineering services. As was provided in previous years, CT Consultants has deleted the line item for billing of the "Principal" from the fee schedule. If for any reason the Principal Engineer provides engineering services during the contract year for development/design review or project design/review, that work would be billed at the hourly rate of a "Senior Manager". Funding for this professional services contract is included in the City's 2017 Operating Budget in both the Public Works and Community Development operating budgets.

Add this Resolution to the January 4, 20176 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.

7. **Administration Report**

8. **Law Director Report**

9. **City Council Member Reports**

   a. Mrs. Combs
   b. Mr. Cappel
   c. Mrs. Harbison
   d. Vice Mayor Roesch
   e. Mr. Suer
   f. Mr. Margolis
   g. Mayor Dobrozsi

10. **Approval of Minutes**—December 7, 2016 Business Session Minutes

11. **Other Business**

12. **Executive Session**

13. **Adjournment**

Should you have any questions or concerns regarding this information, please do not hesitate to contact me.

C: Connie Gaylor, Administrative Coordinator
Department Heads
Terry Donnellon, Law Director
File

CITY OF MONTGOMERY

CITY COUNCIL WORK SESSION AGENDA

10101 Montgomery Road • Montgomery, Ohio 45242 • (513) 891-2424 • Fax (513) 891-2498

December 21, 2016

City Council Special Session-6:00 p.m.

1. **Call to Order**
2. **Executive Session**
3. **Adjournment**

Public Hearing – 6:45 p.m.

1. **Call to Order**

   a. A request from Montgomery Presbyterian Church at 9994 Zig Zag Road for an expansion of their conditional use permit to allow Skyward Academy to increase the number of students enrolled from 45 students to 60 students. Attached please find a public hearing packet prepared by Tracy Roblero, Community Development Director.

   At the close of the presentation, City Council's options are to either Approve the Recommendation, Deny the Recommendation, Remand the matter to Planning Commission for more specific information, or take the matter under advisement and vote at another public meeting within thirty days. If City Council chooses this final option, it is suggested that City Council announce the date and time of the subsequent hearing when the matter will be discussed and considered for vote.

   As a reminder, the Code does not allow additional new evidence to be submitted for review during the public hearing. City Council is to limit its consideration to the record from the Planning Commission, the arguments from the City and the applicant, and any comments, pro or con, from the public.

2. **Adjournment**

City Council Work Session –7:00 p.m.

1. **Call to Order**
2. **Roll Call**
3. **Special Presentation**
4. **Guests and Residents**
5. **Legislation for Consideration Tonight**

   a. An Ordinance to Amend Appropriations for Current Expenses and Other Expenditures of the City of Montgomery, State of Ohio, During the Fiscal Year Ending December 31, 2016

   Add to the Agenda

   Voice Vote

   Assign to a City Council Member

Move to read the Ordinance by title only

Voice Vote

Move to suspend the rules requiring reading of the Ordinance on three separate occasions.

Roll Call Vote

Move for passage of the Ordinance

Roll Call Vote

6. Establishing an Agenda for January 4, 2017

Pending Legislation

a. An Ordinance for The Allocation of Earnings Tax Revenues and Amending Section 44.14 of The Montgomery Code of Ordinances—(Mr. Suer, 3rd Reading)

Add this Ordinance to the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.

b. An Ordinance Amending The Land Usage Code To Regulate Sexually Oriented Businesses—(Mr. Margolis, 3rd Reading)

Add this Ordinance to the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.

c. An Ordinance Rezoning A Portion Of The Vintage Club Development To L-B Limited Business District With A Planned Development Overlay—(Mr. Margolis, 3rd Reading)

Add this Ordinance to the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.

d. An Ordinance Amending The Statement Of Conditions And Exceptions In The Vintage Club Planned Development Overlay District—(Mr. Margolis, 3rd Reading)

Add this Ordinance to the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.

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Add this Resolution to the January 4, 20176 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.

7. Administration Report

8. Law Director Report

9. City Council Member Reports

a. Mrs. Combs
b. Mr. Cappel
c. Mrs. Harbison
d. Vice Mayor Roesch
e. Mr. Suer
f. Mr. Margolis
g. Mayor Dobrozsi

10. Approval of Minutes– November 21, 2016 Business Session Minutes

11. Other Business

12. Executive Session

13. Adjournment

CITY OF MONTGOMERY

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Memorandum

December 14, 2016

TO: Wayne S. Davis, City Manager

FROM: Katie Smiddy, Finance Director KMS

SUBJECT: Legislation Request Amending the Current Year Appropriations

Request

Staff is requesting that City Council consider appropriation adjustments for various funds of the City to enable year-end closeout and to ensure that all funds have appropriate funding levels in place for the City's Certificate of Estimated Resources (CER).

Financial Impact

The proposed supplemental appropriations are necessary to reconcile accounts for the year 2016. This information was presented to and reviewed with the Financial Planning Committee (FPC) of City Council at their December 5 meeting. Changes since the Financial Planning Committee Meeting have been incorporated in the figures below. The aggregate effect of the supplemental appropriations is to increase total appropriations by $929,102. Most of the increase is the result of transferring the ending cash balance in the Vintage Club Capital Construction fund to the Vintage Club TIF Fund. This transfer of the existing balance, $818,174, is the final step in ensuring that this fund is closed out. Furthermore, there are some reductions in appropriations as the result of actual revenues that were less than estimated. Under Ohio Revised Code, appropriations are required to be reduced in these funds.

Background

The year-end supplemental appropriations are necessary to reconcile various accounts which either have been overdrawn or need reduction for various reasons. A brief recap of the proposed appropriation is detailed below:

Fund	*Department*	*FPC Amount*	*Council Work Session Request*	*Net Change*	*Reason*
General	201-Public Health and Welfare	$0.00	$6,250.00	$6,250.00	Increase for CATS payment
General	317-Lodges	$2,500.00	$0.00	($2,500.00)	No additional appropriations necessary

General	406-City Beautiful	$12,000.00	$0.00	($12,000.00)	No additional appropriations necessary
Special Revenue	215-Law Enforcement	$1,650.00	$7,600.00	$5,950.00	Increase for CATS payment
Special Revenue	219-Community Oriented Policing	$0.00	$7,500.00	$7,500.00	Increase to cover last pay of 2016
Special Revenue	223-EMS/Fire Protection	$0.00	$59,500.00	$59,500.00	Increase in capital equipment to cover radios
Special Revenue	226-Environmental Impact Tax	$0.00	$20,000.00	$20,000.00	Appropriate funds to transfer out
Downtown Imp	480-Downtown Improvement	$278.00	$300.00	$22.00	Quarterly water bills for GRA
Trust & Enterprise	546-Trust Reimbursement	$15,000.00	$15,500	$500.00	Increase for contractor bonds
Trust & Enterprise	601-State Fees	$0.00	($6,000.00)	($6,000.00)	Reduce appropriations to amount available
Trust & Enterprise	840-Expendable Trust	$3,000.00	$0.00	($3,000.00)	No additional appropriations necessary
Unclaimed Funds	890-Unclaimed Moneys	$1,500.00	$0.00	($1,500.00)	No additional appropriations necessary
Capital Construction	463-Vintage Club	$0.00	$818,452.00	$818,452.00	Transfer ending balance to VC TIF fund
		$35,928.00	$929,102.00	$893,174.00	

Staff Recommendation

It is recommended that City Council place this item on the Agenda as new legislation amending the 2016 Appropriation Ordinance and increasing or decreasing appropriations in various funds for the year and ensures that all City funds are appropriately funded for Fiscal Year 2016 close out consistent with the Ohio Revised Code. As is annually requested for this "housekeeping" legislation, staff is also recommending that City Council consider suspension of the rules requiring three readings of this Ordinance so staff may affect these changes before year-end.

If there are any questions or if additional information is required, please do not hesitate to contact me.

ORDINANCE NO. , 2016

AN ORDINANCE TO AMEND APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF MONTGOMERY, STATE OF OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31, 2016

WHEREAS, the 2016 Appropriation Ordinance No. 10, 2014 passed December 2, 2015, appropriated a total of $20,555,700 for the year 2016;

WHEREAS, appropriations within a certain fund are insufficient to meet the obligations of the City;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Ohio, that the appropriation ordinance be amended as below:

SECTION 1. There be an increase of $6,250 in the appropriation balance of the following accounts of the General Fund 101:

Account Number 101.201.5309	Center Addiction Tmt	+	$	6,250

SECTION 2. There be an increase of $7,600 in the appropriation balance in the Law Enforcement Fund 215 to:

Account Number 215.000.5350	Reimbursements	+	$	1,350
Account Number 215.000.5309	Center Addiction Tmt	+	$	6,250

SECTION 3. There be an increase of $300 in the appropriation balance in the Downtown Improvement Fund 480 to:

Account Number 480.000.5310	Utilities	+	$	300

SECTION 4. There be an increase of $15,500 in the appropriation balance in the Trust Reimbursement Fund 546 to:

Account Number 546.000.5350	Reimbursements	+	$	15,500

SECTION 5. There be an increase of $7,500 in the appropriation balance in the COPS grant Fund 219 to:

Account Number 219.000.5205	Salary and Wages	+	$	500
Account Number 219.000.5206	Overtime	+	$	7,000

SECTION 6. There be an increase of $59,500 in the appropriation balance in the EMS/Fire Protection Fund 223 to:

Account Number 223.000.5405	Capital Equipment	+ $ 59,500

SECTION 7. There be an increase of $20,000 in the appropriation balance in the Environmental Impact Tax Fund 226 to:

Account Number 226.000.5474	Transfer Out	+ $ 20,000

SECTION 8. There be an increase of $818,452 in the appropriation balance in the Vintage Club Construction TIF Fund 463 to:

Account Number 463.000.5474	Transfer Out	+ $ 818,452

SECTION 9. There be a decrease of $6,000 in the appropriation balance in the State Fees Fund 601 to:

Account Number 601.000.5350	Reimbursements	- $ 6,000

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

PASSED:_____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

_____
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM

_____
Terrence M. Donnellon, Law Director

ORDINANCE NO. , 2016

AN ORDINANCE FOR THE ALLOCATION OF EARNINGS TAX REVENUES AND AMENDING SECTION 44.14 OF THE MONTGOMERY CODE OF ORDINANCES

WHEREAS, Section 44.14 of the Montgomery Code of Ordinances provides for the allocation of earnings tax revenues to certain uses and purposes; and

WHEREAS, the City's changing financial condition warrants a current re-examination of the earnings tax allocation to more accurately reflect operating, capital improvement and debt service needs of the community.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Ohio:

SECTION 1. Section 44.14 of the Montgomery Code of Ordinances is hereby amended to read as follows effective February 1, 2017:

Section 44.14 Allocation Of Funds

The funds collected under the provision of this chapter shall be disbursed for the following purposes:

(A) 20% to the capital improvement fund;

(B) 80% to the general fund for the purpose of general municipal operations.

SECTION 2. All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed effective February 1, 2017.

SECTION 3. This Ordinance shall be in full force and effect from and after the earliest period allowed by law.

PASSED:_____

ATTEST:_____
Connie Gaylor, Clerk of Council

_____
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

_____
Terrence M. Donnellon, Law Director

ORDINANCE NO. , 2016

AN ORDINANCE AMENDING THE LAND USAGE CODE TO REGULATE SEXUALLY ORIENTED BUSINESSES

WHEREAS, under ORC § 715.55, the City may request the Ohio Office of the Attorney General to provide legal guidance and assistance in developing, formulating and drafting an Ordinance regarding the operation of adult entertainment establishments; and

WHEREAS, the Ohio Attorney General's office has provided a model Ordinance incorporated herein to regulate Sexually Oriented Businesses so as to meet the City's interest in minimizing the negative impact of such businesses upon the City; and

WHEREAS, the Planning Commission, at a meeting held August 15, 2016, did review and recommend these regulations, and the district within the City within which these business enterprises will be permitted considering the negative impact such business enterprises have upon the community and particularly surrounding properties, and considering the fact that 75% or more of the City is developed as residential and related residential uses such as schools, daycares and religious institutions, and the majority of the business corridor directly abuts such residential uses either within the City or within the City of the Village of Indian Hill; and

WHEREAS, the Planning Commission has concluded and Council concurs that there must be adequate separation between adult entertainment businesses and residential uses to minimize the negative impact of such businesses; and

WHEREAS, prior to considering this Ordinance, the City Council has been offered for their review and consideration a number of the cases cited in Section 1(C) of this Ordinance and current news articles from the *Cincinnati Enquirer* detailing criminal activity at such adult entertainment establishments in and around the Greater Cincinnati area; and

WHEREAS, Council did hold a public hearing on October 5, 2016 to consider the recommendation from the Planning Commission for the adoption of this Ordinance, at which public hearing a presentation was made by the staff of the Department of Community Development and the Law Director outlining factors they considered in making a recommendation for the regulations enacted herein and defining the area in the City within which such businesses may locate; and

WHEREAS, it is the intent of the Council to adopt this Ordinance within the guidelines of the model Ordinance so as to enjoy such indemnification against any claims or suits which may be asserted against the City, its City Council, employees or agents; and

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that a section of the Code of Ordinances entitled, *Sexually Oriented Businesses*, shall be adopted as follows:

SECTION 1. **PURPOSE AND INTENT**

(A) In enacting this Ordinance, pursuant to § 715.55 of the Ohio Revised Code, the City Council makes the following statement of intent and findings:

(1) Adult entertainment establishments require special supervision from the public safety agencies of this City in order to protect and preserve the health, safety, morals, and welfare of the patrons and employees of the businesses as well as the citizens of this City.

(2) The City Council finds that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature.

(3) The concern over sexually transmitted diseases is a legitimate health concern of this City that demands reasonable regulation of adult entertainment establishments by this City in the specified manner, and expanded authority for reasonable regulation of adult entertainment establishments by local governments, in order to protect the health and well-being of the citizens.

(4) Minimal regulations enacted by this City are a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

(5) There is convincing documented evidence that adult entertainment establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, cause increased crime, particularly in the overnight hours, and downgrade property values.

(6) The City Council desires to minimize and control these adverse effects by regulating adult entertainment establishments in the specified manner. And by minimizing and controlling these adverse effects, the City Council seeks to protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight.

(7) The City Council has determined that current local zoning and other locational criteria do not adequately protect the health, safety, and general welfare of the people of this City and that expanded regulation of adult entertainment establishments is necessary.

(8) It is not the intent of the City Council in enacting this act to suppress or authorize the suppression of any speech activities protected by the First Amendment, but to enact content-neutral statutes that address the secondary effects of adult entertainment establishments.

(9) It is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in this state.

(B) It is the intent of the City Council in enacting this Ordinance to regulate adult entertainment establishments in the manner set forth herein in order to promote the health, safety, morals, and general welfare of the citizens of this City and establish reasonable regulations to prevent the deleterious secondary effects of adult

entertainment establishments within this City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent of the City Council in enacting this Ordinance to restrict or deny, or authorize the restriction or denial of, access by adults to sexually oriented materials protected by the First Amendment, nor to deny, or authorize the denial of, access by the distributors and exhibitors of adult entertainment and adult materials to their intended market. Neither is it the intent nor effect of the City Council in enacting this Ordinance to condone or legitimize the distribution or exhibition of obscene material.

(C) Based on evidence concerning the adverse secondary effects of adult uses on communities presented in hearings and in reports made available to the legislature and subsequently adopted by the Ohio General Assembly as findings under Section 3 of 2005 House Bill 23 (and on findings incorporated in the cases of *Township of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C. (2004), 541 U.S. 774*; *Township of Erie v. Pap's A.M.* (2000), 529 U.S. 277; *Barnes v. Glen Theatre, Inc.* (1991), 501 U.S. 560; *Township of Renton v. Playtime Theatres, Inc.* (1986), 475 U.S. 41; *Young v. American Mini Theatres* (1976), 426 U.S. 50; *California v. LaRue* (1972), 409 U.S. 109; *DLS, Inc. v. Township of Chattanooga* (6th Cir. 1997), 107 F.3d 403; *East Brooks Books, Inc. v. Township of Memphis* (6th Cir. 1995), 48 F.3d 220; *Harris v. Fitchville Township Trustees* (N.D. Ohio 2000), 99 F. Supp.2d 837; *Bamon Corp. v. Township of Dayton* (S.D. Ohio 1990), 730 F. Supp. 90, *aff'd* (6th Cir. 1991), 923 F.2d 470; *Broadway Books v. Roberts* (E.D. Tenn. 1986), 642 F. Supp. 486; *Bright Lights, Inc. v. Township of Newport* (E.D. Ky. 1993), 830 F. Supp. 378; *Richland Bookmart v. Nichols* (6th Cir. 1998), 137 F.3d 435; *Deja Vu v. Metro Government* (6th Cir. 1999), 1999 U.S. App. LEXIS 535; *Threesome Entertainment v. Strittmather* (N.D. Ohio 1998), 4 F.Supp.2d 710; *J.L. Spoons, Inc. v. Township of Brunswick* (N.D. Ohio 1999), 49 F. Supp.2d 1032; *Triplett Grille, Inc. v. Township of Akron* (6th Cir. 1994), 40 F.3d 129; *Nightclubs, Inc. v. Township of Paducah* (6th Cir. 2000), 202 F.3d 884; *O'Connor v. Township and County of Denver* (10th Cir. 1990), 894 F.2d 1210; *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County* (6th Cir. 2001), 2001 U.S. App. LEXIS 26007; *State of Ohio ex rel. Rothal v. Smith* (Ohio C.P. 2002), Summit C.P. No. CV 01094594; *Z.J. Gifts D-2, L.L.C. v. Township of Aurora* (10th Cir. 1998), 136 F.3d 683; *Connection Distrib. Co. v. Reno* (6th Cir. 1998), 154 F.3d 281; *Sundance Assocs. v. Reno* (10th Cir. 1998), 139 F.3d 804; *American Library Association v. Reno* (D.C. Cir. 1994), 33 F.3d 78; *American Target Advertising, Inc. v. Giani* (10th Cir. 2000), 199 F.3d 1241; and other cases and on reports of secondary effects occurring in and around adult entertainment establishments in Phoenix, Arizona (1984); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma Township, Oklahoma (1986); Cleveland, Ohio (1977); Dallas, Texas (1997); St. Croix County, Wisconsin (1993); Bellevue, Washington (1998); Newport News, Virginia (1996); Tucson, Arizona (1990); St. Paul, Minnesota (1988); Oklahoma Township, Oklahoma (1986 and 1992); Beaumont, Texas (1982); New York, New York (1994); Ellicottville, New York (1998); Des Moines, Iowa (1984); Islip, New York (1980); Adams County, Colorado (1987); Manatee County, Florida (1987); New Hanover County, North Carolina (1989); Las Vegas, Nevada (1978); Cattaraugas County, New

York (1998); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); New York Times Square study (1994); Report to ACLJ on the Secondary Impacts of Sex Oriented Businesses (1996); findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and on testimony to Congress in 136 Cong. Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 Cong. Rec. E. 3750; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and from various other police reports, testimony, newspaper reports, and other documentary evidence), and subsequent findings in *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291; *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485; and *Andy's Rest. & Lounge, Inc. v. City of Gary* (7th Cir. 2006), 466 F.3d 550, and the City Council's independent review of the same) the City Council finds:

(1) Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments.

(2) Certain employees of adult entertainment establishments, as defined in this Ordinance as adult theaters and cabarets, engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation and oral and anal sex, occur at adult entertainment establishments, especially those that provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows. The "couch dances" or "lap dances" that frequently occur in adult entertainment establishments featuring live nude or seminude dancers constitute or may constitute the offense of "engaging in prostitution" under Section 2907.25 of the Revised Code.

(4) Offering and providing private or semi-private booths or cubicles encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other adult entertainment establishments for the purpose of engaging in sexual activity within the premises of those adult entertainment establishments.

(6) Numerous communicable diseases may be spread by activities occurring in Sexually Oriented Businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and shigella infections, chlamydial, myoplasmal and ureoplasmal infections, trichomoniasis, and chancroid.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 through December 31, 1992.

(8) A total of 10,255 AIDS cases had been reported in Ohio as of January 1999. Ohio has required HIV case reporting since 1990, and the reported information shows 7,969 people living with (HIV) (4,213) and (AIDS) (3,756) in the state.

(9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Ohio.

(10) The number of cases of early (less than one year) syphilis in the Unites States reported annually has risen. 33,613 cases were reported in 1982, and 45,200 cases were reported through November 1990.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

(12) The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, and exposure to infected blood and blood components, and from an infected mother to her newborn.

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(14) Sanitary conditions in some adult entertainment establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(15) The findings noted in divisions (C)(1) to (14) of this section raise substantial governmental concerns.

(16) Adult entertainment establishments have operational characteristics that require or mandate subject them to reasonable government regulation in order to protect those substantial governmental concerns.

(17) The enactment of this Ordinance will promote the general welfare, health, morals, and safety of the citizens of the City of Montgomery.

SECTION 2. The following sections shall be added to the Land Usage Code, Chapter 151.18, Regulation of Sexually Oriented Businesses:

§ 151.181 DEFINITIONS

(A) As used in this Ordinance:

(1) "adult bookstore," "adult cabaret," "adult motion picture theater," "adult video store," "characterized by," "nude," "nudity," "state of nudity," "seminude," "state of seminudity," "sexual device," "sexual device shop," "sexual

encounter center," "specified anatomical areas," and "specified sexual activity" have the same meanings as in Section 2907.40 of the Revised Code; and

(2) "adult arcade," "adult entertainment," "adult entertainment establishment," "adult novelty store," "adult theater," "distinguished or characterized by their emphasis upon," "nude or seminude model studio," "regularly features," "regularly shown," and "sexual encounter establishment" have the same meanings as in Section 2907.39 of the Revised Code.

(B) "EMPLOYEE" means any individual on a full-time, part-time, or contract basis, regardless of whether the individual is denominated an employee, independent contractor, agent, or otherwise, but does not include an individual exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

(C) "IMMEDIATE FAMILY" means a person's spouse residing in the person's household, parents, siblings of the whole or of the half blood, and children, including adopted children.

(D) "LICENSE" means a license to act or operate a Sexually Oriented Business, issued pursuant to this Ordinance.

(E) "LICENSEE" means a person in whose name a license to operate has been issued, as well as the individual(s) designated on the license application as principally responsible for the operation of the Sexually Oriented Business. With respect to an Employee license issued under this Ordinance, licensee means an employee as defined by Section (2), sub-section (B) above in whose name a license has been issued authorizing employment at Sexually Oriented Business.

(F) "OPERATE" means to control or hold primary responsibility for the operation of a Sexually Oriented Business, either as a business entity, as an individual, or as part of a group of individuals with shared responsibility. "Operate" or "Cause to be Operated" shall mean to cause to function or to put or keep in operation.

(G) "OPERATOR" means any individual on the premises of a Sexually Oriented Business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a Sexually Oriented Business whether or not that person is an owner, part owner, or licensee of the business.

(H) "PATRON" means any individual on the premises of a Sexually Oriented Business, except for any of the following:

(1) An operator or an employee of the Sexually Oriented Business;

(2) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises;

(3) A public employee or a firefighter/emergency medical services worker acting within the scope of the public employee's duties as a public employee.

(I) "PERSON" means an individual, proprietorship, partnership, trust, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

(J) "PREMISES" means the real property on which the Sexually Oriented Business is located and all appurtenances to the real property, including, but not limited, to the Sexually Oriented Business, the grounds, private walkways, and parking lots or parking garages adjacent to the real property under the ownership, control, or supervision of the owner or operator of the Sexually Oriented Business.

(K) "SEXUALLY ORIENTED BUSINESS" means an adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motion picture theater, adult novelty store, adult theater, adult video store, sexual device shop, sexual encounter center, and sexual encounter establishment as defined by Section (2), sub-section (A) of this Ordinance, but does not include a business solely by reason of its showing, selling, or renting materials that may depict sex.

(L) "SPECIFIED CRIMINAL ACTIVITY" means any of the following offenses:

(1) Prostitution or promoting prostitution; soliciting; loitering to engage in solicitation; sexual performance by a child; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar offenses to those described above under the criminal or penal code of any local jurisdiction, state, or country;

(2) for which:

(a) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or

(b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.

(3) The fact that a conviction is being appealed shall not prevent such conviction from constituting a Specified Criminal Activity as defined in this section.

(M) "TRANSFER OF OWNERSHIP OR CONTROL" of a Sexually Oriented Business shall mean any of the following:

(1) the sale, lease, or sublease of the business;

(2) the transfer of securities which constitute a controlling interest in the business whether by sale, exchange, or similar means; or

(3) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

§ 151.182 ZONING REGULATIONS

(A) Sexually Oriented Businesses may only be established in the General Business District and shall be subject to all further restrictions of this Chapter. No person shall establish a Sexually Oriented Business within seven hundred fifty (750) feet of another such business or within seven hundred fifty (750) feet of a property used for residential purposes, a school, a daycare, or a church.

(B) For purchases of this Chapter, distance between any two Sexually Oriented Businesses or between any Sexually Oriented Business and any Protected Use shall be measured in a straight line without regard to intervening structures from the nearest part of the structure containing a Sexually Oriented Business to the nearest property line of the protected use. Protected uses are residential uses, schools, daycares and churches.

§ 151.183 LICENSE REQUIRED

(A) No person shall:

(1) Operate a Sexually Oriented Business as defined by Section (2), sub-section (K) without a valid Sexually Oriented Business license issued by the City pursuant to this Ordinance.

(2) In connection with operating a Sexually Oriented Business, retain the services of a person as an employee, as defined in this Ordinance, who is not licensed as a Sexually Oriented Business employee by the City pursuant to this Ordinance.

(B) Any person who violates sub-section (A)(1) above shall be guilty of a misdemeanor of the third degree for a first offense, and a misdemeanor of the first degree for any second or subsequent offense.

(C) A violation of sub-section (A)(2) above shall be a ground for the suspension of a Sexually Oriented Business license as provided for in Section (10) of this Ordinance.

(D) No person shall act as an employee, as defined in this Ordinance, on the premises of a Sexually Oriented Business without having secured a Sexually Oriented Business employee license ("Employee License") pursuant to this Ordinance.

(E) A violation of sub-section (E) shall be a ground for the suspension of a Sexually Oriented Business employee license as provided for in Section (10) of this Ordinance.

§ 151.184 APPLICATION FOR LICENSE

(A) An original or renewal application for a Sexually Oriented Business license shall be submitted to the Community Development Director or its designee on a form provided by the Community Development Director. The City's application may require and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established in this Ordinance.

(B) A filing fee shall be paid at the time of filing the application in the amount of Five Hundred Dollars ($500.00).

(C) An application for a Sexually Oriented Business license shall identify and be signed by the following persons:

(1) If the business entity is owned by an individual, that individual.

(2) If the business entity is owned by a corporation, each Officer or Director of the corporation, any individual owning or controlling more than fifty (50) percent of the voting shares of the corporation, and any person with an ownership interest in the corporation who will be principally responsible for the operation of the proposed Sexually Oriented Business.

(3) If the business entity is owned by a partnership (general or limited), a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, each partner (other than limited partners); and any other person entitled to share in the profits of the organization, whether or not such person is also obligated to share in the liabilities of the organization, who will be principally responsible for the operation of the proposed Sexually Oriented Business.

(D) An application for a Sexually Oriented Business license must designate one or more individuals who are to be principally responsible for the operation of the proposed Sexually Oriented Business, if a license is granted. At least one person so designated must be involved in the day-to-day operation of the proposed Sexually Oriented Business on a regular basis. Each person so designated, as well as the business entity itself, shall be considered a license applicant, must qualify as a licensee under this Ordinance, and shall be considered a licensee if a license is granted.

(E) An application for a Sexually Oriented Business license shall be completed according to the instructions on the application form, which shall require the following:

(1) If the applicant is:

(a) an individual, state the legal name and any aliases of such individual; or

(b) a partnership, state the complete name of the partnership and all of its partners and whether the partnership is general or limited, and provide a copy of the partnership agreement, if any; or

(c) a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, state the complete name of the organization and provide a copy of the legal document establishing the organization, if any; or

(d) a corporation, state the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of incorporation, and state the names and capacities of all Officers and Directors, the name of the registered corporate agent for the State of Ohio, and the address of the registered office within the State of Ohio for service of process.

(2) If the applicant intends to operate the Sexually Oriented Business under a name other than that of the applicant, state the fictitious name to be used and submit copies of documentation evidencing the registration of the business name under applicable laws.

(3) State whether any applicant has been convicted of a Specified Criminal Activity as defined in this Ordinance, and if so, the Specified Criminal Activity involved and the date, place, and jurisdiction of each such conviction.

(4) State whether any applicant has had a previous license under this Ordinance or other similar regulation of another jurisdiction denied, suspended or revoked, including the name and location of the Sexually Oriented Business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation; and state whether the applicant has been a partner in a partnership or an officer, or fifty (50) percent or greater owner of a corporation licensed under this Ordinance whose license has previously been denied, suspended or revoked, including the name and location of the business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) State whether any applicant holds any other licenses under this Ordinance or other similar regulation from this or another jurisdiction and, if so, the names and locations of such other licensed businesses.

(6) State the location of the proposed Sexually Oriented Business, including a legal description of the property (i.e., permanent parcel number), street address, and telephone number(s), if any.

(7) State the mailing address and residential address of each applicant and each person signing the application.

(8) Submit a recent photograph of each applicant who is a natural person, taken by the Montgomery Police Department that clearly shows the applicant's face.

(9) Submit the fingerprints of each applicant who is a natural person, recorded by the Montgomery Police Department.

(10) For any applicant who is a natural person, describe and identify the location of any tattoos on such person's face, arms, legs, or hands, or any other anatomical area that normally would be visible when such person is on the premises of the proposed Sexually Oriented Business.

(11) State the driver's license number and Social Security number of each applicant who is a natural person and each person signing the application, or, for an applicant that is not a natural person, the applicant's federally issued tax identification number.

(12) Submit proof that each applicant who is a natural person is at least eighteen (18) years old.

(13) Submit a sketch or diagram showing the configuration of the premises of the Sexually Oriented Business. The diagram shall also designate the place at which the adult business license will be conspicuously posted, if granted. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(14) The above-required disclosures facilitate the police investigation into the applicant's criminal background regarding crimes of a sexual nature so that the City can determine whether the Ordinance's civil disabilities provisions apply. Such provisions exist to combat the sex crimes connected with sexually oriented establishments by temporarily prohibiting those recently convicted of such crimes from employment with those establishments. In addition, the required disclosures ensure continuing compliance with the Ordinance's licensing and permitting requirements.

(15) The information gathered pursuant to the above provisions constitute protected private information and are exempt from Ohio's Public Records Act in accordance with the decision of the Sixth Circuit Court of Appeals in *DejaVu of Cincinnati v. Union Township* (6th Cir. 2005), 411 F.3d 777.

§ 151.185 ISSUANCE OF A LICENSE

(A) Upon receipt of an application for a Sexually Oriented Business license, the Community Development Department shall promptly request that the Montgomery Police Department review the information provided in the application concerning the criminal background of the applicant(s) and that the Montgomery Police Department shall transmit the results of its investigation in writing to the Community Development Department within five (5) days of the completion of its investigation.

(B) Within five (5) days of receipt of an application for a Sexually Oriented Business, the Community Development Department shall notify the City Fire Chief and the Hamilton County Health Commissioner of such application. In making such notification, the Community Development Department shall request that the Fire Chief and Health Commissioner promptly inspect the premises for which the Sexually Oriented Business license is sought to assess compliance with the regulations under their respective jurisdictions.

(C) The Fire Chief shall provide to the Community Development Department a written certification of whether the premises are in compliance with the City Fire Code within ten (10) days of receipt of notice of the application.

(D) The Community Development Department, or its designee, shall commence the inspection of the premises for which a Sexually Oriented Business license is sought promptly upon receipt of the application, and shall complete, within ten (10) days after receipt of the application, a written certification of whether the premises are in compliance with the City Zoning Ordinance, the City Building Code, and the provisions of this Ordinance related to physical characteristics of the premises, and whether the City has received notice from any state or county agency of the premises being in violation of any applicable state building or property codes.

(E) Within twenty-one (21) days after receipt of a completed Sexually Oriented Business license application, the Community Development Department shall approve or deny the issuance of a license. The Community Development Department shall approve the issuance of a license to an applicant unless he/she determines that one or more of the following findings is true:

(1) An applicant who is a natural person is under eighteen (18) years of age.

(2) An applicant has failed to provide all information and documents required for issuance of the license as requested on the application form, or has provided information or documents as requested on the application that are insufficient on their face; provided, however, that no license shall be denied solely on the ground that an applicant has refused to disclose its Social Security number in accordance with the provisions of the Privacy Act of 1974, Pub. L. No. 93-579, § 7(a)(1).

(3) An applicant has, within the preceding twelve (12) months, been denied a Sexually Oriented Business license by any jurisdiction or has had a license to operate a Sexually Oriented Business revoked by any jurisdiction.

(4) An applicant has been convicted of a Specified Criminal Activity as defined in this Ordinance.

(5) The proposed Sexually Oriented Business would violate or fail to be in compliance with any provisions of this Ordinance, the City Zoning Ordinance, the City Building Code, or state statute or regulation.

(6) The application and investigation fee required by this Ordinance has not been paid.

(7) An applicant is in violation of or not in compliance with any provision of this Ordinance, except as provided in Section (6), sub-section (F) of this section.

(F) If the Community Development Department determines that one or both of the following findings is true, the license issued pursuant to this section shall contain a requirement that the licensee correct all deficiencies specified within 120 days of the date the license is issued:

(1) The results of inspections of the premises by the Fire Chief or its designee or the Health Commissioner or its designee indicate that the premises are not in compliance with applicable laws and regulations under their respective jurisdictions.

(2) An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business, which are not the subject of a pending appeal or other legal challenge.

(G) A Sexually Oriented Business license shall state on its face the name of the applicant, the expiration date, and the address of the licensed Sexually Oriented Business. All Sexually Oriented Business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.

(H) The Community Development Department or its designee shall advise the applicant in writing within three (3) days of the Community Development Department's decision of the reasons for any license denial. If the City finds, subsequent to denial, that the basis for the denial of the license has been corrected or abated, the applicant may reapply.

(I) Before an approved Sexually Oriented Business license shall be issued, the applicant shall pay a one year license fee of Five Hundred Dollars ($500.00).

§ 151.186 EMPLOYEE LICENSE APPLICATION

(A) An application for an Employee license shall be submitted to the Community Development Department on a form provided by the Community Development Department. The application may request, and the applicant shall provide, such information as reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established in this Ordinance.

(B) A filing fee shall be paid at the time of the application in the amount of Twenty Five Dollars ($25.00).

(C) An application for an employee license shall be completed according to the instructions of the application form, which shall require the following:

(1) State the applicant's name and any other names (including "stage" names) or aliases used by the applicant.

(2) State the applicant's date and place of birth.

(3) State the applicant's height, weight, and hair and eye color.

(4) Submit a recent photograph of the applicant, taken by the Montgomery Police Department, which clearly shows the applicant's face.

(5) Submit the applicant's fingerprints, recorded by the Montgomery Police Department.

(6) Describe and identify the location of any tattoos on the applicant's face, arms, legs, or hands, or any other anatomical area that normally would be visible when the applicant is on the premises of the proposed Sexually Oriented Business.

(7) State the applicant's present residence address and telephone number.

(8) State the applicant's present or intended business address and telephone number.

(9) State the applicant's driver's license number and Social Security number.

(10) Submit proof that the applicant is at least eighteen (18) years old.

(11) Provide a statement detailing the Sexually Oriented Business-related license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate a Sexually Oriented Business, in this or any other jurisdiction, and whether the applicant has ever had a Sexually Oriented Business-related license, permit, or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation, or suspension. Attach a copy of any order of denial, revocation, or suspension.

(12) State whether the applicant has been convicted of a Specified Criminal Activity as defined in this Ordinance and, if so, the Specified Criminal Activity involved and the date, place and jurisdiction of each such conviction.

(13) The above-required disclosures facilitate the police investigation into the applicant's criminal background regarding crimes of a sexual nature so that the City can determine whether the Ordinance's civil disabilities provisions apply. Such provisions exist to combat the sex crimes connected with sexually oriented

establishments by temporarily prohibiting those recently convicted of such crimes from employment with those establishments. In addition, the required disclosures ensure continuing compliance with the Ordinance's licensing and permitting requirements.

(14) The information gathered pursuant to the above provisions constitutes protected private information and is exempt from Ohio's Public Records Act in accordance with the decision of the Sixth Circuit Court of Appeals in *DejaVu of Cincinnati v. Union Township* (6th Cir. 2005), 411 F.3d 777.

§ 151.187 ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE

(A) Upon the filing of a completed application for an employee license, the Community Development Department shall issue a license to said applicant immediately.

(B) Within five (5) days of receipt of a completed application for an employee license, the Community Development Department shall request that the Montgomery Police Department initiate an investigation of the information provided in the application concerning the criminal background of the applicant. The Montgomery Police Department shall document the results of its investigation in writing within five (5) days of the completion of its investigation and transmit this writing to the Community Development Department or its designee.

(C) Within ten (10) days after completion of the criminal background investigation of the applicant, the Community Development Department shall either affirm the prior issuance of the license or revoke the license. The Community Development Department shall affirm the prior issuance of a license to an applicant unless he/she determines that one or more of the following findings are true:

(1) The applicant has failed to provide all information and documents required for issuance of the license as requested on the application form, or has provided information or documents as requested on the application that are insufficient on their face; provided, however, that no license shall be denied solely on the ground that an applicant has refused to disclose its social security number in accordance with the provisions of the Privacy Act of 1974, Pub. L. No. 93-579, § 7(a)(1).

(2) The applicant is under eighteen (18) years of age.

(3) The applicant has been convicted of a Specified Criminal Activity as defined in this Ordinance.

(4) The employee license is to be used for employment in a business prohibited by local, state, or federal law, statute, rule or regulation.

(5) The applicant has, within the preceding twelve (12) months, been denied an employee license by any jurisdiction or has had an employee license revoked by any jurisdiction.

(D) If the employee license is revoked, the Community Development Department shall advise the applicant in writing within three (3) days of the reason(s) for any such revocation.

(E) Before an approved Sexually Oriented Business employee license shall be issued, an approved applicant shall pay a license fee of Twenty Five Dollars ($25.00).

§ 151.188 EXPIRATION AND RENEWAL OF LICENSE

(A) Each license issued pursuant to this Ordinance shall expire one year from the date of issuance and may be renewed by making application as provided in this section. Application for renewal shall be made no more than ninety (90) days and no less than twenty-one (21) days before the expiration date. If application is made less than twenty-one (21) days before the expiration date, the license will not be extended pending a decision on the application, but will expire on its normal expiration date.

(B) An application for renewal of a Sexually Oriented Business license shall be submitted to the Community Development Department on a form provided by the Community Development Department. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to this Ordinance. Copies of any document or material submitted in connection with the initial license application shall accompany the completed renewal application that has been revised or such application shall be revised to reflect any change in circumstances or conditions. Sketches or diagrams submitted with an initial Sexually Oriented Business license application may be resubmitted with subsequent renewal applications, provided that the applicant certifies in writing that the sketch or diagram still depicts the premises accurately.

(C) The Community Development Department shall make determinations concerning the approval of license renewals based on the same criteria and time mandates used to evaluate applications for new licenses under this Ordinance.

(D) The Community Development Department shall advise the applicant in writing within three (3) days of the reason(s) for any denial of a license renewal.

(E) An application for renewal of an employee license shall be submitted to the Community Development Department on a form provided by the Community Development Department. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to this Ordinance. Copies of any document or material submitted in connection with the initial license application shall accompany the completed renewal application that has been revised or requires revision to reflect any change in circumstances or conditions.

(F) When the City denies an application for renewal of a license, the applicant shall not be issued another license for one year from the date of denial. However, if the City finds, subsequent to denial, that the basis for the denial of the renewal

license has been corrected or abated, the applicant may reapply prior to the expiration of the one year period.

(G) An approved Sexually Oriented Business licensee shall pay an annual renewal license fee of Five Hundred Dollars ($500.00) before a license shall be issued. An approved Sexually Oriented Business employee licensee shall pay an annual license fee of Twenty Five Dollars ($25.00) before a renewal license shall be issued.

§ 151.189 SUSPENSION

(A) The City shall suspend a Sexually Oriented Business license for a period not to exceed thirty (30) days if it determines that a licensee:

(1) has violated or is not in compliance with any section of this Ordinance; or

(2) has knowingly allowed an employee to violate or fail to comply with any section of this Ordinance.

(B) The City shall suspend a Sexually Oriented Business license for a period not to exceed thirty (30) days if it determines that a licensee or its employee or agent has refused to allow, or has prohibited or has interfered with, an inspection of the licensed Sexually Oriented Business premises as authorized by Section (6), sub-sections (B) – (C) of this Ordinance or any other reasonable inspection.

(C) The City shall suspend an employee license for a period not to exceed thirty (30) days if it determines that a licensee has violated or is not in compliance with any section of this Ordinance.

(D) The Community Development Department shall advise the licensee in writing within three (3) days of the reason(s) for any suspension.

§ 151.1810 REVOCATION

(A) The City shall revoke a Sexually Oriented Business license or employee license if a cause of suspension under this Ordinance occurs and the license has been suspended two times within the preceding twelve (12) months.

(B) The City shall revoke a Sexually Oriented Business license if it determines that:

(1) a licensee failed to provide all information and documents required for issuance of the license as requested on the application form, or provided information or documents as requested on the application that are false;

(2) the licensee(s) failed to comply with any requirement stated in the license, pursuant to this Ordinance, to correct specified deficiencies within 120 days;

(3) a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(4) a licensee has knowingly allowed prostitution, solicitation, or the commission of a felony on the premises;

(5) a licensee knowingly operated the Sexually Oriented Business during a period of time when the licensee's license was suspended;

(6) a licensee has knowingly allowed any act of Specified Criminal Activity, as defined in this Ordinance, to occur in or on the licensed premises;

(7) a licensee has been convicted of a Specified Criminal Activity, as defined in this Ordinance, during the term of the license; or

(8) a licensee is delinquent in payment to the City, County, or State for any taxes or fees that were assessed or imposed in relation to any business.

(C) The City shall revoke an employee license if it determines that:

(1) the licensee failed to provide all information and documents required for issuance of the license as requested on the application form, or provided information or documents as requested on the application that are false;

(2) the licensee has knowingly acted as an employee on the premises of a Sexually Oriented Business during a period of time when the licensee's license was suspended; or

(3) the licensee has been convicted of a Specified Criminal Activity, as defined in this Ordinance during the term of the license.

(D) The Community Development Department shall advise the licensee in writing within three (3) days of the reason(s) for any revocation.

(E) When the City revokes a license pursuant to sub-sections (A), (B)(3) – (7), (C)(2) or (3) above, the licensee shall not be issued another license for one (1) year from the date the revocation became effective.

(F) When the City revokes a license pursuant to sub-sections (B)(1), (B)(8) or (C)(1) above, the applicant may be granted a license if the basis for the revocation has been corrected or abated and at least thirty (30) days have elapsed since the date the revocation became effective.

§ 151.1811 APPEAL RIGHTS

(A) Any denial, suspension, or revocation of a license under this Ordinance may be appealed to the City Council by written notice within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the

City Council must hold a hearing on the appeal within twenty-one (21) days and must issue a decision affirming or reversing the denial, suspension, or revocation within five (5) days after the hearing. During the time between the date of the denial, suspension, or revocation of a license and the date of the City Council decision affirming or reversing the denial, suspension, or revocation, the status quo of the license holder or applicant shall be maintained.

(B) In the event that the City Council denies, suspends, or revokes a new or renewal license under this Ordinance, or any action taken on an appeal that is provided by this Ordinance, the applicant may pursue an appeal to Hamilton County Court of Common Pleas pursuant to Revised Code Chapter 2506. The failure of the City Council to render a decision on the application within the time prescribed in Section (10), sub-section (A) above shall be considered an affirmance of the denial, suspension, or revocation of the license and the applicant may pursue an appeal to Hamilton County Court of Common Pleas pursuant to Revised Code Chapter 2506. This appeal provision is intended to comply with the requirement for prompt judicial review stated by the United States Supreme Court in *Township of Littleton, Colorado v. Z. J. Gifts D-4* (2004), 541 U.S. 774.

(C) Any licensee lawfully operating a Sexually Oriented Business prior to the denial of a license renewal application, or the suspension or revocation of a license, shall retain said license and all privileges attendant thereto, subject to all other terms of this Ordinance, so that the status quo of the licensee is maintained during the pendency of an appeal to the City Council of a decision rendered under this Ordinance and during the entire time required for the Court of Common Pleas to rule on the appeal pursuant to sub-section (B) above.

(D) Any licensee lawfully acting as an employee in a Sexually Oriented Business prior to the denial of a license renewal application, or the suspension or revocation of a license, shall retain said license and all privileges attendant thereto, subject to all other terms of this Ordinance, so that the status quo of the licensee is maintained during the pendency of an appeal to the City Council of a decision rendered under this Ordinance and during the entire time required for the Court of Common Pleas to rule on the appeal pursuant to sub-section (B) above.

(E) In the event that any judicial review of the denial of a new or renewal license application or the revocation or suspension of a license is still pending thirty (30) days before the expiration date of any license, the licensee may file a renewal license application with the Community Development Department pursuant to this Ordinance. In the event that an application for renewal of a license is denied and the applicant seeks judicial review of that denial, the City has the right to consolidate such review with any pending judicial actions in regards to the previous denial, suspension or revocation of a license.

(F) If, during the pendency of any appeal pursued under sub-section (B) above, there are additional denials of a renewal license application or suspensions or revocations of that license, the City has the right to consolidate the appeal pursued under

Section (12), sub-section (B) above for the additional denials, suspensions or revocations with any pending appeal for that same licensee.

§ 151.1812 TRANSFER OF LICENSE

(A) A Sexually Oriented Business license is not transferable from one licensee to another or from one location to another. Any purported transfer of a Sexually Oriented Business license shall automatically and immediately revoke that license.

(B) An employee license is not transferable from one licensee to another, but the use of the license by the individual to whom it was issued may be transferred from one licensed Sexually Oriented Business to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the Community Development Department within fifteen (15) days of such transfer.

§ 151.1813 ADDITIONAL REGULATIONS CONCERNING THE OPERATION OF A SEXUALLY ORIENTED BUSINESS

(A) Sexual Activity, Live Entertainment and Performances

(1) No person shall, in a Sexually Oriented Business, appear before a patron or patrons in a state of nudity, regardless of whether such public nudity is expressive in nature.

(2) Any employee appearing on the premises of a Sexually Oriented Business in a state of semi-nudity, as defined by this Ordinance, must be on a stage that is at least twenty-four (24) inches from the floor, and at a distance at least thirty-six (36) inches from all parts of a clearly designated area in which patrons will be present.

(3) All live entertainment and performances in a Sexually Oriented Business must take place on a stage that is at least twenty-four (24) inches from the floor and a distance of at least thirty-six (36) inches from all parts of a clearly designated area in which patrons will be present.

(4) The interior of the premises shall be configured in such a manner that there is a an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. It is the duty of the operator to ensure that at least one employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by the operator station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise,

display racks or other materials or enclosures at all times that any patron is present on the premises.[1]

(5) No employee shall knowingly or intentionally, in a Sexually Oriented Business, appear within view of any patron in a nude or semi-nude condition unless the employee, while nude or semi-nude, shall be and remain at least six (6) feet from all patrons.[2]

(6) Employees in a Sexually Oriented Business shall maintain a minimum distance of five (5) feet from areas on the business premises occupied by patrons for a minimum of twenty (20) minutes after the employee appears in a nude or semi-nude condition within view of any patron. This regulation is not intended to prohibit ingress or egress from the premises. It is intended to control illicit sexual contact and reduce the incidents of prostitution occurring in the establishments.[3]

(7) No patron who is not a member of the employee's immediate family shall knowingly touch an employee while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or semi-nude.[4]

(8) No employee who regularly appears nude or seminude on the premises of a Sexually Oriented Business and while nude or seminude, shall knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or allow the patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.[5]

(9) The provisions of sub-sections (A)(1) – (8) shall not apply to an employee's use of any restroom or any single-sex dressing room that is accessible only to employees.

(10) In addition, sub-sections (A)(1) – (8) shall not apply to live performances in which the patron and employee are separated by an impenetrable barrier such as, but not limited too, glass or Plexiglas.

(B) Minors Prohibited. No person under the age of 18 years shall be permitted on the premises of a Sexually Oriented Business.

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[1] *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291.

[2] *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291.

[3] *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485.

[4] Pursuant to R.C. 2907.40(C)(1).

[5] Pursuant to R.C. 2907.40(C)(2).

(C) Hours of Operation. No Sexually Oriented Business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a Sexually Oriented Business that holds a liquor permit pursuant to Chapter 4303 of the Revised Code may remain open until the hour specified in that permit if it does not conduct, offer, or allow Sexually Oriented Business activity in which the performers appear nude.[6]

SECTION 3. The *Schedule of Permitted Uses* in § 151.1203 shall be amended to reflect that Sexually Oriented Businesses are a Permitted Use in the General Businesses District (G-B) with a footnote referring to the above regulation in Chapter 151.18

SECTION 4. If any section, sub-section, paragraph or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, sub-sections, paragraphs, and clauses shall not be affected.

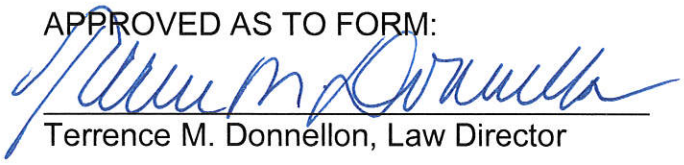
SECTION 5. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED:_____

ATTEST: _____ _____

Connie M. Gaylor, Clerk of Council Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director

[6] Pursuant to R.C. 2907.40(B).

ORDINANCE NO. , 2016

AN ORDINANCE REZONING A PORTION OF THE VINTAGE CLUB DEVELOPMENT TO L-B LIMITED BUSINESS DISTRICT WITH A PLANNED DEVELOPMENT OVERLAY

WHEREAS, at the time the Vintage Club site on Montgomery Road was zoned into the L-B Limited Business District and subjected to a Planned Development Overlay, a portion of the site consisting of approximately .0361 acres, being Auditor's parcel number 620-0210-0723, was located in Symmes Township, and while it was part of the project site it was not properly zoned within the Vintage Club development; and

WHEREAS, in proceedings over this past calendar year, such parcel was annexed from Symmes Township into the City of Montgomery; and

WHEREAS, Section 151.0104 of the Land Usage Code provides that any land annexed into the City is subject to the similar zoning category in which it was located within the Township until such time as it is rezoned within the City after annexation; and

WHEREAS, the Planning Commission has reviewed an application to rezone this property into the L-B Limited Business District subject to the same Vintage Club Planned Development Overlay, as amended, so that the property may be properly developed consistent with the General Development Plan for the site; and

WHEREAS, the Planning Commission, on August 15, 2016, did consider such application and recommended rezoning the site to be consistent with the project site for the Vintage Club; and

WHEREAS, Council did hold a public hearing on October 5, 2016 to consider such recommendations from the Planning Commission; and

WHEREAS, Council has recommended that these modifications be adopted.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The property as more fully described on Exhibit A attached hereto and incorporated herein by reference, consisting of .0361 acres previously identified as Auditor's parcel number 620-0210-0723 which has now been properly annexed into the City of Montgomery, shall be rezoned to L-B Limited Business District subject to the Vintage Club Planned Development Overlay District rules and regulations, as amended.

SECTION 2. The Community Development Director is hereby directed to make a change in the zoning map to reflect the incorporation of this parcel into the L-B Limited Business District and the Vintage Club Planned Development Overlay District.

SECTION 3. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED:_____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

_____
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

_____
Terrence M. Donnellon, Law Director

ORDINANCE NO. , 2016

AN ORDINANCE AMENDING THE STATEMENT OF CONDITIONS AND EXCEPTIONS IN THE VINTAGE CLUB PLANNED DEVELOPMENT OVERLAY DISTRICT

WHEREAS, by Ordinance No. 11, 2006, Council did establish the terms and conditions for the Vintage Club Planned Development Overlay District ("District"); and

WHEREAS, by Ordinance No. 11, 2013, Council did make certain modifications to the District; and

WHEREAS, Council and the Planning Commission did reserve the right to make further modifications to the District consistent with a final General Development Plan for the northern site, which plans have now been submitted, reviewed and approved in part by the Planning Commission; and

WHEREAS, the Planning Commission did meet on August 15, 2016 to review and consider the proposed modifications to the District, which modifications were recommended by the Planning Commission; and

WHEREAS, Council did hold a public hearing on October 5, 2016 to consider such recommendations from the Planning Commission; and

WHEREAS, Council has recommended that these modifications be adopted.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The Statement of Conditions and Exceptions for the Vintage Club Planned Development Overlay District are hereby modified as follows:

A. The permitted height for buildings in the interior of the L-B Limited Business District section of the site shall be increased to a maximum of four stories or 52 feet in height. Such maximum height shall be measured as the average of the top of the parapet walls and/or the mean of the pitched roof for any such structures. No pitched roof element shall exceed 62 feet in height.

B. The perimeter and front yard landscape requirements, with the exception of properties fronting Montgomery Road, shall be modified to accept the landscaping as approved within the General Development Plan. Such modification is necessary as a result of lot splits within the site reflecting the fact that interior parking will be public parking fronting and surrounding each of these interior buildings.

C. There shall be no front, side or rear building setbacks for buildings in the L-B Limited Business section except as such property shall abut the residential village section of the site.

D. The setback requirements for the residential condominiums and/or offices along the northern boundary of the project within the L-B Limited Business District shall be reduced to 25 feet with a six foot landscape buffer.

E. Parking setbacks shall be eliminated for front, side and rear yards except the front yard setback for properties fronting Montgomery Road.

F. The Christ Hospital, the principal tenant of the property owned and developed by Brandicorp Montgomery Development Corporation on the southwest corner of the site, shall be deemed an adjacent property owner for purposes of notification concerning any modifications to the District and/or to achieve standing to appeal or take other legal action with regard to decisions of the Montgomery Planning Commission

and/or City Council concerning modifications to the General Development Plan, Final Development Plan, or modifications to the Vintage Club Planned Development Overlay District.

SECTION 2. All other zoning standards within the District set forth in Ordinance 11, 2006, as amended by Ordinance 11, 2013, are hereby ratified.

SECTION 3. All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

SECTION 4. All sections, subsections, parts and provisions of this Ordinance are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any section, subsection, part or provision to be unconstitutional, void or ineffective for any reason shall not affect or render invalid any other section, subsection, part or provision of this Ordinance.

SECTION 5. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED:_____

ATTEST: _____ _____

Connie M. Gaylor, Clerk of Council Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

_____

Terrence M. Donnellon, Law Director

CITY OF MONTGOMERY

Providing superior services with integrity.
Partnering with you to build a great community!

Memorandum

December 16, 2016

TO: Wayne Davis, City Manager

FROM: Brian Riblet, Public Works Director BKR
Tracy Roblero, Community Development Director

SUBJECT: Legislation Request for a Professional Services Contract with CT Consultants, Inc.

Request

It is necessary for City Council to adopt a Resolution to authorize the City Manager to enter into a one-year contract with CT Consultants, Inc., for professional engineering services. It is anticipated that the City will spend more than fifty thousand ($50,000) dollars with CT Consultants, Inc. during 2017 for various professional engineering services; consequently, a contract and legislative approval for these professional services is required.

Financial Impact

Funding for professional engineering and architectural services is provided for in the 2016 operating budgets including: "303" Parks, "407" Development, "709" Public Works and in the Capital Improvement Program's "261" Street Maintenance and Repairs.

Background

The City has contracted for approximately 25 years with CT Consultants, Inc. (formerly CDS Associates, Inc.) to provide civil, traffic, structural, electrical and storm water engineering and has been very satisfied with their ability to perform each of these engineering services.

Attached is the proposed 2017 fee schedule from CT Consultants, Inc. In keeping with the commitment that CT Consultants, Inc. has made to the City to provide professional engineering services at a reasonable cost, CT Consultants, Inc. has provided a competitive fee structure for 2017 that includes minor increases in their fee schedule ranging from 2-3% depending on the level of service.

As was provided in previous years, CT Consultants, Inc. has deleted the line item for billing of the "Principal" from the fee schedule. If for any reason the Principal Engineer provides

engineering services during the contract year for development/design review or project design/review, that work would be billed at the hourly rate of a "Senior Project Engineer".

Recommendation

Staff recommends that the City continue the contractual relationship with CT Consultants, Inc. for professional engineering. It is requested that City Council adopt legislation authorizing the City Manager to enter into a contract for those professional engineering services that CT Consultants, Inc. is staffed to provide during 2017 based on the attached fee schedule.

Enclosure

RESOLUTION NO , 2016

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CT CONSULTANTS, INC. FOR PROFESSIONAL SERVICES RELATED TO GENERAL ENGINEERING AND ARCHITECTURAL SERVICES FOR CALENDAR YEAR 2017

WHEREAS, Section 9.03 of Article IX of the Charter of the City of Montgomery, Ohio, provides the method under which the City Manager shall make certain purchases and enter into contracts on behalf of the City; and

WHEREAS, it is appropriate to provide contract authority for professional services that are generally not subject to competitive bidding but will exceed a total of $50,000 in a calendar year; and

WHEREAS, it is the desire of the Council of the City of Montgomery to enter into a contract with CT Consultants, Inc. for calendar year 2017 to perform general engineering and architectural services for the City.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Ohio:

SECTION 1. The City Manager is hereby authorized to enter into a contract with CT Consultants, Inc. for professional services to be provided to the City of Montgomery for calendar year 2017 according to the schedule submitted by CT Consultants, Inc., attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 2. The City Manager is hereby authorized to pay CT Consultants, Inc. according to the rates set forth in said schedule.

SECTION 3. This Resolution shall be in full force and effect from and after its passage.

PASSED:_____

ATTEST:_____
Connie Gaylor, Clerk of Council

_____
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

_____
Terrence M. Donnellon, Law Director

CITY OF MONTGOMERY

2017 HOURLY FEE SCHEDULE

~~Principal Engineer~~	~~$198.00~~
Senior Project Engineer	153.00
Project Engineer	133.00
Engineer 2	112.00
Engineer 1	100.00
Designer 3	97.00
Designer 2	82.00
Engineer Intern	51.00
Survey Crew	140.00
Construction Rep 3	85.00
Technical Support	52.00

Expenses at Cost Plus 10%

CT CONSULTANTS, INC.

2017 Montgomery Fee Schedule

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

City of Montgomery
City Council Business Session Minutes
December 7, 2016

Present
Wayne Davis, City Manager
Terry Donnellon, Law Director
Tracy Roblero, Community Development Director
Katie Smiddy, Finance Director
Brian Riblet, Public Works Director
Don Simpson, Police Chief
Paul Wright, Fire Chief
Matthew Vanderhorst, Community and Information Services Director
Connie Gaylor, Clerk of Council

City Council Members Present
Lynda Roesch, Vice Mayor
Ann Combs
Gerri Harbison
Ken Suer
Mike Cappel
Craig Margolis

Council Members Absent
Chris Dobrozsi, Mayor

City Council convened in Council Chambers at 7:00 p.m. for the Business Session with Vice-Mayor Roesch presiding.

ROLL CALL

Vice-Mayor Roesch stated that Mayor Dobrozsi had previously noted that he would be out of town for this evening's meeting, therefore the roll would need to be called.

The roll was called and showed the following members were present:

Mrs. Combs, Mr. Cappel, Mrs. Harbison, Vice-Mayor Roesch, Mr. Suer and Mr. Margolis.

Mr. Margolis made a motion to excuse Mayor Dobrozsi's absence. Mr. Cappel seconded. City Council unanimously agreed.

LEGISLATION FOR CONSIDERATION TONIGHT

Vice-Mayor Roesch stated that since there were audience members present to address City Council regarding the Resolution Authorizing a Grant in the Amount of $12,500.00 to The Center for Addiction Treatment, that she would like a motion to reorder the agenda and to hold the discussion and vote on this legislation at this time.

Mrs. Harbison made a motion to change the order of the agenda. Mr. Margolis seconded. City Council unanimously agreed.

A Resolution Authorizing a Grant in the Amount of $12,500.00 to The Center for Addiction Treatment

Mr. Margolis moved to read the Resolution by title only. Mr. Cappel seconded. City Council unanimously agreed.

Mr. Margolis read the Resolution by title only and moved for passage. Mr. Cappel seconded.

Mr. Margolis stated that this Resolution, if approved, would issue a one-time grant in the amount of $12,500 to the Center for Addiction Treatment (CAT). Mr. Margolis explained that at the October 3 Law and Safety Committee meeting, Sandi Kuehn, President and CEO of CAT as well as Ken Schneider, Board Member of the Center, made a presentation to the Committee requesting a grant contribution to support the treatment center's expansion efforts. This vital service serves all Hamilton County residents and is the only non-hospital detoxification center within a 180-mile radius. The funds for this grant are available in the General Fund, the Public Health and Welfare account and the Law Enforcement Fund, partially due to cost savings realized when the Sycamore Senior Center closed its operations earlier in the year.

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

Mr. Suer stated how important he felt this one-time grant was and that he was glad that the City is able to contribute towards the efforts in fighting the disease of addiction.

Mrs. Harbison stated that the City of Montgomery has worked with a group called Much in Common, which is a regional group from Ohio, Kentucky and Indiana, to bring the heroin epidemic and the opioid problem to the forefront so communities could learn what their roles are in the treatment of this disease. She stated that she is happy that the City is supporting the efforts of the Center for Addiction Treatment.

Ken Schneider, Board Member of the CAT and Montgomery resident now for 42 years, thanked City Council for supporting this much needed cause. He explained that this grant funding would be included in the capital building campaign that is planned to triple the size of the facility that they currently have, leading to increased treatment of patients. He stated that as of this time CAT is still .5 million short of their required funds of 5.7 million. He stated that he plans to go to all local governments to petition their support of the building campaign. He reminded everyone that this was a brain disease and not a moral issue. He asked for support not only of CAT, but also the families that deal with the effects of the disease. He stated that he was very proud to live in a city that will support the community in this way.

Sally Frye, a former resident of Montgomery for 20 years, explained that their family most recently experienced the epidemic levels of the heroin epidemic when they lost their daughter, Lexis Waterman, just 27 days prior, to an overdose. She thanked the City for this donation. She reached out to CAT for treatment for Lexis and she hopes that these funds will help CAT to save at least one life.

Norm Frankowski, here on behalf of his wife, Debbie Frankowski, are Montgomery residents since 1998. Debbie is the Medical Director of the CAT. He stated that she is very grateful for the grant and the CAT house being the only treatment center in the area. He stated that the CAT house has three things: Staying Power, People Power and a Recognized Power. He stated that the CAT House is the oldest treatment facility in Ohio, opening its doors in 1970. He stated that it had "People Power" in the staff that works there are so committed to saving people and their families from the disease of addiction and finally it is a recognized power by the State of Ohio as a vital resource in the treatment of addictions. He stated that on behalf of his wife and the staff of the CAT House, thank you for this grant.

Vice-Mayor Roesch stated that we all know someone that has been touched by this disease, and we recognize that the community needs to take action to address it and this grant is a small way for the City to contribute.

The roll was called and showed the following vote:

AYE: Margolis, Combs, Cappel, Harbison, Roesch, Suer	(6)
NAY:	(0)
ABSENT: Dobrozsi	(1)

SPECIAL PRESENTATION

Warren Walker, District Manager, Community and Government Relations for Duke Energy and Brad Schneider were present to provide an update to City Council on the gas pipeline expansion project, and are working with Wayne Davis and Brian Riblet to schedule another meeting to update City Council on future plans regarding utility infrastructure in and around Montgomery.

LEGISLATION FOR CONSIDERATION TONIGHT-CONTINUED

Pending Legislation

An Ordinance to Make Appropriations for Current Expenses and Other Expenditures of the City of Montgomery, State of Ohio, During the Fiscal Year Ending December 31, 2017

Mr. Suer read the Ordinance by title only and moved for passage. Mr. Margolis seconded.

Mr. Suer explained that this Ordinance, if approved, would accept the Appropriations for Current Expenses and Other Expenditures of the City of Montgomery, State of Ohio, During the Fiscal Year Ending December 31, 2017. He explained that these documents were presented to and reviewed with the Financial Planning Committee of City Council at their September 6 meeting and were formally reviewed with staff on September 14.

The roll was called and showed the following vote:

AYE: Combs, Cappel, Harbison, Roesch, Suer, Margolis	(6)
NAY:	(0)
ABSENT: Dobrozsi	(1)

An Ordinance for The Allocation of Earnings Tax Revenues and Amending Section 44.14 of The Montgomery Code of Ordinances

Mr. Margolis read the Ordinance by title only and moved for passage of the second reading. Mr. Cappel seconded.

Mr. Suer explained information has been supplied previously on this Ordinance that, if approved, will adjust the allocation of the City's Earnings Tax revenues. As you may recall, in the City's 2017 Operating and Capital Budget with Four Year Forecast, staff requested that City Council proceed with legislation which reallocates the City's Earnings Tax revenues effective February 1, 2017. The current allocation is: 76% of Earnings Tax revenues to the General Fund, 20% to the Capital Improvement Fund and 4% to the Debt Retirement Fund. The proposed reallocation would provide 80% of Earnings Tax revenues to the General Fund and 20% to the Capital Improvement Fund.

The roll was called and showed the following vote:

AYE: Cappel, Harbison, Roesch, Suer, Margolis, Combs	(6)
NAY:	(0)
ABSENT: Dobrozsi	(1)

An Ordinance Amending the Land Usage Code to Regulate Sexually Oriented Businesses

Mr. Margolis read the Ordinance by title only and moved for passage of the second reading. Mr. Cappel seconded.

Mr. Margolis explained that, if approved, this Ordinance will enact regulations governing Sexually Oriented Businesses. While such a business may not be compatible with the City's Business District and uses, the courts will not allow local communities to ban such businesses as they enjoy certain First Amendment freedoms. On the other hand, we are permitted to regulate the businesses through a licensing process, and to allow separation of such businesses from protected uses such as residences, schools and daycare centers. This Ordinance will enact the structure for the City to regulate the location and operation of these businesses in the City.

The roll was called and showed the following vote:

AYE: Harbison, Roesch, Suer, Margolis, Combs, Cappel	(6)
NAY:	(0)
ABSENT: Dobrozsi	(1)

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An Ordinance Rezoning a Portion of the Vintage Club Development to L-B Limited Business District with A Planned Development Overlay

Mr. Margolis read the Ordinance by title only and moved for passage of the second reading. Mr. Cappel seconded.

Mr. Margolis explained that, if approved, this Ordinance will rezone the property located at PIN 620-0210-0723-00 from the current zoning classification to 'LB' – Limited Business District with a Planned Development Overlay. City Council held a Public Hearing on October 5, in which the recommendation from the Planning Commission was heard regarding a request from MB Land Company to consider a rezoning application of this property. The property was recently annexed into the City of Montgomery from Symmes Township. The property is currently zoned 'O' Residence with Subservient Office and Business Uses, as it was zoned when located in the Township. Section 151.0104 states that for "all land that may hereafter be annexed to the City of Montgomery, the township zoning regulations existing at the time of annexation shall continue to govern the former township land until an amendment to the City of Montgomery Zoning Map is adopted in conformance with the procedures of this Zoning Code". Staff supports the rezoning of this property that would make the zoning consistent with the zoning of the Vintage Club.
The roll was called and showed the following vote:

AYE: Roesch, Suer, Margolis, Combs, Cappel, Harbison	(6)
NAY:	(0)
ABSENT: Dobrozsi	(1)

An Ordinance Amending the Statement of Conditions and Exceptions in The Vintage Club Planned Development Overlay District

Mr. Margolis read the Ordinance by title only and moved for passage of the second reading. Mr. Cappel seconded.

Mr. Margolis explained that, if approved, this Ordinance will modify the Vintage Club Planned Development List of Exceptions and Conditions. The proposed modifications to the Statement of Conditions and Exceptions were created by Staff and the applicant working hand in hand to address the conflicts between the Zoning Regulations in the underlying LB District and the approved General Development Plan. These modifications are consistent with the approved General Development Plan and the intent of the Vintage Club Planned Development which has been communicated from the beginning of the project.

The roll was called and showed the following vote:

AYE: Suer, Margolis, Combs, Cappel, Harbison, Roesch	(6)
NAY:	(0)
ABSENT: Dobrozsi	(1)

New Legislation

A Resolution Adopting a Five Year Capital Improvement Program for the City of Montgomery

Mr. Suer moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.

Mr. Suer read the Resolution by title only and moved for passage. Mr. Cappel seconded.

Mr. Suer explained that information has been supplied previously on this Resolution that, if approved, would adopt the City's proposed Five-Year Capital Improvement Program. This was reviewed by City Council as a companion piece to the proposed 2017 Operating and Capital Budget with Four Year Forecast and represents a comprehensive planning tool for capital investment in the community over the next five years.

The roll was called and showed the following vote:

AYE:	Suer, Margolis, Combs, Cappel, Harbison, Roesch	(6)
NAY:		(0)
ABSENT:	Dobrozsi	(1)

A Resolution Authorizing the City Manager to Enter into an Agreement with The Sycamore Community School District Board of Education to Assign a Part-Time School Resource Officer

Mrs. Combs moved to read the Resolution by title only. Mr. Cappel seconded. City Council unanimously agreed.

Mrs. Combs read the Resolution by title only and moved for passage. Mr. Cappel seconded.

Mrs. Combs explained that information has been supplied previously on this Resolution that, if approved, would authorize the City Manager to enter into an agreement with the Sycamore Community School District Board of Education to assign a Part-Time School Resource Officer to the Sycamore Junior High School. Since 2001, the City has partnered with the Sycamore Community School District to assign a School Resource Officer to the Sycamore Senior High School. In the interest of expanding upon this partnership and exploring new opportunities to build positive police/youth relationships, City staff and Sycamore School District officials have discussed a part-time School Resource Officer assignment at the junior high school. If approved, the tentative starting date for the position would be January 5, 2017. This is the first day of school after the holidays. The agreement would span the remaining 91 days of the 2016-2017 school year. Terms of the agreement would provide for an officer to be assigned four (4) hours per school day for the remainder of the school year. The School District would provide a fixed amount of twenty thousand dollars ($20,000) to partially compensate for the salary and fringe benefits associated with the position. The City would provide uniforms, equipment and training for the officer.

The roll was called and showed the following vote:

AYE:	Combs, Cappel, Harbison, Roesch, Suer, Margolis	(6)
NAY:		(0)
ABSENT:	Dobrozsi	(1)

A Resolution Authorizing an Amendment to the Current Contract with Donnellon, Donnellon and Miller for Legal Services to The City of Montgomery

Vice-Mayor Roesch asked Mrs. Harbison to sponsor this Resolution.

Mrs. Harbison moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.

Mrs. Harbison read the Resolution by title only and moved for passage. Mr. Cappel seconded.

Mrs. Harbison explained that, if approved, this Resolution will authorize an amendment to the current contract with Donnellon, Donnellon and Miller for legal services to the City of Montgomery. This Resolution is the result of the recent performance appraisal of the Law Director conducted by City Council and staff.

The roll was called and showed the following vote:

AYE:	Cappel, Harbison, Roesch, Suer, Margolis, Combs	(6)
NAY:		(0)
ABSENT:	Dobrozsi	(1)

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

ADMINISTRATION REPORT

Mr. Davis reported on the following items:

- Mr. Davis announced that earlier in the week, that an email had been sent informing everyone of Mrs. Combs resignation from City Council. Mr. Davis stated that Mrs. Combs had sold her home and would be moving out of the City. He stated that her final meeting would be at the January 4, 2017 Business Session.

- The Government Affairs Committee will meet in Council Chambers on Monday, December 12 at 4:30 p.m.

- The Parks and Recreation and Public Works Committees have cancelled their meetings for the month of December.

- City Council Work Session is scheduled for December 21, 2016 at 7:00 p.m.

- Meetings prior to City Council on December 21:

  - A CIC meeting will be held at 5:45 p.m. to discuss the Historic Landmark Grant.
  - A Special Meeting of City Council will be held at 6:00 p.m., to discuss matters of personnel.
  - A Public Hearing will be held at 6:45 p.m. to consider a request for the expansion of a conditional use permit for Montgomery Presbyterian Church at 9994 Zig Zag Road to expand the enrollment from 45 to 60 students in Skyward Academy.

- The City's annual Holiday in the Village festivities were held on Saturday, December 3. The tree was adorned with 3,000 lights. Thanks to public works for your work and time to make this a great event. The Montgomery Community Church provided the outstanding music and energy to this event.

- Along with Councilmembers Craig Margolis and Mike Cappel, and Matthew Vanderhorst, he attended a presentation by the Southwest Ohio Regional Transit Authority (SORTA) which was held at the Madeira Municipal Building on Monday, December 5. Dwight Ferrell, CEO and General Manager of SORTA talked about the funding challenges faced by SORTA, and how it has prevented them from expanding public transportation service beyond downtown Cincinnati. He stated that SORTA has partnered with a third party consultant to help them create a 10-year master plan for expanding service and develop an alternative funding source. Mr. Ferrell stated that the funding does not include the streetcar as that is a separate project. Mr. Ferrell also stated that he would like to share their plan with local officials and community members to determine if they are on the correct path so they can make changes if necessary.

- The Board of Zoning Appeals met Tuesday evening to hear an application from Life Enriching Communities to allow for outdoor dining to be located a minimum of ten feet from the right-of-way for the new retail/restaurant building to be developed at 9856 Montgomery Road. After hearing the testimony provided by Staff, Life Enriching Communities and the adjacent property owners, and weighing the facts of the case, the Board of Zoning Appeals approved the variance request as submitted.

- On Wednesday, December 7, he met with Sycamore School's Superintendent Frank Forsthoefel, Treasurer Beth Weber and members of the Sycamore School Board, along with Terry Donnellon and Katie Smiddy, to provide them with an update on the progress of the Gateway Redevelopment Area.

- On Wednesday, December 7, he and Brian met with representatives from Duke Energy and Tri-Health Pavilion to review and discuss the proposed routing of the Duke Energy Gas Pipeline project. The current proposed route includes routing the natural gas pipeline through the western edge of the Tri-Health Pavilion property.

- On Wednesday, December 7, he met with residents of Jolain Drive along with Terry Donnellon and Brian Riblet to review and discuss the potential storm water project to reduce flooding in the rear of several properties on Jolain Drive. This issue has been investigated, researched, and discussed for several years and has been an agenda item at multiple Public Works Committee meetings. Staff has always moved forward in an attempt to find a positive outcome and currently a public/private partnership project. The proposed project includes the removal of an existing 12" concrete storm pipe and the installation of dual 24" concrete storm pipes and is currently being considered for inclusion in the 2017 City budget.

- The Civil Service Commission met Tuesday evening to review and certify the results of the November 19 police patrol officer written examination. Don Simpson, Paul Wright, Ben Shapiro and Julie Prickett were also in attendance. A total of 19 candidates took the exam with 18 candidates achieving a passing score. Interviews for two open positions will be conducted in January.

- A reminder that this Friday is the Annual Holiday Luncheon which will be held on from 11:00 a.m. to 1:00 p.m. at Terwilliger Lodge.

- Breakfast with Santa is this Saturday morning at Terwilliger Lodge. The event will run from 8:30 to 10:30 a.m. This is an all-you-can-eat for $5 a plate or $20 for a family. Please remember to bring non-perishable food items to be donated to the FreeStore Foodbank. All proceeds from this event will benefit the Holiday Family Fund.

- As a reminder, a Certificate of Appreciation will be presented to Kathleen Whitton with Bethesda North Hospital on Wednesday, December 14 at 8:30 a.m. The presentation will be held in the Golder II conference room on the second floor.

APPROVAL OF MINUTES

Mr. Margolis moved to approve the November 16, 2016 Work Session minutes as amended. Mr. Cappel seconded. City Council unanimously agreed.

MAYOR'S COURT

Vice-Mayor Roesch reported that the total Mayor's Court collections for the month of November 2016 were $14,170.00

Mr. Margolis moved to accept the Mayor's Court collections for the month of November 2016. Mr. Cappel seconded. City Council unanimously accepted the collections.

OTHER BUSINESS

Mr. Margolis reported that at the Planning, Zoning and Landmarks Committee meeting on November 7, the Committee made a motion to recommend to City Council the review and study of recommended text amendments to Chapter's 150 and 151 of the Zoning Code. He stated that areas of review will be the definition of Drug Treatment Center, the update of the Sign Code, regulations to cellular or small cell facilities, state regulations on medical marijuana, Heritage District Design Guidelines and the Montgomery Road Commercial Corridor Design Guidelines.
Mr. Margolis made a motion for staff and the Planning Commission to move ahead with the review process of proposed text amendments to Chapters 150 and 151 of the Zoning Code.

Mr. Cappel seconded. City Council Unanimously agreed.

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Vice-Mayor Roesch asked if there was any further business to discuss in Public Session. There being none, she asked for a motion to adjourn.

Mr. Margolis moved to adjourn. Mr. Cappel seconded. City Council unanimously agreed.

City Council adjourned at 7:54 p.m.

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Connie Gaylor, Clerk of Council