

December 30, 2016

TO: Mayor and City Council Members  
FROM: Wayne S. Davis, City Manager *WSD*  
SUBJECT: City Council Business Session of Wednesday, January 4, 2017

As a reminder, City Council is scheduled to meet in Business Session on Wednesday, January 4, 2017 at 7:00 p.m.

**Business Session**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Special Presentation
  - a. Ann Combs will be presented with a proclamation in recognition of her years of service as a City Council member
5. Guests and Residents
6. Legislation for Consideration Tonight

**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, 3<sup>rd</sup> Reading) Information has been previously supplied 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.

***There is no need for a Motion to Read by Title Only on the second or third reading of an Ordinance. By Charter the second and third readings of an Ordinance are automatically by title only without a motion. A Motion is only needed on the first reading of an Ordinance, and the first and only reading of a Resolution.***

***Move for passage of the Ordinance***

### **Roll Call Vote**

- b. An Ordinance Amending the Land Usage Code to Regulate Sexually Oriented Businesses— (Mr. Margolis, 3<sup>rd</sup> Reading) Information has been previously supplied on this Ordinance, that if approved, 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.

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***Move for passage of the Ordinance***

### **Roll Call Vote**

- c. An Ordinance Rezoning a Portion of the Vintage Club Development to L-B Limited Business District with A Planned Development Overlay—(Mr. Margolis, 3<sup>rd</sup> Reading) Information has been previously supplied on this Ordinance, that if approved, 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.

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***Move for passage of the Ordinance***

### **Roll Call Vote**

- d. An Ordinance Amending the Statement of Conditions and Exceptions in The Vintage Club Planned Development Overlay District—(Mr. Margolis, 3<sup>rd</sup> Reading) Information has been previously supplied on this Ordinance, that if approved, 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.

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***Move for passage of the Ordinance***

***Roll Call Vote***

### **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**—(Mr. Cappel) Information has been previously supplied on this Resolution, that if approved, will 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.

***Move to read the Resolution by title only***

***Voice Vote***

***Move passage of the Resolution***

***Roll Call Vote***

**7. Administration Report**

**8. Approval of Minutes** — December 21, 2016 Special Session; December 21, 2016 Public Hearing; December 21, 2016 Work Session

**9. Mayor's Court Report**

**10. Other Business**

**11. Executive Session**

**12. 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  
Julie Kipper

January 4, 2017

**City Council Business Session – 7:00 p.m.**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Special Presentation

- a. Ann Combs will be presented with a proclamation in recognition of her years of service as a City Council member

5. Guests and Residents

6. Legislation for Consideration Tonight

**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, 3<sup>rd</sup> Reading)

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*Move for passage of the Ordinance*

*Roll Call Vote*

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

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*Move for passage of the Ordinance*

*Roll Call Vote*

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

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*Move for passage of the Ordinance*

**Roll Call Vote**

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

***There is no need for a Motion to Read by Title Only on the second or third reading of an Ordinance. By Charter the second and third readings of an ordinance are automatically by title only without a motion. A Motion is only needed on the first reading of an Ordinance, and the first and only reading of a Resolution.***

***Move for passage of the Ordinance***

**Roll Call Vote**

**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—(Mr. Cappel)

***Move to read the Resolution by title only***

**Voice Vote**

***Move passage of the Resolution***

**Roll Call Vote**

**7. Administration Report**

- 8. Approval of Minutes** — December 21, 2016 Special Session; December 21, 2016 Public Hearing; December 21, 2016 Work Session

**9. Mayor's Court Report**

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

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); Cattaraugus 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 United 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 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.<sup>1</sup>

(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.<sup>2</sup>

(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.<sup>3</sup>

(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.<sup>4</sup>

(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.<sup>5</sup>

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

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

<sup>3</sup> *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485.

<sup>4</sup> Pursuant to R.C. 2907.40(C)(1).

<sup>5</sup> 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.<sup>6</sup>

**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

<sup>6</sup> 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

**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

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City of Montgomery  
City Council Special Session  
December 21, 2016

Present

Wayne Davis, City Manager  
Julie Kipper, Acting Clerk of Council

City Council Members Present

Chris Dobrozsi, Mayor  
Lynda Roesch, Vice Mayor  
Ann Combs  
Mike Cappel  
Gerri Harbison  
Ken Suer  
Craig Margolis

City Council convened in Council Chambers for the Special Session at 6:01 p.m. with Mayor Dobrozsi presiding.

Mayor Dobrozsi called the meeting to order and asked for a motion to adjourn into Executive Session for matters related to personnel appointment and purchase and/or sale of real estate.

Mr. Margolis moved to adjourn into Executive Session for matters related to personnel appointment and purchase and/or sale of real estate. Mr. Cappel seconded.

The roll was called and showed the following vote:

AYE: Combs, Harbison, Roesch, Suer, Margolis, Cappel, Dobrozsi	(7)
NAY:	(0)
ABSENT:	(0)

City Council adjourned into Executive Session at 6:03 p.m.

City Council reconvened into Public Session at 6:40 p.m.

Mayor Dobrozsi asked if there was any further business to discuss in Public Session. There being none, he asked for a motion to adjourn.

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

City Council adjourned the Special meeting at 6:43 p.m.

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Julie Kipper, Acting Clerk of Council

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City of Montgomery  
City Council Public Hearing Minutes  
December 21, 2016

Present

Wayne Davis, City Manager  
Terry Donnellon, Law Director  
Tracy Roblero, Community Development Director  
Katie Smiddy, Finance Director  
Julie Kipper, Acting Clerk of Council

City Council Members Present

Chris Dobrozsi, Mayor  
Lynda Roesch  
Ann Combs  
Gerri Harbison  
Ken Suer  
Mike Cappel  
Craig Margolis

Guests and Residents

Michelle Bacon, Pastor, Montgomery Presbyterian Church  
Melissa Amrein, Director, Skyward Academy

---

City Council convened in Council Chambers at 6:48 p.m. with Mayor Dobrozsi presiding, to conduct a Public Hearing to consider 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.

Ms. Roblero stated that Montgomery Presbyterian Church was approved for an expansion of their conditional use permit to allow Skyward Academy to operate out of the church with a maximum number of 45 students in May of 2015. Skyward Academy is now requesting to allow for a maximum of 60 students to be enrolled in the school. Montgomery Presbyterian Church has several classrooms at the church and Skyward Academy is currently operating out of five classrooms. If the expansion request is approved, Skyward Academy will utilize seven classrooms. Skyward Academy would be in operation from 8:45 a.m. until 3:00 p.m. with extended day care offered from 8:00 a.m. to 9:00 a.m., and again from 3:00 p.m. until 5:30 p.m. There would not be any evening classes or activities. Ms. Roblero stated that the applicant is proposing that there would be no more than 60 students with 14 teachers, however the student to teacher ratio could change depending on the needs of their students.

Ms. Roblero stated that the Planning Commission met on November 14 to consider and discuss this application. At the conclusion of the meeting, the Planning Commission voted unanimously to recommend approval of the expansion of the conditional use permit with the following conditions:

1. The conditional use permit is limited to the operation of the school with a maximum daily attendance of 60 students. The applicant would need to return for an expansion of the permit if enrollment exceeds 60 students per day.
2. There will be no outdoor evening activities.
3. All outdoor activities will be monitored by staff.
4. All drop off and pick up shall be at the designated area.

Ms. Roblero stated that staff supports the recommendation of the Planning Commission and the application as submitted, and that staff has not received any calls from any adjacent property owners in favor of or in opposition of the application.

Pastor Michelle Bacon addressed City Council and stated that the Church has a wonderful partnership with Skyward Academy, and that they are able to offer Skyward Academy the space to operate at a well below market rate, which makes it possible for Skyward Academy to have a place to operate and provides an important resource for the community. Ms. Bacon also stated that the rent that the Academy pays to the Church covers a significant part of the Church's operating budget, which helps the Church to continue offering its services to the community. Ms. Bacon thanked City Council for their consideration of this request.

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City Council Public Hearing Minutes

December 21, 2016

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53 Ms. Harbison stated that she has a friend that has a son that could possibly be able to attend Skyward Academy if  
54 the expansion is approved, and that this expansion could greatly benefit not only her friend's son, but other  
55 citizens of the community as well.

56  
57 Mr. Cappel stated that this is an exciting opportunity being created for citizens of the community and that the  
58 students' letters were very moving, and it is clear that the opportunities are greatly appreciated.

59  
60 Ms. Melissa Amrein addressed City Council and stated that the students and families are very grateful for the  
61 opportunity, and there is definitely a need and there are not a lot of options for these kids and that this is their first  
62 chance to really be successful in school. She stated that she hears from many parents of their students that are so  
63 thankful that Skyward Academy is an option for their kids. She thanked Pastor Michelle Bacon for the partnership  
64 with the Church, and thanked the community for their support.

65  
66 Mr. Suer stated that he feels this is excellent work that is being done at Skyward Academy, and that it is fulfilling  
67 a need for parents with children that have special needs, and provides an excellent resource for them. He also  
68 stated that he likes to see buildings in Montgomery being utilized for other purposes, and that having Skyward  
69 Academy at the Church ensures that buildings are not going unused or underutilized.

70  
71 Mr. Margolis recognized Pastor Bacon as a graduate of the MCLA program, and also a wonderful neighbor within  
72 the community through the Montgomery Presbyterian Church, and that he values the importance of their  
73 partnership with Skyward Academy and what it offers to the community.

74  
75 Mayor Dobrozsi stated that he wanted to recognize that Montgomery Presbyterian Church sponsors local Boy  
76 Scout Troop 258, and for years it has provided a place for those kids to continue in the Boy Scout and Eagle Scout  
77 programs. Mayor Dobrozsi stated that he appreciates the numerous contributions that the Church provides to the  
78 community as a whole.

79  
80 Mayor Dobrozsi stated that City Council has four options regarding this hearing request; to Approve the  
81 Recommendation, Deny the Recommendation, remand the matter to Planning Commission for more information,  
82 or take the matter under advisement and vote at another public meeting within thirty days.

83  
84 Ms. Harbison made a motion to approve the recommendation from the Planning Commission. Mr. Cappel  
85 seconded.

86  
87 The roll was called and showed the following vote:

88  
89 AYE: Combs, Cappel, Harbison, Dobrozsi, Roesch, Suer, Margolis (7)

90 NAY: (0)

91 ABSENT: (0)

92  
93 Mayor Dobrozsi thanked everyone for attending this evening's meeting, and asked for a motion to adjourn from  
94 the Public Hearing.

95  
96 Mr. Margolis moved to adjourn the Public Hearing. Mr. Cappel seconded. City Council unanimously agreed.

97  
98 The meeting was adjourned at 6:57 p.m.

99  
100  
101

---

Julie Kipper, Acting Clerk of Council

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City of Montgomery  
City Council Work Session Minutes  
December 21, 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  
Julie Kipper, Acting Clerk of Council

City Council Members Present

Chris Dobrozsi, Mayor  
Lynda Roesch, Vice Mayor  
Craig Margolis  
Mike Cappel  
Gerri Harbison  
Ken Suer  
Ann Combs

City Council convened in Council Chambers for the Work Session at 7:00 p.m. with Mayor Dobrozsi presiding.

ROLL CALL

Mayor Dobrozsi asked for a motion to dispense with the roll call since everyone was in attendance.

Mr. Margolis moved to dispense with the roll call. Mr. Cappel seconded. City Council unanimously agreed.

Legislation for Consideration this Evening

**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**

Mayor Dobrozsi requested a motion to add this Ordinance to the agenda for consideration this evening.

Vice Mayor Roesch moved to add the Ordinance to the agenda. Mr. Margolis seconded. City Council unanimously agreed.

Mayor Dobrozsi assigned the legislation to Mr. Suer.

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

Mr. Suer stated that this is an Ordinance that will amend appropriations for current expenses and other expenditures of the City of Montgomery, Montgomery Ohio during the fiscal year ending December 31, 2016.

Mr. Suer moved to suspend the rules requiring reading of the Ordinance on three separate occasions. Mr. Margolis seconded.

The roll was called and showed the following vote to approve the suspension of rules:

AYE: Combs, Cappel, Harbison, Dobrozsi, Roesch, Suer, Margolis (7)  
NAY: (0)  
ABSENT: (0)

Mr. Suer moved for passage of the Ordinance. Mr. Cappel seconded. City Council unanimously agreed.

Mr. Suer explained that this Ordinance 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

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54 reconcile line items which had expenditures exceed budget for various reasons, which need additional  
55 appropriations or are required to be reduced by law. The aggregate effect of the supplemental appropriations is to  
56 increase total appropriations by \$929,102. Most of the increase is the result of transferring the ending cash balance  
57 in the Vintage Club Capital Construction fund to the Vintage Club TIF Fund. Furthermore, there are reductions in  
58 appropriations as the result of actual revenues that were less than estimated. Under Ohio Revised Code,  
59 appropriations should be reduced in these funds.

60  
61 Ms. Smiddy explained that this Ordinance is an annual end of year process to increase or decrease appropriations  
62 in various funds for the year, and ensures that all City funds are appropriately funded for Fiscal Year 2016 closeout  
63 consistent with the Ohio Revised Code. She stated that this information was reviewed by the Financial Planning  
64 Committee of Council at the December 5, 2016 meeting. She stated that the result of transferring the ending cash  
65 balance in the Vintage Club Capital Construction fund to the Vintage Club TIF Fund will officially close out the  
66 Vintage Club Capital Construction Fund.

67  
68 The roll was called and showed the following vote:

69  
70 AYE: Cappel, Harbison, Dobrozsi, Roesch, Suer, Margolis, Combs (7)  
71 NAY: (0)  
72 ABSENT: (0)  
73

74 **ESTABLISHING AN AGENDA FOR JANUARY 4, 2017**

75  
76 **Pending Legislation**

77  
78 **An Ordinance for The Allocation of Earnings Tax Revenues and Amending Section 44.14 of The Montgomery**  
79 **Code of Ordinances— (Mr. Suer, 3<sup>rd</sup> Reading)**  
80

81 Mayor Dobrozsi stated that this will be the third reading of this Ordinance for The Allocation of Earnings Tax  
82 Revenues and Amending Section 44.14 of The Montgomery Code of Ordinances.  
83

84 Mayor Dobrozsi asked Ms. Smiddy if there were any updates to this legislation.

85  
86 Ms. Smiddy responded that there were none.  
87

88 **An Ordinance Amending the Land Usage Code to Regulate Sexually Oriented Businesses— (Mr. Margolis,**  
89 **3<sup>rd</sup> Reading)**  
90

91 Mayor Dobrozsi stated that this will be the third reading of this Ordinance Amending the Land Usage Code to  
92 Regulate Sexually Oriented Businesses.  
93

94 Mayor Dobrozsi asked Ms. Roblero if there were any updates.

95  
96 Ms. Roblero stated that there were none.  
97

98 Mr. Donnellon stated that the City of Loveland recently passed a similar Ordinance regarding sexual encounter  
99 businesses.  
100

101 **An Ordinance Rezoning a Portion of the Vintage Club Development to L-B Limited Business District with A**  
102 **Planned Development Overlay— (Mr. Margolis, 3<sup>rd</sup> Reading)**  
103

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104 Mayor Dobrozsi stated that this will be the third reading of this Ordinance Rezoning a Portion of the Vintage Club  
105 Development to L-B Limited Business District with A Planned Development Overlay  
106

107 Mayor Dobrozsi asked Ms. Roblero if there were any updates to this legislation.  
108

109 Ms. Roblero stated that there were none.  
110

111 **An Ordinance Amending the Statement of Conditions and Exceptions in The Vintage Club Planned**  
112 **Development Overlay District— (Mr. Margolis, 3<sup>rd</sup> Reading)**  
113

114 Mayor Dobrozsi stated that this will be the third reading of this Ordinance Amending the Statement of Conditions  
115 and Exceptions in The Vintage Club Planned Development Overlay District.  
116

117 Mayor. Dobrozsi asked Ms. Roblero if there were any updates to this legislation.  
118

119 Ms. Roblero responded that there were none.  
120

#### 121 **New Legislation** 122

123 **A Resolution Authorizing the City Manager to Enter into a Contract with CT Consultants, Inc. for**  
124 **Professional Services Related to General Engineering and Architectural Services for Calendar Year 2017**  
125

126 Mr. Riblet explained that if approved, this Resolution will authorize the City Manager to enter into a one-year  
127 contract with CT Consultants, Inc. for professional engineering and architectural services for calendar year 2017.  
128 The City has contracted for approximately 25 years with CDS Associates Inc., which merged with CT Consultants,  
129 Inc. in 2014, to provide civil, traffic, structural, electrical and storm water engineering services. CT Consultants has  
130 provided a competitive fee structure for 2017 including slight hourly rate increases for engineering services. As was  
131 provided in previous years, CT Consultants has deleted the line item for billing of the "Principal" from the fee  
132 schedule. If for any reason the Principal Engineer provides engineering services during the contract year for  
133 development/design review or project design/review, that work would be billed at the hourly rate of a "Senior  
134 Manager". Funding for this professional services contract is included in the City's 2017 Operating Budget in both  
135 the Public Works and Community Development operating budgets.  
136

#### 137 **ADMINISTRATION REPORT** 138

139 Mr. Wayne Davis reported on the following items:  
140

- 141 • Monday, January 2, 2017, City offices will be closed in observance of New Year's Day.  
142
- 143 • The Planning, Zoning and Landmarks, Financial Planning, and the Law and Safety Committees of City  
144 Council have cancelled their meetings for Monday, January 2, 2017.  
145
- 146 • City Council Business Session is scheduled for January 4, 2017 at 7:00 p.m.  
147
- 148 • Last Thursday, December 15, Assistant Finance Director/Tax Commissioner Tonyia Burnett unexpectedly  
149 resigned.  
150
- 151 • Today, the Fire Department's Ambulance Committee traveled to Van Wert, Ohio to tour the Braun  
152 Ambulance Company as they research what aspects to include in the specifications for the new ambulance  
153 purchase as part of the 2017 Capital Improvement Program. The committee toured the Horton Ambulance

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City Council Work Session Minutes

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- 154 Company in November. During January the committee plans to visit a few local departments that have  
155 received recent deliveries of new ambulances. The last step will be final specification development as the  
156 committee works towards a March proposal deadline.  
157
- 158 • Public works staff is currently working with representatives from Greater Cincinnati Water Works  
159 (GCWW) on the scheduling, hours of work, and time frame to adjust a water main valve box at the  
160 intersection of Montgomery Road and Cooper Road. The work could possibly start as early as next week  
161 but staff will provide more details as they are defined.  
162
  - 163 • On Thursday, crews from Capital Electric will be working to repair the traffic signal at the intersection of  
164 Montgomery Road and Market Place. The power service for the traffic signal will be shut down to allow  
165 crews to make the necessary repairs and the intersection will be maintained by a patrol officer during this  
166 time. Work is anticipated to begin at 8:45 a.m. and potentially could last through the day time hours.  
167
  - 168 • The Planning Commission also considered a request from the Public Works Department for a conditional  
169 use permit and Final Development Site plan approval for the proposed building expansion. After hearing  
170 from Staff and discussing the project, the Planning Commission voted to recommend approval of the  
171 conditional use permit to City Council and approved the Final Development Site plan. Staff requests that  
172 City Council set a date for the public hearing for the proposed building expansion. If it is acceptable to City  
173 Council, staff recommended setting the hearing at 6:45 p.m. on Wednesday, February 1.  
174
  - 175 • The first session of the Montgomery Citizens Leadership Academy will be held on January 12, 2017.  
176
  - 177 • As a reminder, City offices will be closed on Friday, December 23 and Monday December 26 in observance  
178 of the Christmas holiday.  
179
  - 180 • Mr. Davis requested an Executive Session at end of meeting for matters related to the sale and/or purchase  
181 of real estate.  
182

183 **LAW DIRECTOR REPORT**

184  
185 Mr. Donnellon did not have anything to report, however he wished everyone a happy holiday.  
186

187 **CITY COUNCIL REPORTS**

188  
189 Mrs. Combs wished everyone a happy holiday. She stated that she will miss everyone and appreciates her time  
190 serving as a member of City Council.  
191

192 Mr. Cappel stated that his thoughts are with everyone working over the holiday on behalf of the City.  
193

194 Mr. Cappel reported that the rain barrel at the Public Works building looks really nice and that construction is  
195 coming along well.  
196

197 Mr. Cappel reported that he met with the Webelos troop at the Montgomery Presbyterian Church on Tuesday  
198 evening. He stated that they asked very good questions and had good discussions on teardowns and related  
199 deforestation.  
200

201 Mrs. Harbison reported that the first general meeting of the First Suburbs Consortium will be held on January 31,  
202 2017 from 6:00 - 8:00 p.m. The topic of the meeting will be on housing.  
203

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City Council Work Session Minutes

December 21, 2016

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204 Vice Mayor Roesch reported that the Parks and Recreation Committee had their holiday dinner meeting and the  
205 Beautification and Tree Committee had their holiday brunch meeting.

206  
207 Vice Mayor Roesch reported that the Blue Ash Montgomery Symphony Orchestra (BAMSO) held their holiday  
208 concert on December 4.

209  
210 Vice Mayor Roesch reported that the Blue Ash Montgomery Symphony Orchestra (BAMSO) received  
211 notification on Monday that they received the Nippert Foundation grant.

212  
213 Vice Mayor Roesch wished everyone happy holidays.

214  
215 Mr. Suer wished everyone happy holidays.

216  
217 Mr. Suer asked Ms. Roblero a question about the recent case that came before the Planning Commission and Board  
218 of Zoning Appeals regarding the Twin Lakes expansion project and their request for a variance to allow for outdoor  
219 seating. Ms. Roblero stated that their request for a variance was approved, which will allow for outdoor dining. She  
220 stated it was approved at 10 feet off the right of way.

221  
222 Mr. Margolis thanked the First Responders and Public Works employees that will be working over the holiday.

223  
224 Mr. Margolis reported that he attended the Planning Commission meeting held on Monday, December 19.

225  
226 Mr. Margolis reported that he, along with Matthew Vanderhorst, and Tom Wolf attended the WeThrive Community  
227 Recognition Event on December 1. He stated the City was recognized with an award for our accomplishments  
228 including adding healthy food options at the Pool Concessions, EMS SignPost program and the Home Safety check  
229 program. Mr. Margolis expressed his thanks to everyone that is involved in supporting the WeThrive initiative for  
230 the community.

231  
232 Mayor Dobrozsi recognized Mr. Cappel's upcoming birthday on December 30, and wished Matthew Vanderhorst  
233 a happy belated birthday, as his birthday was December 15.

234  
235 Mayor Dobrozsi thanked the Police and Fire department for their efforts today.

236  
237 Mayor Dobrozsi thanked everyone for another successful Holiday in The Village and tree lighting event on  
238 December 3.

239  
240 **APPROVAL OF MINUTES**

241  
242 Mayor Dobrozsi requested a motion to approve the December 6, 2016 Business Session minutes.

243  
244 Mr. Margolis moved to approve the December 6, 2016 Business Session minutes. Mr. Cappel seconded. City  
245 Council unanimously agreed.

246  
247 **OTHER BUSINESS**

248  
249 Mayor Dobrozsi stated that City Council needed to appoint the 2017 Ohio-Kentucky-Indiana (OKI) representative.

250  
251 Mrs. Harbison made a motion to appoint Mayor Dobrozsi as the 2017 OKI representative. Vice Mayor Roesch  
252 seconded. City Council unanimously agreed.

253

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.

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254 Mayor Dobrozsi reported he received a letter from Mayor Demyunk from Neuilly-Plaisance inviting him to visit  
255 in July 2017. He stated that he would email City Council a copy of the letter.

256  
257 Mayor Dobrozsi asked if there was any further business to discuss in Public Session. There being none, he asked  
258 for a motion to adjourn into Executive Session for the purposes of discussing matters related to the sale and/or  
259 purchase of real estate.

260  
261 Mr. Margolis moved to adjourn to Executive Session to discuss matters related to the sale and/or purchase of real  
262 estate. Mr. Cappel seconded.

263  
264 The roll was called and showed the following vote:

265  
266 AYE: Combs, Cappel, Harbison, Dobrozsi, Roesch, Suer, Margolis (7)  
267 NAY: (0)  
268 ABSENT: (0)

269  
270 City Council adjourned into Executive Session at 7:25 p.m.

271  
272 City Council reconvened into Public Session at 7:39 p.m.

273  
274 Mayor Dobrozsi asked if there was any further business to discuss in Public Session. There being none, he asked  
275 for a motion to adjourn

276  
277 Mr. Margolis moved to adjourn. Mr. Cappel seconded. City Council unanimously agreed.

278  
279 City Council adjourned at 7:40 p.m.

280  
281  
282  
283

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Julie Kipper, Acting Clerk of Council