

November 11, 2016

TO: Mayor and City Council Members

FROM: Wayne S. Davis, City Manager *WSD*

SUBJECT: City Council Work Session of Wednesday, November 16, 2016

As a reminder, City Council is scheduled to meet in Work Session on Wednesday, November 16, 2016 at 7:00 p.m.

Prior to the City Council Work Session, there will be a Special Session of City Council at 6:15 p.m. It is anticipated that City Council will be moving into Executive Session to discuss matters related to personnel.

### Work Session

1. Call to Order
2. Roll Call
3. Guests and Residents
4. Legislation for Consideration Tonight
5. Establishing an Agenda for December 7, 2016

### Pending Legislation

- a. An Ordinance to Make Appropriations for Current Expenses and Other Expenditures of the City of Montgomery, State of Ohio, During the Fiscal Year Ending December 31, 2017—(Mr. Suer, 3<sup>rd</sup> Reading) Information has been supplied previously on this Ordinance that establishes the City's Budget for fiscal year 2017. These documents were presented to and reviewed with the Financial Planning Committee of City Council at their September 6 meeting. On September 14, City Council and staff formally reviewed the 2017 Operating and Capital Budget with Four Year Forecast and 2017-2021 Capital Improvement Program. Changes to the Budget as a result of that meeting have been incorporated into the revised Budget.

***Add this Ordinance to the December 7, 2016 Business Session agenda with adoption of the Ordinance requested at that meeting.***

- b. An Ordinance for The Allocation of Earnings Tax Revenues and Amending Section 44.14 of The Montgomery Code of Ordinances—(Mr. Suer, 2<sup>nd</sup> Reading) Information has been supplied previously on this Ordinance that will adjust the allocation of the City's Earnings Tax revenues. As you may recall, in the City's 2017 Operating and Capital Budget with Four Year Forecast, staff requested that City Council proceed with legislation which reallocates the City's Earnings Tax revenues effective February 1, 2017. The current allocation is: 76% of Earnings Tax revenues to the General Fund, 20% to the Capital Improvement Fund and 4% to the Debt Retirement Fund. The proposed reallocation would provide 80% of Earnings Tax revenues to the General Fund and 20% to the Capital Improvement Fund.

***Add this Ordinance to the December 7, 2016 Business Session for second reading at that meeting. The third reading will be held at the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.***

- c. An Ordinance Amending the Land Usage Code to Regulate Sexually Oriented Businesses— (Mr. Margolis, 2<sup>nd</sup> Reading) Information has been supplied previously on this Ordinance to enact regulations governing Sexually Oriented Businesses. While such a business may not be compatible with the City's Business District and uses, the courts will not allow local communities to ban such businesses as they enjoy certain First Amendment freedoms. On the other hand, we are permitted to regulate the businesses through a licensing process and to allow separation of such businesses from protected uses such as residences, schools, and daycare centers. This Ordinance will enact the structure for the City to regulate the location and operation of these businesses in the City.

***Add this Ordinance to the December 7, 2016 Business Session for second reading at that meeting. The third reading will be held at the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.***

- d. An Ordinance Rezoning a Portion of the Vintage Club Development to L-B Limited Business District with A Planned Development Overlay—(Mr. Margolis, 2<sup>nd</sup> Reading) Information has been supplied previously on this Ordinance that will rezone the property located at PIN 620-0210-0723-00 from the current zoning classification to 'LB' – Limited Business District with a Planned Development Overlay. City Council held a Public Hearing on October 5, in which the recommendation from the Planning Commission was heard regarding a request from MB Land Company to consider a rezoning application of this property. The property was recently annexed into the City of Montgomery from Symmes Township. The property is currently zoned 'O' Residence with Subservient Office and Business Uses as it was zoned when located in the Township. Section 151.0104 states that for "all land that may hereafter be annexed to the City of Montgomery, the township zoning regulations existing at the time of annexation shall continue to govern the former township land until an amendment to the City of Montgomery Zoning Map is adopted in conformance with the procedures of this Zoning Code". Staff supports the rezoning of this property that would make the zoning consistent with the zoning of the Vintage Club.

***Add this Ordinance to the December 7, 2016 Business Session for second reading at that meeting. The third reading will be held at the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.***

- e. An Ordinance Amending the Statement of Conditions and Exceptions in The Vintage Club Planned Development Overlay District—(Mr. Margolis, 2<sup>nd</sup> Reading) Information has been supplied previously on this Ordinance that will modify the Vintage Club Planned Development List of Exceptions and Conditions. The proposed modifications to the Statement of Conditions and Exceptions were created by staff and the applicant working hand in hand to address the conflicts between the Zoning Regulations in the underlying LB District and the approved General Development Plan. These modifications are consistent with the approved General Development Plan and the intent of the Vintage Club Planned Development which has been communicated from the beginning of the project.

***Add this Ordinance to the December 7, 2016 Business Session for second reading at that meeting. The third reading will be held at the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.***

## New Legislation

- a. A Resolution Adopting a Five Year Capital Improvement Program for the City of Montgomery— Please find attached correspondence from Finance Director, Katie Smiddy, requesting that City Council consider a Resolution to adopt the City's proposed Five-Year Capital Improvement Program. This was reviewed by City Council as a companion piece to the proposed 2017 Operating and Capital Budget with Four Year Forecast and represents a comprehensive planning tool for capital investment in the community over the next five years.

***Add this Resolution to the December 7, 2016 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.***

- b. A Resolution Authorizing a Grant in The Amount of \$12,500.00 To The Center for Addiction Treatment—At the October 5, City Council Business Session, City Council made a motion to support a recommendation made by the Law and Safety Committee to issue a grant in the amount of \$12,500 to the Center for Addiction Treatment (CAT). At the October 3, Law and Safety Committee meeting, Sandi Kuehne, President and CEO of CAT as well as Ken Schneider, Board Member of the Center, made a presentation to the Committee requesting a grant contribution to support the treatment center's expansion efforts. This vital service serves all Hamilton County residents and is the only non-hospital detoxification center within a 180-mile radius. The funds for this grant are available in the General Fund, the Public Health and Welfare account and the Law Enforcement Fund, partially due to cost savings realized when the Sycamore Senior Center closed its operations earlier in the year

***Add this Resolution to the December 7, 2016 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.***

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

***Add this Resolution to the December 7, 2016 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.***

## 6. Administration Report

## 7. Law Director Report

## 8. City Council Member Reports

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

**9. Approval of Minutes**—November 2, 2016 Business Session Minutes

**10. Other Business**

- a. Mayor's Court Report

**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  
File



## CITY COUNCIL WORK SESSION AGENDA

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

November 16, 2016

### City Council Special Session-6:15 p.m.

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

### City Council Work Session –7:00 p.m.

1. Call to Order
2. Roll Call
3. Special Presentation
4. Guests and Residents
5. Legislation for Consideration Tonight
6. Establishing an Agenda for December 7, 2016

### Pending Legislation

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***Add this Ordinance to the December 7, 2016 Business Session agenda with adoption of the Ordinance requested at that meeting.***

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***Add this Ordinance to the December 7, 2016 Business Session for second reading at that meeting. The third reading will be held at the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.***

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### **9. City Council Member Reports**

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

### **10. Approval of Minutes— November 2, 2016 Business Session Minutes**

### **11. Other Business**

- a. Mayors Court Report

### **12. Executive Session**

### **13. Adjournment**

ORDINANCE NO. \_\_\_\_\_, 2016

**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**

**WHEREAS**, Council previously did approve and submit to the Budget Commission a budget for revenues and expenses for the fiscal year commencing January 1, 2017 and ending December 31, 2017; and

**WHEREAS**, the proposed budget has been accepted and approved, and Council does desire to appropriate funds according to the budget to meet current expenses and other expenditures for the 2017 fiscal year.

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

**SECTION 1.** Commencing January 1, 2017 and for the fiscal year ending December 31, 2017, in order to provide for the current expenses and other expenditures of the City, the sums detailed on the attached schedule are hereby appropriated as if such schedule is fully set forth herein.

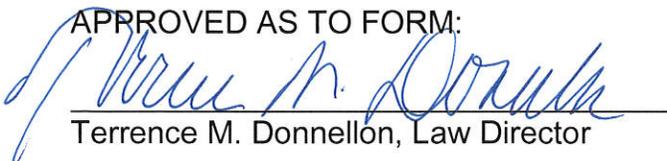
**SECTION 2.** This Ordinance shall be in full force and effect from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

## Attachment to 2017 Appropriation Ordinance

General Fund		
101 Police Department	Personnel	3,119,797
	Nonpersonnel	457,062
	<b>Total</b>	<b>\$3,576,859</b>
106 Disaster Services	Personnel	0
	Nonpersonnel	9,300
	<b>Total</b>	<b>\$9,300</b>
201 Public Health and Welfare	Personnel	58,179
	Nonpersonnel	0
	<b>Total</b>	<b>\$58,179</b>
301 Recreation	Personnel	226,870
	Nonpersonnel	93,752
	<b>Total</b>	<b>\$320,622</b>
303 City Parks	Personnel	301,941
	Nonpersonnel	206,000
	<b>Total</b>	<b>\$507,941</b>
317 Swaim and Terwilliger Lodges	Personnel	0
	Nonpersonnel	31,600
	<b>Total</b>	<b>\$31,600</b>
321 Special Events	Personnel	0
	Nonpersonnel	104,250
	<b>Total</b>	<b>\$104,250</b>
405 Landmarks Commission	Personnel	0
	Nonpersonnel	13,250
	<b>Total</b>	<b>\$13,250</b>
406 City Beautiful	Personnel	0
	Nonpersonnel	123,411
	<b>Total</b>	<b>\$123,411</b>
407 Development	Personnel	363,883
	Nonpersonnel	426,100
	<b>Total</b>	<b>\$789,983</b>
408 Planning Commission	Personnel	0
	Nonpersonnel	11,000
	<b>Total</b>	<b>\$11,000</b>
409 Historical Building Operations	Personnel	0
	Nonpersonnel	43,700
	<b>Total</b>	<b>\$43,700</b>
701 City Administration	Personnel	457,200
	Nonpersonnel	23,600
	<b>Total</b>	<b>\$480,800</b>
702 Finance Department	Personnel	570,815
	Nonpersonnel	61,225

	<b>Total</b>	<b>\$632,040</b>
703 Legal Administration	Personnel	0
	Nonpersonnel	218,000
	<b>Total</b>	<b>\$218,000</b>
705 City Council	Personnel	17,304
	Nonpersonnel	3,750
	<b>Total</b>	<b>\$21,054</b>
707 Mayor's Court	Personnel	86,076
	Nonpersonnel	76,775
	<b>Total</b>	<b>\$162,851</b>
708 Civil Service Commission	Personnel	0
	Nonpersonnel	4,150
	<b>Total</b>	<b>\$4,150</b>
709 Public Works Administration	Personnel	532,025
	Nonpersonnel	139,500
	<b>Total</b>	<b>\$671,525</b>
712 Community and Information Services	Personnel	486,253
	Nonpersonnel	144,290
	<b>Total</b>	<b>\$630,543</b>
715 General Government	Personnel	10,000
	Nonpersonnel	1,471,270
	<b>Total</b>	<b>\$1,481,270</b>
Total General Fund Transfers/Cash Advances Out		<b>699,006</b>
Total General Fund	Personnel	6,230,343
	Nonpersonnel	4,360,991
	<b>Total</b>	<b>10,591,334</b>

**Special Revenue Funds**

219 Community Oriented Policing Solutions	Personnel	156,516
	Nonpersonnel	3,500
	<b>Total</b>	<b>\$160,016</b>
223 Fire Department	Personnel	2,191,628
	Nonpersonnel	726,694
	<b>Total</b>	<b>\$2,918,322</b>
261 Street Maintenance and Repair	Personnel	758,515
	Nonpersonnel	285,579
	<b>Total</b>	<b>\$1,044,094</b>
209 Memorial Fund	Personnel	0
	Nonpersonnel	3,000
	<b>Total</b>	<b>\$3,000</b>
210 Parks & Recreation	Personnel	0
	Nonpersonnel	500
	<b>Total</b>	<b>\$500</b>
215 Law Enforcement	Personnel	0
	Nonpersonnel	12,300

	<b>Total</b>	<b>\$12,300</b>
216 Drug Enforcement	Personnel	0
	Nonpersonnel	400
	<b>Total</b>	<b>\$400</b>
217 DUI Enforcement and Education	Personnel	0
	Nonpersonnel	1,000
	<b>Total</b>	<b>\$1,000</b>
218 Mayor's Court Technology Fund	Personnel	0
	Nonpersonnel	13,295
	<b>Total</b>	<b>\$13,295</b>
220 Law Enforcement Assistance Fund	Personnel	0
	Nonpersonnel	1,600
	<b>Total</b>	<b>\$1,600</b>
227 Environmental Impact Area I	Personnel	0
	Nonpersonnel	15,000
	<b>Total</b>	<b>\$15,000</b>
228 Environmental Impact Area II	Personnel	0
	Nonpersonnel	75,000
	<b>Total</b>	<b>\$75,000</b>
229 Environmental Impact Area III	Personnel	0
	Nonpersonnel	5,000
	<b>Total</b>	<b>\$5,000</b>
230 Environmental Impact Area IV	Personnel	0
	Nonpersonnel	1,500
	<b>Total</b>	<b>\$1,500</b>
265 State Highway Fund	Personnel	0
	Nonpersonnel	54,000
	<b>Total</b>	<b>\$54,000</b>
266 Permissive MVL Fund	Personnel	0
	Nonpersonnel	79,000
	<b>Total</b>	<b>\$79,000</b>
275 Municipal Pool	Personnel	0
	Nonpersonnel	263,450
	<b>Total</b>	<b>\$263,450</b>
485 Arts and Amenities	Personnel	0
	Nonpersonnel	94,200
	<b>Total</b>	<b>\$94,200</b>
<b>Total Special Revenue Funds</b>	Personnel	3,106,659
	Nonpersonnel	1,635,018
	<b>Total</b>	<b>4,741,677</b>

**Debt Service Funds**

322 Special Assessment Bond Retirement	Personnel	0
	Nonpersonnel	16,010
	<b>Total</b>	<b>\$16,010</b>

324 General Bond Retirement	Personnel	0
	Nonpersonnel	12,200
	<b>Total</b>	<b>\$12,200</b>
328 Reserve Bond Retirement	Personnel	0
	Nonpersonnel	176,625
	<b>Total</b>	<b>\$176,625</b>
331 Vintage Club Tax Increment Financing Fund	Personnel	0
	Nonpersonnel	2,019,045
	<b>Total</b>	<b>\$2,019,045</b>
Total Debt Service Funds	Personnel	0
	Nonpersonnel	2,223,880
	<b>Total</b>	<b>2,223,880</b>

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**Capital Projects Funds**

410 Capital Improvements	Personnel	0
	Nonpersonnel	3,560,144
	<b>Total</b>	<b>\$3,560,144</b>
460 Urban Redevelopment Fund	Personnel	0
	Nonpersonnel	287,650
	<b>Total</b>	<b>\$287,650</b>
461 Triangle Equivalent TIF	Personnel	0
	Nonpersonnel	153,900
	<b>Total</b>	<b>\$153,900</b>
463 Vintage Club Capital Construction Fund	Personnel	0
	Nonpersonnel	6,500,000
	<b>Total</b>	<b>\$6,500,000</b>
Total Capital Projects Funds	Personnel	0
	Nonpersonnel	10,501,694
	<b>Total</b>	<b>10,501,694</b>

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**Fiduciary Funds**

875 Compensated Absence	Personnel	27,000
	Nonpersonnel	0
	<b>Total</b>	<b>\$27,000</b>
546 Trust Reimbursements	Personnel	0
	Nonpersonnel	50,000
	<b>Total</b>	<b>\$50,000</b>
601 State Fees	Personnel	0
	Nonpersonnel	10,000
	<b>Total</b>	<b>\$10,000</b>
836 Historical Trust Fund	Personnel	0
	Nonpersonnel	500
	<b>Total</b>	<b>\$500</b>
840 Cemetery Expendable Trust	Personnel	0
	Nonpersonnel	44,850
	<b>Total</b>	<b>\$44,850</b>

890 Unclaimed Moneys Fund	Personnel	0
	Nonpersonnel	716
	<b>Total</b>	<b>\$716</b>
Total Fiduciary Funds	Personnel	27,000
	Nonpersonnel	106,066
	<b>Total</b>	<b>133,066</b>

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**Total All Funds**

Personnel	9,364,002
Nonpersonnel	18,827,649
<b>Total</b>	<b>28,191,651</b>

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.

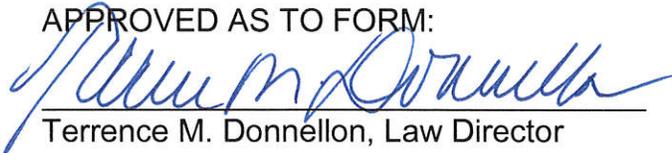
**SECTION 5.** This Ordinance shall take effect the earliest opportunity as allowable by law.

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.

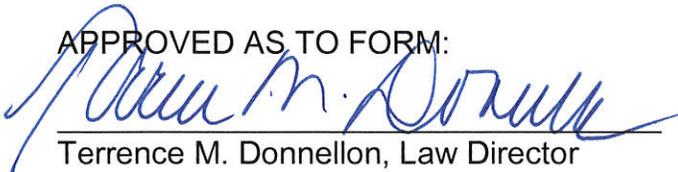
**SECTION 3.** This Ordinance shall take effect the earliest opportunity as allowable by law.

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

November 11, 2016

TO: Wayne S. Davis, City Manager

FROM: Katie Smiddy, Finance Director *KMS*

SUBJECT: Recommendation on Adopting Capital Improvement Program (CIP)

**Introduction**

As part of the City's Budget process, City Council is asked to approve by ordinance, the *2017 Operating and Capital Budget and Four-Year Forecast* and to approve by resolution, *the 2017-2021 Capital Improvement Program*. The City's appropriation ordinance is currently in the reading stages for final passage and adoption at the December 7 City Council Business Session. This Resolution requests that City Council for passage and adoption of the City's Capital Improvement Program (CIP).

**Background**

The City's *2017-2021 Capital Improvement Program* is a formal document providing a detailed description of the City's operating equipment, capital equipment and capital project expenditures for the five year period beginning in 2017. This document is a companion document to the *2017 Operating and Capital Budget and Four-Year Forecast* and presents the same capital financial information as the budget document. The CIP, however, provides a more thorough description and presentation of the City's planned capital expenditures than does the budget document. Both of the documents serve as supporting documentation for the City's annual appropriations and serve as guides for carrying out the financial plans of the City.

At the September budget review meeting, the Capital Improvement Program and the related budget documents were reviewed with City Council and staff.

**Recommendation**

As part of the 2017 budget process, it is recommended that City Council place the *2017-2021 Capital Improvement Program* on its agenda for the November 16, 2016 Work Session for consideration and approval at its December 7, 2016 Business Session.

RESOLUTION NO. \_\_\_\_\_, 2016

**A RESOLUTION ADOPTING A FIVE YEAR CAPITAL IMPROVEMENT PROGRAM  
FOR THE CITY OF MONTGOMERY**

**WHEREAS**, the City Manager has recommended and this Council has considered a Five Year Capital Improvement Program (CIP) for the years 2017 through 2021; and

**WHEREAS**, the CIP should be approved by City Council so that projects may be planned and implemented.

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

**SECTION 1.** The Council hereby adopts the Five Year Capital Improvement Program for the years 2017 through 2021.

**SECTION 2.** The City Manager is hereby authorized and directed to implement the Five Year Capital Improvement Program and to report on its progress from time to time to the Council.

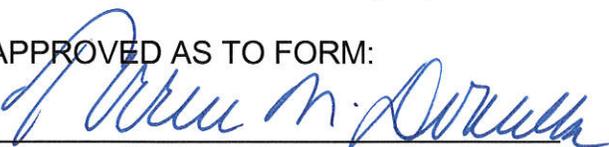
**SECTION 3.** This Resolution shall be in full force and effect from and after its passage.

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 A GRANT IN THE AMOUNT OF \$12,500.00  
TO THE CENTER FOR ADDICTION TREATMENT**

**WHEREAS**, statistical evidence indicates that there is a high incidence of opioid abuse throughout southwestern Ohio; and

**WHEREAS**, no community is immune from this health crisis which requires intervention and treatment to turn the tide to begin to see positive results; and

**WHEREAS**, the Center for Addiction Treatment located in Cincinnati has proven to be a valuable resource and a good steward of funds to provide medication assisted treatment for those affected by this health crisis; and

**WHEREAS**, the Center for Addiction Treatment has requested grant assistance from the City of Montgomery in cooperation with financial assistance it has received from the State and other local communities to support its mission; and

**WHEREAS**, with the support of the Police Department, the Fire Department and the Administrative Staff, Council believes support for the Center will begin the process to find that *Recovery is Within Reach* as advocated by the Center.

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

**SECTION 1.** Council does authorize a grant in the amount of \$12,500.00 to be paid to the Center for Addiction Treatment to provide operating assistance to the Center for addiction treatment. Council finds that this grant will return benefits to the citizens, businesses and institutions of the City of Montgomery by supporting treatment alternatives

to stem the tide of opioid abuse which affects individuals and families throughout our community.

**SECTION 2.** The City Manager is hereby authorized to fund this grant as soon as reasonably practicable.

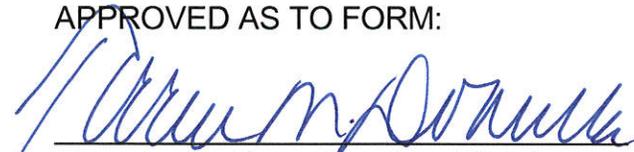
**SECTION 3.** This Resolution shall be in full force and effect from and after its passage.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

November 7, 2016

TO: Wayne Davis, City Manager

FROM: Don Simpson, Chief of Police 

SUBJECT: Sycamore Junior High Part-Time SRO Agreement

### Introduction

Since 2001 the City has partnered with the Sycamore Community School District to assign a School Resource Officer to the Sycamore Senior High School. In the interest of expanding upon this partnership and exploring new opportunities to build positive police/youth relationships City staff and Sycamore School District officials have discussed a part-time School Resource Officer assignment at the junior high school.

### Background

The partnership between the City and the Sycamore Community School District to provide a School Resource Officer (SRO) at the Senior High School has proven to be a valuable asset to the community. Through the years, numerous examples of the success of the program have been cited by students, faculty and community members. The tremendous working relationship between the SRO and school district staff led to discussions centered on creating an additional SRO at the junior high school.

For several years the police department administered the DARE program within the School District and the DARE officer worked with students and staff to develop positive relationships. The DARE officer assignment, although part-time, allowed for positive communication and dialogue with students and staff. Changes in State funding sources and the need for additional classroom time led to the elimination of the DARE program within the district. Coincidentally, as the DARE assignment was coming to an end the popular Sycamore School Superintendent, Dr. Adrienne James, announced her retirement.

The new Superintendent, Frank Forsthoefel, expressed interest in expanding the successful SRO program to the junior high school in a part-time capacity for the remainder of this school year. Several meetings were conducted with junior high staff, district officials and police department staff. Senior High SRO Paul Payne expressed his support of the position due to frequent requests from the junior high for assistance with issues and mentoring of students. All parties recognized the need for a partnership between the entities to allow for funding of the position. After discussing the possibility of creating a part-time SRO position for the remainder of the 2016-2017 school year, Superintendent Frank Forsthoefel expressed that the district could possibly contribute up to \$20,000 towards an agreement with the City. Funding for future years or continuation of the part-time SRO agreement would be discussed at a later date after evaluating the success of the program and determining available budgetary amounts.

If approved, the tentative starting date for the position would be January 5, 2017. This is the first day of school after the holidays. The agreement would span the remaining 91 days of the 2016-2017 school year. Terms of the agreement would provide an officer be assigned four (4) hours per school day for the remainder of the school year. The School District would provide a fixed amount of Twenty Thousand Dollars (\$20,000) for the salary and fringe benefits associated with the position. The City would provide uniforms, equipment and training for the officer. (Additional terms and conditions may be found in the attached draft agreement

The position would be staffed with an assignment of a current police officer with our department. When not assigned as an SRO at the junior high school the officer would perform his/her duties as a Montgomery Police Officer. This assignment "does not" create an additional position nor is it intended to suggest the need to add additional personnel to the department. This assignment is temporary in nature and any future terms of an agreement to provide an officer for such an assignment will need to be re-negotiated with Sycamore Community Schools.

#### Recommendation

It is recommended that City Council consider placing legislation on the December 7, 2016 business session to approve a contractual agreement with Sycamore Community Schools to provide a part-time School Resource Officer at the Sycamore Junior High School for the remainder of the 2016-2017 school year.

RESOLUTION NO. \_\_\_\_\_, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO  
AN AGREEMENT WITH THE SYCAMORE COMMUNITY SCHOOL  
DISTRICT BOARD OF EDUCATION TO ASSIGN A SCHOOL RESOURCE OFFICER  
FOR SCHOOL YEAR 2016-2017 FOR THE SYCAMORE JUNIOR HIGH SCHOOL**

**WHEREAS**, the City of Montgomery and the Sycamore Community Schools have agreed to enter into a contract to assign a patrol officer from the Montgomery Police Department to serve as a part-time School Resource Officer for the Sycamore Community School District within the Sycamore Junior High School; and

**WHEREAS**, within such Agreement the City and School District intend to outline the obligations and responsibilities among the parties and to allocate the cost of such assignment.

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

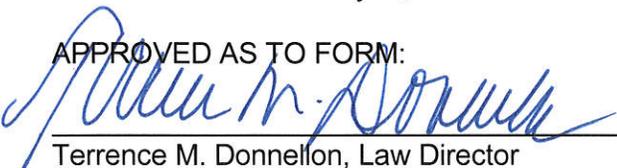
**SECTION 1.** The City Manager is hereby authorized to enter into an agreement with the Sycamore Community School District Board of Education to provide a part-time School Resource Officer to Sycamore Junior High School for the school year 2016 – 2017 as set forth in the agreement submitted by Sycamore Community School District Board of Education attached hereto as "Exhibit A".

**SECTION 2.** This Resolution shall be in full force and effect from and after its passage.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

**SCHOOL RESOURCE OFFICER AGREEMENT**  
**Commencing School Year 2016-17**

This Agreement is entered into at Cincinnati, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between the CITY OF MONTGOMERY, OHIO (hereinafter referred to as "Montgomery") and the SYCAMORE COMMUNITY SCHOOL DISTRICT BOARD OF EDUCATION (hereinafter referred to as "Sycamore").

WHEREAS, Montgomery, through its Police Department, does assign an officer to the Sycamore High School under agreement between Montgomery and Sycamore; and

WHEREAS, for the remainder of the 2016-2017 School Year, Sycamore has requested that Montgomery assign a second officer for a partial shift to the Sycamore Junior High School; and

WHEREAS, Montgomery has agreed to such assignment on the same terms and conditions as the School Resource Officer is assigned to the Sycamore High School.

NOW THEREFORE, in exchange for the mutual promises and covenants contained herein, as properly authorized by the Council of the City of Montgomery, Ohio and the Board of Education of the Sycamore Community School District, the parties agree as follows:

1. Duration: This Agreement shall commence in December of the 2016-17 School Year and terminate on the last day of student attendance for such School Year.

2. Services Rendered: Montgomery shall assign a School Resource Officer, hereinafter referred to as "SRO", to Sycamore Junior High School at 5757 Cooper Road, Montgomery, Ohio. The SRO will work four (4) hours per school day as mutually agreed upon by Montgomery and Sycamore for the remaining days in the 2016-2017 School Year [approximately ninety-one (91) days] commencing January 5, 2017. When not assigned to Sycamore, the SRO may be assigned to Montgomery to other duties and responsibilities.

3. Scope of Accountability:

A. The SRO solely shall be supervised by the City of Montgomery Police Department in accordance with the current chain of command. Sycamore shall not control, direct, or supervise the SRO, but Sycamore and its administration may request responsive action from time to time from the SRO to be performed consistent with his duties and responsibilities as a police officer for Montgomery.

B. The SRO shall be a certified police officer.

C. Montgomery is the sole employer of the SRO and agrees to direct and supervise the SRO and to withhold and/or pay all applicable Federal, State and local income taxes, state mandated pension funds, workers' compensation and liability insurance for said SRO. Montgomery will also provide all other fringe benefits pursuant to the current labor agreements for the City of Montgomery Police Department.

D. Sycamore may provide input to the Montgomery Police Department into the selection process of the SRO, but the appointment of the SRO and assignment of the SRO shall be within the sole direction of Montgomery.

E. Daily assignment of duties will be made in cooperation with the Sycamore Junior High School Administration.

F. School principals will continue to assume full responsibility for the enforcement of discipline and school rules and regulations.

4. Compensation: In consideration of Services Rendered, Sycamore promises and agrees to pay Montgomery the following:

A. Sycamore will reimburse Montgomery a fixed amount of Twenty Thousand Dollars (\$20,000) for the salary and fringe benefits associated with this position pursuant to current labor agreements for the City of Montgomery Police Department.

B. Sycamore will reimburse Montgomery for all overtime hours requested by Sycamore at the overtime rate for this position pursuant to the current labor agreements for the City of Montgomery Police Department. Authorization for billing of said overtime cost will be provided by Sycamore Administration.

C. Montgomery will provide mobile phone or equivalent technology.

D. Montgomery will invoice Sycamore on a quarterly basis for all services with invoice to be paid within 21 days of receipt.

E. This Agreement represents the entire agreement between the parties and there are no separate agreements or understandings which are not incorporated herein. This Agreement is intended by the parties to be an agreement to purchase professional services, and it is not an agreement of employment, nor joint venture, nor partnership between the parties.

CITY OF MONTGOMERY, OHIO:

SYCAMORE COMMUNITY SCHOOL DISTRICT BOARD OF EDUCATION:

By: \_\_\_\_\_  
Wayne S. Davis

By: \_\_\_\_\_  
Jean Staubach, President

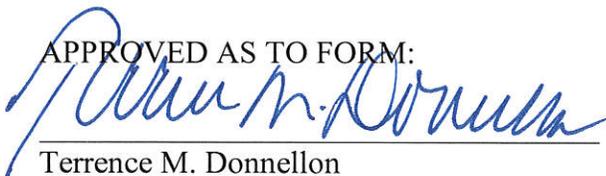
Its: City Manager

By: \_\_\_\_\_  
Beth Weber, Treasurer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon  
Director of Law

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City of Montgomery  
City Council Business Session Minutes  
November 2, 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  
Faith Lynch, Community Engagement Coordinator  
Matthew Vanderhorst, Community and Information Services Director  
Connie Gaylor, Clerk of Council

City Council Members Present

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

City Council convened in Council Chambers at 7:00 p.m. for the Business Session 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.

**SPECIAL PRESENTATION**

Wendy New, on behalf of Montgomery Food Share, was present to accept a Certificate of Appreciation in honor of their service to the community and for being the third largest food donor which covers twenty counties in Ohio.

**LEGISLATION FOR CONSIDERATION TONIGHT**

**Pending Legislation**

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

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

Mr. Suer read the Ordinance by title only and moved for passage of the second reading. Ms. Roesch seconded.

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

The roll was called and showed the following vote:

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

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City Council Business Session Minutes

November 2, 2016

Page 2

55 **New Legislation**

56  
57 **A Resolution Authorizing the City Manager to Enter into A Contract with Morton Salt, Inc. For The**  
58 **Purchase of De-Icing Rock Salt for The 2017 Season**

59  
60 Mr. Cappel moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.

61  
62 Mr. Cappel read the Resolution by title only and moved for passage. Mrs. Harbison seconded.

63  
64 Mr. Cappel explained that, if approved, this Resolution will authorize the City Manager to enter into a contract  
65 extension with Morton Salt, Inc. pursuant to a joint purchasing bid for 2016-2017 de-icing rock salt. The purchase  
66 of de-icing rock salt for the 2016-2017 winter season is included in the City budget in the 261.000.5380 Street  
67 Maintenance Fund, 266.000.5380 Permissive MVL Fund and 265.000.5380 State Highway Fund. If approved, the  
68 request would authorize a maximum purchase of 1,430 tons of de-icing rock salt for the amount of \$75,089.30  
69 (\$52.51 per ton) which represents a 31% decrease per ton from the 2015/2016 winter season.

70  
71 The roll was called and showed the following vote:

72  
73 AYE: Cappel, Harbison, Dobrozsi, Roesch, Suer, Margolis, Combs (7)  
74 NAY: (0)  
75 ABSENT: (0)  
76

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

79  
80 Mr. Suer moved to read the Ordinance by title only. Mr. Margolis seconded. City Council unanimously agreed.

81  
82 Mr. Suer read the Ordinance by title only and moved for passage of the first reading. Mr. Cappel seconded.

83  
84 Mr. Suer explained that, if approved, this Ordinance will adjust the allocation the City's Earnings Tax Revenues.  
85 As you may recall, in the City's 2017 Operating and Capital Budget with Four Year Forecast document, staff  
86 requested that City Council proceed with legislation which reallocates the City's Earnings Tax revenues effective  
87 February 1, 2017. The current allocation is: 76% of Earnings Tax revenues to the General Fund, 20% to the Capital  
88 Improvement Fund and 4% to the Debt Retirement Fund. The proposed reallocation would provide 80% of the  
89 Earnings Tax revenues to the General Fund and 20% to the Capital Improvement Fund.

90  
91 The roll was called and showed the following vote:

92  
93 AYE: Harbison, Dobrozsi, Roesch, Suer, Margolis, Combs, Cappel (7)  
94 NAY: (0)  
95 ABSENT: (0)  
96

97 **A Resolution Authorizing a Purchase Agreement for the Sale of Montgomery Commons Real Estate**

98  
99 Ms. Roesch moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.

100  
101 Ms. Roesch read the Resolution by title only and moved for passage. Mr. Margolis seconded.

102  
103 Ms. Roesch explained that, if approved, this Resolution will authorize a purchase agreement for the sale of  
104 Montgomery Commons Real Estate. Mr. Donnellon previously explained that this legislation is the last step in a  
105 30-year process under which the City acquired land at the corner of Montgomery Road and Cooper Road, and it is  
106 transferring that land to the current property owner. The City acquired the property in an economic development

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City Council Business Session Minutes

November 2, 2016

Page 3

107 transaction when a Tax Increment Financing district was created for the downtown lot. The Lease Agreement with  
108 the prior property owner granted to the Lessee the purchase option for \$1.00 in November 2016. The current land  
109 owner, Montgomery Commons LLC, has sent notice to the City that they wish to exercise those rights.

110

111 The roll was called and showed the following vote:

112

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

114 NAY: (0)

115 ABSENT: (0)

116

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

118

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

120

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

122

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

129

130 The roll was called and showed the following vote:

131

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

133 NAY: (0)

134 ABSENT: (0)

135

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

138

139 Mayor Dobrozsi asked City Council to be recused from the vote from this item. A voice vote was taken and all City  
140 Council were in favor.

141

142 Vice Mayor Roesch asked Mr. Margolis to read the Ordinance.

143

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

145

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

147

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

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City Council Business Session Minutes

November 2, 2016

Page 4

159 The roll was called and showed the following vote:

160  
161 AYE: Suer, Margolis, Combs, Cappel, Harbison, Roesch (6)  
162 NAY: (0)  
163 ABSENT: (0)  
164 ABSTAIN: Dobrozsi (1)  
165

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

168  
169 Mayor Dobrozsi asked City Council to be recused from the vote from this item. A voice vote was taken and all City  
170 Council were in favor.

171  
172 Vice Mayor Roesch asked Mr. Margolis to read the Ordinance.

173  
174 Mr. Margolis moved to read the Ordinance by title only. Mr. Cappel seconded. City Council unanimously agreed.  
175

176 Mr. Margolis read the Ordinance by title only and moved for passage of the first reading. Mr. Cappel seconded.  
177

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

184  
185 The roll was called and showed the following vote:

186  
187 AYE: Margolis, Combs, Cappel, Harbison, Roesch, Suer (6)  
188 NAY: (0)  
189 ABSENT: (1)  
190 ABSTAIN: Dobrozsi  
191

192 **A Resolution Authorizing a Contract with Motorola for The Purchase of Replacement Radios**

193  
194 Mrs. Combs moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.  
195

196 Mrs. Combs read the Resolution by title only and moved for passage. Mr. Cappel seconded.  
197

198 Mrs. Combs explained that, if approved, this Resolution will authorize the expenditure of \$139,645 for the purchase  
199 of 50 Motorola APX6000 portable radios and other support equipment. The Police Department's share would  
200 consist of \$65,403.50 and the share for the Fire Department would be \$74,241.50. The total purchase cost between  
201 the Police and Fire departments is \$139,645. This would be a savings of \$63,073.50 shared between both  
202 departments compared to the current budgeted cost of approximately \$202,000. Due to personnel vacancies, the  
203 Police Department budget has appropriation authority to accommodate the purchase in this fiscal year. The Fire  
204 Department would require an adjustment in appropriations before the close of the 2016 fiscal year. The radio  
205 equipment is currently listed with the State of Ohio purchasing contract 573077-0 which expires June 30, 2017.  
206 This would allow the City to purchase the radio equipment without conducting a formal bidding process.  
207

208 The roll was called and showed the following vote:

209  
210 AYE: Combs, Cappel, Harbison, Dobrozsi, Roesch, Suer, Margolis (7)

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City Council Business Session Minutes

November 2, 2016

Page 5

211 NAY: (0)  
212 ABSENT: (0)  
213

214 **ADMINISTRATION REPORT**  
215

216 Mr. Davis reported on the following items:  
217

- 218 • The Law and Safety and Planning, Zoning and Landmarks Committees will meet in Council Chambers on  
219 Monday November 7 at 4:00 and 4:30 p.m., respectively.  
220
- 221 • The Financial Planning, Parks and Recreation, Government Affairs and Public Works Committees have all  
222 cancelled their meetings for the month of November.  
223
- 224 • City Council Work Session is scheduled for November 16, 2016 at 7:00 p.m.  
225
- 226 • The 2016 United Way campaign has concluded with great results. This year's total contributions exceeded  
227 last year's total by approximately 16%.  
228
- 229 • The 2016 Resurfacing Program is nearing completion. Kemper Road is scheduled for the next two Saturdays  
230 with milling and installation of 1.5" of intermediate asphalt being done on November 5 and the final  
231 installation of the asphalt surface course being completed on November 12. November 19 is scheduled as  
232 a rain date if needed.  
233
- 234 • A contract with Rogers Pavement was signed in the amount of \$29,240 for the paving of the City Hall  
235 Parking Lot. This work will begin on Friday and be completed by Sunday evening.  
236
- 237 • A contract with Strawser Construction was signed in the amount of \$29,651.40 for the annual Crack Seal  
238 Program. This work has been completed.  
239
- 240 • A contract with Cirilian, Inc. dba as RECI was signed for online recreation, membership, league  
241 management and facility reservation services. These services will replace the online services currently  
242 provided by E-Gov Link. The fees associated with this agreement would be approximately \$3,900 a year  
243 for the service and 3% per charge transaction. These fees are consistent with what we currently pay to E-  
244 Gov and for Paypal services.  
245
- 246 • A contract with SwimSafe was extended for option years 2017 and 2018 in the amounts of \$125,530 and  
247 \$126,530 respectively.  
248
- 249 • The Civil Service Commission patrol officer exam is scheduled for Saturday, November 19. The deadline  
250 for applications is November 9. As of today, 12 candidates have submitted applications to take the exam. A  
251 Civil Service Commission meeting is being scheduled for December 6 to review and certify exam  
252 results. Currently there are three open patrol officer positions.  
253
- 254 • A reminder to not forget to change your clocks this Sunday, when Daylight Saving time ends. We fall back  
255 an hour for this marking of the change of seasons.  
256
- 257 • A reminder that the Montgomery Chamber of Commerce Annual Dinner will be held on Thursday  
258 November 10 beginning at 5:30 p.m and is being held at the Montgomery Inn.  
259
- 260 • A reminder that the Blue Ash Veterans Day Ceremony will be held on Friday, November 11, 2016. The  
261 ceremony will begin promptly at 10:30 a.m. at the Blue Ash Bicentennial Veterans Memorial Park at Cooper

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City Council Business Session Minutes

November 2, 2016

Page 6

262 and Hunt Roads in downtown Blue Ash. The ceremonies at the Memorial will end at approximately 11:30  
263 a.m., followed by a luncheon at the Blue Ash Recreation Center.

- 264
- 265 • The internal GRA team will hold an open house for the MCLA graduates on November 17 from 5:00 to  
266 7:00 pm, to discuss the potential interchange modification and obtain feedback from the group.
  - 267
  - 268 • A reminder that the Blue Ash/Montgomery Rotary Club Community Awards Celebration Dinner will be  
269 held on November 3 at the City of Blue Ash, Cooper Creek Event Center and that Council Member Gerri  
270 Harbison will be honored as the 'Citizen of the Year'.
  - 271

272 **APPROVAL OF MINUTES**

273

274 Mr. Cappel moved to approve the October 19, 2016 Work Session minutes. Mr. Margolis seconded. City Council  
275 unanimously agreed.

276

277 **OTHER BUSINESS**

278

279 Mr. Margolis reported that the Planning Commission and the Board of Zoning Appeals both met and reviewed a  
280 request by Twin Lakes to approve outdoor seating at the retail building being constructed along Montgomery Road  
281 in front of the Twin Lakes complex.

282

283 Ms. Roblero stated that she was working with the applicant on potential redesigns and will be working with Joseph  
284 Chevrolet regarding those designs as well. She anticipates a redesign being resubmitted to the Board of Zoning  
285 Appeals at their November 22, 2016 meeting.

286

287 Mr. Margolis reported that he attended the final Much in Common series meeting held in regards to Opioid Abuse.  
288 He explained that the discussion was centered around what to do next. He stated that as this issue has been on the  
289 forefront of discussions among all the surrounding communities that the question was how to proceed and to address  
290 this public health issue.

291

292 Mayor Dobrozsi stated that he would be out of town on November 14 and November 15 and would need to appoint  
293 an Acting Mayor in his place.

294

295 Mr. Margolis made a motion to name Mr. Suer as the Acting Mayor in Mr. Dobrozsi's absence. Ms. Roesch  
296 approved. City Council unanimously agreed.

297

298 Mayor Dobrozsi stated that on Wednesday, November 9 he would be a guest pizza maker at Rapid Fire Pizza. He  
299 stated that 25% of all sales go to the charity of his choice and he selected A Kid Again in Montgomery. He noted  
300 that he would be there from 5:00 to 8:00 p.m.

301

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

304

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

306

307 City Council adjourned at 7:46 p.m.

308

309

310

---

Connie Gaylor, Clerk of Council

## Monthly Mayor's Court Report

Montgomery Mayor's Court  
Cash Flow for October 2016

Page : 1  
Report Date : 11/03/2016  
Report Time : 14:26:46

	Current Period	Year-To-Date	Last Year-to-Date
<b>City Revenue From:</b>			
Court Costs			
Court Costs	\$500.00	\$5,031.00	\$5,760.00
Computer Fund	\$750.00	\$9,349.00	\$10,410.00
Additional Costs	\$0.00	\$327.00	\$1,374.00
Fines			
Overpayment / Adjustment	\$0.00	\$215.00	\$5.00
City Revenue From Fines	\$6,985.00	\$93,280.00	\$103,275.00
Fees			
SUBP FEES	\$0.00	\$6.00	\$0.00
EXPUNGEMENT FEES CITY	\$60.00	\$100.00	\$240.00
Capias Fee	\$600.00	\$6,600.00	\$6,280.00
Tax Diversion Fee	\$0.00	\$875.00	\$0.00
Miscellaneous/Other			
Miscellaneous/Other	\$227.00	\$1,386.00	\$385.00
Bond Forfeits			
Bond Forfeits	\$75.00	\$1,475.00	\$413.00
Miscellaneous/Other			
Bond Administration Fees	\$0.00	\$0.00	\$0.00
<b>Total to City:</b>	<b>\$9,197.00</b>	<b>\$118,644.00</b>	<b>\$128,142.00</b>
<b>State Revenue From:</b>			
Court Costs			
Court Costs	\$1,890.00	\$23,595.10	\$26,305.00
General Fund	\$0.00	\$30.00	\$0.00
V/C	\$630.00	\$8,078.00	\$8,946.00
DRUG LAW ENFORCEMENT FUND	\$234.50	\$2,918.90	\$3,251.50
Fines			
Fines	\$135.00	\$1,200.00	\$450.00
Seatbelt Driver	\$0.00	\$120.00	\$180.00
Child Restraint	\$0.00	\$100.00	\$0.00
Fees			
EXPUNGEMENT FEES STATE	\$90.00	\$150.00	\$360.00
Miscellaneous/Other			
Expungement Fee - State	\$0.00	\$30.00	\$0.00
<b>Total to State:</b>	<b>\$2,979.50</b>	<b>\$36,222.00</b>	<b>\$39,492.50</b>
<b>Other Revenue From:</b>			
Court Costs			
Court Costs	\$100.50	\$1,251.00	\$1,393.50
Area Fines			
Area Fines	\$25.00	\$400.00	\$155.00
Fees			

# Monthly Mayor's Court Report

Montgomery Mayor's Court  
Cash Flow for October 2016

Page : 2  
Report Date : 11/03/2016  
Report Time : 14:26:46

	Current Period	Year-To-Date	Last Year-to-Date
Fees	\$0.00	\$223.80	\$148.50
Restitution			
Restitution	\$0.00	\$600.51	\$735.11
<b>Total to Other:</b>	<b>\$125.50</b>	<b>\$2,475.31</b>	<b>\$2,432.11</b>
<b>TOTAL REVENUE *</b>	<b>\$12,302.00</b>	<b>\$157,341.31</b>	<b>\$170,066.61</b>
*Includes credit card receipts of	\$2,920.00	\$47,785.31	\$51,055.00

END OF REPORT

**Monthly Distribution Journal**

Montgomery Mayor's Court  
 Disbursal of fines and court costs for October 2016

Page : 1  
 Report Date : 11/03/2016  
 Report Time : 12:57:40

Disbursal Category	Amount	
<b>COSTS</b>		
Computer Fund	\$750.00	
city-appearance	\$500.00	
<b>Total to City:</b>		<b>\$1,250.00</b>
V/C	\$630.00	
DRUG LAW ENFORCEMENT FUND	\$234.50	
INDIGENT DEFENSE SUPPORT FUND - COST	\$1,890.00	
<b>Total to State:</b>		<b>\$2,754.50</b>
INDIGENT DRIVERS ALC TREATMENT FUND-COST	\$100.50	
<b>Total to Other:</b>		<b>\$100.50</b>
<b>Total Costs:</b>		<b>\$4,105.00</b>
<b>FINES</b>		
City Revenue From Fines	\$6,985.00	
<b>Total to City:</b>		<b>\$6,985.00</b>
INDIGENT DEFENSE SUPPORT FUND - FINE	\$135.00	
<b>Total to State:</b>		<b>\$135.00</b>
<b>Total Fines:</b>		<b>\$7,120.00</b>
<b>AREA FINES - OUTGOING</b>		
INDIGENT DRIVER ALC TREATMENT FUND -FINE	\$25.00	
<b>Total to Other:</b>		<b>\$25.00</b>
<b>Total Area Fines - Outgoing:</b>		<b>\$25.00</b>
<b>FEES</b>		
EXPUNGEMENT FEES CITY	\$60.00	
Capias Fee	\$600.00	
<b>Total to City:</b>		<b>\$660.00</b>
EXPUNGEMENT FEES STATE	\$90.00	
<b>Total to State:</b>		<b>\$90.00</b>
<b>Total Fees:</b>		<b>\$750.00</b>
<b>MISC RECEIPTS</b>		
Hamilton County Municipal Court	\$227.00	
<b>Total to City:</b>		<b>\$227.00</b>
<b>Total Misc Receipts:</b>		<b>\$227.00</b>

# Monthly Distribution Journal

Montgomery Mayor's Court  
Disbursal of fines and court costs for October 2016

Page : 2  
Report Date : 11/03/2016  
Report Time : 12:57:40

<b>Disbursal Category</b>	<b>Amount</b>
<b>TOTALS</b>	
Total to State:	\$2,979.50
Total Area Fines to External Agencies:	\$25.00
Total to Other Entities, including Restitution:	\$100.50
Total Bonds Forfeited to City:	\$75.00
Total to City including Misc. Receipts, Adjustments, & BA Fee:	\$9,122.00
<hr/>	
<b>TOTAL TO BE DISBURSED:</b>	<b>\$12,302.00</b>

END OF REPORT