

# CITY OF CLAYTON, OHIO

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## RESOLUTIONS AND ORDINANCES May 19, 2022

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### OLD BUSINESS

### ORDINANCES – SECOND OF TWO READINGS

#### ORDINANCE NO. O – 05 – 22 – 10

#### AN ORDINANCE APPROVING AMENDMENTS TO ARTICLES 3 AND 22 OF THE CITY’S PERSONNEL PRACTICES MANUAL

**WHEREAS**, pursuant to Charter Section 11.03, Council adopted Ordinance No. O-08-99-15 on October 7, 1999 adopting a Personnel Practices Manual; and

**WHEREAS**, the City Staff has recommended specified amendments to Articles 3 and 22 of the Personnel Practices Manual as shown on the attached *Exhibit A*.

#### **NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That Articles 3 and 22 of the City’s Personnel Practices Manual are hereby amended as delineated in the attached *Exhibit A*.
2. That the City Manager is authorized to revise those portions of the Personnel Practices Manual, if any, which are directly impacted by the above language revisions.
3. That in accordance with Clayton Charter Section 4.031 the requirement that this enactment be read on two (2) separate days is complied with by readings on May 5, 2022 and May 19, 2022.
4. That in accordance with Clayton Charter Section 4.031(H) this enactment shall become effective thirty days after its second reading and enactment.

ADOPTED BY COUNCIL ON MAY 19, 2022

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**NEW BUSINESS**

**ORDINANCES - FIRST OF TWO READINGS**

**ORDINANCE NO. O – 05 – 22 – 11**

**AN ORDINANCE TO APPROVE CURRENT REPLACEMENT PAGES  
TO THE CLAYTON CODIFIED ORDINANCES.**

**WHEREAS**, certain provisions within the Codified Ordinances should be amended to conform with current State law as required by the Ohio Constitution; and

**WHEREAS**, various ordinances of a general and permanent nature have been passed by Council which should be included in the Codified Ordinances; and

**WHEREAS**, the City has heretofore entered into a contract with the Walter H. Drane Company to prepare and publish such revision which is before Council;

**NOW, THEREFORE, BE IT ORDAINED, BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the ordinances of the City of Clayton, Ohio, of a general and permanent nature, as revised, recodified, rearranged and consolidated into component codes, titles, chapters and sections within the 2022 Replacement Pages to the Codified Ordinances, are hereby approved and adopted.

2. That the following sections and chapters are hereby added, amended or repealed as respectively indicated in order to comply with current State law.

**Administrative Code**

101.03 Rules of Construction. (Amended)

**Traffic Code**

303.082 Private Tow-Away Zones. (Amended)  
303.083 Impounding Vehicles on Public Property. (Added)  
331.211 Report of Vehicle Failing to Yield Right of Way to Public Safety Vehicle.  
(Amended)  
333.03 Maximum Speed Limits. (Amended)  
335.02 Permitting Operation Without Valid License; One License Permitted.  
(Amended)  
335.021 Ohio Driver’s License Required for In State Residents. (Amended)  
335.09 Display of License Plates or Validation Stickers; Temporary License  
Placard. (Amended)  
371.13 Operation of Personal Delivery Device on Sidewalks and Crosswalks.  
(Added)

### General Offenses Code

513.14	Sale of Dextromethorphan. (Added)
517.01	Gambling Definitions. (Amended)
517.02	Gambling. (Amended)
517.06	Methods of Conducting a Bingo Game; Prohibitions. (Amended)
517.08	Raffles. (Amended)
517.09	Charitable Instant Bingo Organizations. (Amended)
517.11	Bingo or Game of Chance Records. (Amended)
517.13	Bingo Exceptions. (Amended)
517.14	Instant Bingo Conduct by a Veteran's or Fraternal Organization. (Amended)
517.15	Skill-Based Amusement Machines. (Amended)
517.16	Electronic Instant Bingo; Prohibited Conduct. (Added)
525.13	Interfering with Civil Rights. (Amended)
529.01	Liquor Control Definitions. (Amended)
529.07	Open Container Prohibited. (Amended)
537.19	Hazing Prohibited. (Added)
545.03	Property Exceptions as Felony Offense. (Amended)
545.09	Passing Bad Checks. (Amended)

### Fire Prevention Code

1519.01	Fireworks Definitions. (Amended)
1519.05	Application. (Amended)
1519.06	Safety Requirements for Fireworks Showroom Structures. (Added)

3. That the complete text of the sections listed above are set forth in full in the current replacement pages to the Codified Ordinances which are hereby attached to this ordinance as **Exhibit A**. Any summary publication of this ordinance shall include a complete listing of these sections. Notice of adoption of each new section by reference to its title shall constitute sufficient publication of new matter contained therein.

4. That in accordance with Clayton Charter Section 4.031 the requirement that this enactment be read on two (2) separate days is complied with by readings on May 19, 2022 and June 16, 2022.

5. That in accordance with Clayton Charter Section 4.031(H) this enactment shall become effective thirty days after its second reading and enactment.

**ORDINANCES – SINGLE READING AND IMMEDIATE ENACTMENT VIA EMERGENCY**

**ORDINANCE NO. O – 05 – 22 – 12**

**DELINEATING AN OVERLAY IN RELATION TO THE PROPOSED WENGER VILLAGE INCENTIVE DISTRICT WITHIN THE CITY OF CLAYTON, OHIO; ADOPTING A WRITTEN ECONOMIC DEVELOPMENT PLAN AS TO SAME, ALL AS PURSUANT TO OHIO REVISED CODE SECTION 5709.40(C), AND DECLARING AN EMERGENCY.**

WHEREAS, this Council is contemplating the creation of an incentive district for parcels in the City of Clayton, Ohio (the “City”) as authorized under Division (C) of Ohio Revised Code Section (“R.C.”) 5709.40; and,

WHEREAS, pursuant to Division (C)(2) of R.C. 5709.40, this Council must conduct a public hearing on the contemplated incentive district, which such public hearing must be preceded by sufficient notice to every real property owner whose property is located within the boundaries of such incentive district, here the Wenger Village Incentive District, and which such notice must include a map of the Wenger Village Incentive District on which this Council must have delineated an overlay; and,

WHEREAS, such an overlay must satisfy Division (A)(6) of R.C. 5709.40, namely an area of not more than three hundred acres that is a square, or that is a rectangle having two longer sides that are not more than twice the length of the two shorter sides; and,

WHEREAS, the overlay depicted in **EXHIBIT A** attached hereto and incorporated herein by reference (the “**Overlay**”) is drawn in accordance with the respective statute; and,

WHEREAS, pursuant to Division (A)(5)(f) of R.C. 5709.40, the City Engineer is contemplating whether the adequacy of the existing public infrastructure serving the Wenger Village Incentive District is sufficient to meet the residential, commercial or industrial development needs of said incentive district; and,

WHEREAS, the City Engineer is required to consider a written economic development plan for the Wenger Village Incentive District as has been adopted for such purposes by this Council; and,

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interests of the City to adopt the written economic development plan for the Wenger Village Incentive District, a copy of which is provided in **EXHIBIT B** attached hereto and incorporated herein by reference (the “**Economic Development Plan**”).

NOW, THEREFORE, be it ordained by the legislative authority of the Municipality of Clayton, Montgomery County, Ohio, that:

Section 1. Delineation of Overlay on a Map of the Proposed Incentive District. Pursuant to Division (A)(6) of R.C. 5709.40, this Council hereby delineates the Overlay as it relates to and serves to further describe the proposed Wenger Village Incentive District.

Section 2. Adoption of Written Economic Development Plan for the Proposed Incentive District. Under Division (A)(5)(f) of R.C. 5709.40, this Council hereby adopts the Economic Development Plan in furtherance of its contemplation of the Wenger Village Incentive District.

Section 3. Open Meetings. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision-making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with Ohio's Sunshine Laws, including R.C. 121.22.

Section 4. Effective Date. This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that this ordinance must be immediately effective so that the work on the Development can begin as quickly as possible, thus providing economic benefit to the City and its residents; wherefore this ordinance shall take effect and be in force from and immediately after its adoption.

ADOPTED BY COUNCIL ON MAY 19, 2022

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**COUNCIL TABLED THE FOLLOWING ORDINANCE:**

**ORDINANCE NO. O – 05 – 22 – 14**

**DELINEATING AN OVERLAY IN RELATION TO THE PROPOSED NATIONAL AND HABER INCENTIVE DISTRICT WITHIN THE CITY OF CLAYTON, OHIO; ADOPTING A WRITTEN ECONOMIC DEVELOPMENT PLAN AS TO SAME, ALL AS PURSUANT TO OHIO REVISED CODE SECTION 5709.40(C), AND DECLARING AN EMERGENCY.**

WHEREAS, this Council is contemplating the creation of an incentive district for parcels in the City of Clayton, Ohio (the “City”) as authorized under Division (C) of Ohio Revised Code Section (“R.C.”) 5709.40; and,

WHEREAS, pursuant to Division (C)(2) of R.C. 5709.40, this Council must conduct a public hearing on the contemplated incentive district, which such public hearing must be preceded by sufficient notice to every real property owner whose property is located within the boundaries of such incentive district, here the National and Haber Incentive District, and which such notice must include a map of the National and Haber Incentive District on which this Council must have delineated an overlay; and,

WHEREAS, such an overlay must satisfy Division (A)(6) of R.C. 5709.40, namely an area of not more than three hundred acres that is a square, or that is a rectangle having two longer sides that are not more than twice the length of the two shorter sides; and,

WHEREAS, the overlay depicted in **EXHIBIT A** attached hereto and incorporated herein by reference (the “**Overlay**”) is drawn in accordance with the respective statute; and,

WHEREAS, pursuant to Division (A)(5)(f) of R.C. 5709.40, the City Engineer is contemplating whether the adequacy of the existing public infrastructure serving the National and Haber Incentive District is sufficient to meet the residential, commercial or industrial development needs of said incentive district; and,

WHEREAS, the City Engineer is required to consider a written economic development plan for the National and Haber Incentive District as has been adopted for such purposes by this Council; and,

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interests of the City to adopt the written economic development plan for the National and Haber

Incentive District, a copy of which is provided in **EXHIBIT B** attached hereto and incorporated herein by reference (the “**Economic Development Plan**”).

NOW, THEREFORE, be it ordained by the legislative authority of the Municipality of Clayton, Montgomery County, Ohio, that:

Section 1. Delineation of Overlay on a Map of the Proposed Incentive District. Pursuant to Division (A)(6) of R.C. 5709.40, this Council hereby delineates the Overlay as it relates to and serves to further describe the proposed National and Haber Incentive District.

Section 2. Adoption of Written Economic Development Plan for the Proposed Incentive District. Under Division (A)(5)(f) of R.C. 5709.40, this Council hereby adopts the Economic Development Plan in furtherance of its contemplation of the National and Haber Incentive District.

Section 3. Open Meetings. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision-making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with Ohio’s Sunshine Laws, including R.C. 121.22.

Section 4. Effective Date. This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that this ordinance must be immediately effective so that the work on the Development can begin as quickly as possible, thus providing economic benefit to the City and its residents; wherefore this ordinance shall take effect and be in force from and immediately after its adoption.

ADOPTED BY COUNCIL ON MAY 19, 2022

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## **ORDINANCES – FIRST OF TWO READINGS**

### **ORDINANCE NO. O – 05 – 22 – 13**

**AUTHORIZING THE CREATION OF THE WENGER VILLAGE INCENTIVE DISTRICT WITHIN THE CITY OF CLAYTON, OHIO; DECLARING IMPROVEMENTS TO CERTAIN REAL PROPERTY WITHIN SUCH INCENTIVE DISTRICT TO BE A PUBLIC PURPOSE; DESCRIBING THE PUBLIC INFRASTRUCTURE IMPROVEMENTS TO BE MADE TO BENEFIT OR SERVE THE REAL PROPERTY WITHIN SUCH INCENTIVE DISTRICT; DECLARING SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; REQUIRING ANNUAL SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND; AND PROVIDING RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40(C), 5709.42, 5709.43, 5709.832 AND 5709.85.**

WHEREAS, Division (C) of Ohio Revised Code Section (“**R.C.**”) 5709.40 provides that this Council may, under certain circumstances, (i) create an incentive district for parcels of real property located in the City of Clayton, Montgomery County, Ohio (the “**City**”), (ii) declare as “improvements,” which term is defined in Division (A)(4) of R.C. 5709.40, to such parcels of real property located in such incentive district to be a public purpose, thereby granting to those improvements an exemption from real property taxation, (iii) designate the public infrastructure improvements made, to be made, or in the process of being made that benefit or serve, or, once made, will benefit or serve parcels in such

incentive district, and (iv) require annual service payments in lieu of taxes to be used to finance the designated public infrastructure improvements within such incentive district; and,

WHEREAS, pursuant to Division (C)(4) of R.C. 5709.40, such exemption may be for up to ten (10) years and up to seventy-five percent (75%) of the increase in the assessed value of any real property in such incentive district that would first appear on the tax list and duplicate of real and public utility property after the effective date of an ordinance adopted under R.C. 5709.40 were it not for the exemption granted by that ordinance (an “**Improvement**”); and,

WHEREAS, the real property described in **EXHIBIT A** attached hereto and incorporated herein by reference (the “**Property**”) is located in the City, with each parcel of the Property referred to herein as a “**Parcel**” (whether as presently appearing on Montgomery County tax duplicates or as subdivided or combined and appearing on future tax duplicates); and,

WHEREAS, Oakes Tree Development, LLC, or its designee, (the “**Developer**”) proposes to develop the Property by constructing approximately 58 single family residential units, together with related site improvements (the “**Development**”), which Development places additional demand on the Public Infrastructure Improvements, defined below; and,

WHEREAS, pursuant to Division (C) of R.C. 5709.40, this Council desires to create an incentive district of the Parcels comprising the Development (the “**Wenger Village Incentive District**”); and,

WHEREAS, as required by Division (A)(5)(f) of R.C. 5709.40, the City Engineer has certified to this Council that (i) the Wenger Village Incentive District is less than 300 acres in size, (ii) the Wenger Village Incentive District is enclosed by a continuous boundary, and (iii) the existing public infrastructure is inadequate to meet the residential, commercial, or industrial development needs of the Wenger Village Incentive District, as evidenced by the City’s written economic development plan, which is on file with the Clerk of the Council; and,

WHEREAS, pursuant to Division (C)(4) of R.C. 5709.40, this Council has determined to grant the TIF Exemption (as defined herein) from real estate taxation for all Improvements to the Property within the Wenger Village Incentive District for seventy-five percent (75%) of such Improvements for ten (10) years; and,

WHEREAS, this Council (i) has determined that it is necessary and appropriate and in the best interests of the City to provide for annual service payments in lieu of real property taxes with respect to the Property pursuant to R.C. 5709.42 and (ii) desires to facilitate the construction of the public infrastructure improvements described in **EXHIBIT B** attached hereto and incorporated herein by reference (the “**Public Infrastructure Improvements**”); and,

WHEREAS, in connection with the construction of the Development, the City and the Developer desire to execute a tax increment financing agreement substantially in the form attached hereto and incorporated herein as **EXHIBIT C** (the “**TIF Agreement**”), which TIF Agreement provides for the construction of the Development and for the financing of the Public Infrastructure Improvements, as defined herein and in the TIF Agreement; and,

WHEREAS, notice of this proposed ordinance has been delivered to the Boards of Education of the Northmont City School District (“**Northmont City Schools**”) and the Miami Valley Career Technology Center (“**Miami Valley Career Tech**,” and together with Northmont City Schools, the “**School Districts**”) pursuant to R.C. 5709.40 and R.C. 5709.83; and,

WHEREAS, this Council acknowledges that this ordinance is being adopted after a duly conducted public hearing, with prior notice, via first class mail, of such public hearing provided not later than thirty (30) days to every real property owner whose property is located in the boundaries of

the Wenger Village Incentive District, and said notice included a map of the incentive district, an overlay relating thereto, and information to property owners as to excluding their property from the incentive district, as appropriate, all in accordance with Division (C)(2)(a) of R.C. 5709.40; and,

WHEREAS, this Council acknowledges that it has received an affirmative statement from the owners of all the Parcels (i.e., 100% of the Property) located within the Wenger Village Incentive District (i) otherwise waiving the notice requirement set forth in Division (C)(2)(a) of R.C. 5709.40 with respect to all of the Property, (ii) affirming that the owners thereof have no intention of excluding any of the Property from the Wenger Village Incentive District, and (iii) requesting that this Council proceed with the enactment of this ordinance.

NOW, THEREFORE, be it ordained by the legislative authority of the Municipality of Clayton, Montgomery County, Ohio, that:

Section 1. Creation of Incentive District. Pursuant to Division (C) of R.C. 5709.40, this Council hereby creates the Wenger Village Incentive District, which consists of the Parcels specifically identified and depicted in Exhibit A attached hereto, and further declares that the Improvements to the Property are a public purpose.

Section 2. Authorization of TIF Exemption. Under Division (C) of R.C. 5709.40, this Council hereby exempts from taxation seventy-five percent (75%) of the Improvement as a public purpose for a period of ten (10) years (the “**TIF Exemption**”). The TIF Exemption with respect to all Property in the Wenger Village Incentive District shall commence with the first day of the tax year following the effective date of this ordinance and for which an Improvement on any Parcel in the Wenger Village Incentive District would have first appeared on the tax list and duplicate of real and public utility property were it not for the exemption granted by this ordinance (the “**Commencement Date**”), and in all cases, the Wenger Village Incentive District and the TIF Exemption shall end with respect to all Property in the Wenger Village Incentive District on the date that is the earlier of (a) ten years after the Commencement Date or (b) the date on which the City can no longer require service payments in lieu of taxes, either by law, or because the costs of all Public Infrastructure Improvements are paid for, all in accordance with the requirements of R.C. 5709.40, R.C. 5709.42, and R.C. 5709.43.

Section 3. Service Payments and Property Tax Rollback Payments. As provided in R.C. 5709.42, this Council hereby directs and requires the owners of Parcels within the Wenger Village Incentive District (the “**Owners**”) to make annual service payments in lieu of taxes with respect to the Improvement allocable to each such Owner’s Parcel to the County Treasurer of Montgomery County, Ohio (the “**County Treasurer**”) on or before the final dates for payment of real property taxes. Each service payment in lieu of taxes, including any penalties and interest at the then-current rate established under R.C. 323.121 and R.C. 5703.47, will be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement if it were not subject to the TIF Exemption. Such service payments in lieu of taxes, penalties and interest, and any other payments with respect to each Improvement that are received by the County Treasurer in connection with the reduction required by R.C. 319.302, R.C. 321.24, R.C. 323.152 and R.C. 323.156, as the same may be amended from time-to-time, or any successor provisions, as the same may be amended from time-to-time (the “**Property Tax Rollback Payments**,” and together with the annual service payments in lieu of taxes and penalties and interest described above, the “**Service Payments**”), will be allocated and distributed in accordance with Section 5 of this ordinance.

Section 4. Creation of TIF Fund. This Council hereby establishes, pursuant to and in accordance with the provisions of R.C. 5709.43, the Seneca Drive Municipal Public Improvement Tax Increment Equivalent Fund (the “**TIF Fund**”), into which shall be deposited all of the Service Payments distributed to the City with respect to the Improvements to Parcels of the Property by or on behalf of the

County Treasurer, as provided in R.C. 5709.42. The City may use amounts deposited into the TIF Fund to pay any costs associated with the Public Infrastructure Improvements approved by the City, including, but not limited to, the “**costs of permanent improvements**” described in Division (B) of R.C. 133.15. The TIF Fund will be maintained in the custody of the City and will exist so long as such Service Payments are collected and used for the purposes described in this Section 5. Then the TIF Fund is to be dissolved and any surplus funds remaining in the TIF Fund will be transferred to the City’s general fund, all as set forth under Division (D) of R.C. Section 5709.43.

Section 6. Distribution of Funds. At the same time and in the same manner as real property tax distributions, the County Treasurer shall distribute the Service Payments to the City to be deposited in the TIF Fund, and the City shall then distribute the Service Payments as follows:

FIRST, unless so distributed by the County Treasurer or the County Auditor of Montgomery County, Ohio (the “**County Auditor**”), to compensate each appropriate taxing authority, in an amount equal to the amount of taxes each such authority would have received had this ordinance not been adopted, as to renewal levies with an increase, replacement levies, or additional levies, as appropriate, all as are described under Division (F) of R.C. 5709.40; and,

SECOND, to be deposited into the TIF Fund and then distributed according to the terms and conditions of the TIF Agreement.

The City shall then distribute Service Payments on deposit in the TIF Fund to pay or reimburse the City or the Developer, respectively, for the costs of Public Infrastructure Improvements constructed by the City or the Developer, respectively, according to the terms and conditions of the TIF Agreement. The Service Payments are hereby directed one hundred percent (100%) to general public infrastructure improvements, as they comprise the Public Infrastructure Improvements set forth herein. The TIF Fund is to remain in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the TIF Fund is to be dissolved and any surplus funds remaining therein are to be transferred to the City’s General Fund, all in accordance with R.C. 5709.43.

Section 7. TIF Agreement and Further Authorizations. This Council hereby approves the TIF Agreement, with any changes that are not inconsistent with this ordinance and not substantially adverse to the City and which shall be conclusively evidenced by the signing of the TIF Agreement by the Mayor, to which this Council further hereby authorizes execution on behalf of the City. This Board further authorizes and directs the Mayor or other appropriate officers of the City to provide such information and certifications and execute and deliver, or accept delivery of such instruments, as are necessary and appropriate to implement this ordinance and the TIF Agreement.

Section 8. Application for Real Property Tax Exemption and Remission. This Council hereby authorizes the Mayor or other appropriate officers of the City to prepare and sign any applications for real property tax exemption pursuant to R.C. 5709.911, the provisions of which govern the priority status of the exemptions provided under this ordinance.

Section 9. Tax Incentive Review Council. This Council hereby designates the Montgomery County Tax Incentive Review Council (the “**TIRC**”) as the tax incentive review council that shall review annually all exemptions from taxation resulting from this ordinance and any other matters as may properly come before the TIRC, in accordance with R.C. 5709.85.

Section 10. Nondiscriminatory Hiring Practices. In accordance with R.C. 5709.832, this Council hereby determines that no employer located in the Wenger Village Incentive District is to deny any individual employment based on considerations of race, religion, sex, disability, color, national origin, or ancestry.

Section 11. Ohio Department of Development. Pursuant to Division (I) of R.C. 5709.40, the Mayor is hereby directed to deliver a copy of this ordinance to the Director of the Ohio Department of Development (“**ODOD**”) within fifteen (15) days after its passage. On or before March 31 of each year that the TIF Exemption remains in effect, the Mayor or other authorized officer of this City shall prepare and submit, or cause to be prepared and submitted, to the Director of ODOD the status report required under Division (I) of R.C. 5709.40.

Section 12. Open Meetings. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision-making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with Ohio’s Sunshine Laws, including R.C. 121.22.

Section 13. Effective Date. This ordinance shall take effect and be in full force from and after the earliest period allowed by law.

ADOPTED BY COUNCIL ON JUNE 16, 2022

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**COUNCIL TABLED THE FOLLOWING ORDINANCE:**

**ORDINANCE NO. O – 05 – 22 – 15**

**AUTHORIZING THE CREATION OF THE NATIONAL AND HABER INCENTIVE DISTRICT WITHIN THE CITY OF CLAYTON, OHIO; DECLARING IMPROVEMENTS TO CERTAIN REAL PROPERTY WITHIN SUCH INCENTIVE DISTRICT TO BE A PUBLIC PURPOSE; DESCRIBING THE PUBLIC INFRASTRUCTURE IMPROVEMENTS TO BE MADE TO BENEFIT OR SERVE THE REAL PROPERTY WITHIN SUCH INCENTIVE DISTRICT; DECLARING SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; REQUIRING ANNUAL SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND; AND PROVIDING RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40(C), 5709.42, 5709.43, 5709.832 AND 5709.85.**

WHEREAS, Division (C) of Ohio Revised Code Section (“**R.C.**”) 5709.40 provides that this Council may, under certain circumstances, (i) create an incentive district for parcels of real property located in the City of Clayton, Montgomery County, Ohio (the “**City**”), (ii) declare as “improvements,” which term is defined in Division (A)(4) of R.C. 5709.40, to such parcels of real property located in such incentive district to be a public purpose, thereby granting to those improvements an exemption from real property taxation, (iii) designate the public infrastructure improvements made, to be made, or in the process of being made that benefit or serve, or, once made, will benefit or serve parcels in such incentive district, and (iv) require annual service payments in lieu of taxes to be used to finance the designated public infrastructure improvements within such incentive district; and,

WHEREAS, pursuant to Division (C)(4) of R.C. 5709.40, such exemption may be for up to ten

(10) years and up to seventy-five percent (75%) of the increase in the assessed value of any real property in such incentive district that would first appear on the tax list and duplicate of real and public utility property after the effective date of an ordinance adopted under R.C. 5709.40 were it not for the exemption granted by that ordinance (an “**Improvement**”); and,

WHEREAS, the real property described in **EXHIBIT A** attached hereto and incorporated herein by reference (the “**Property**”) is located in the City, with each parcel of the Property referred to herein as a “**Parcel**” (whether as presently appearing on Montgomery County tax duplicates or as subdivided or combined and appearing on future tax duplicates); and,

WHEREAS, Oakes Tree Development, LLC, or its designee, (the “**Developer**”) proposes to develop the Property by constructing approximately 114 single family residential units, together with related site improvements (the “**Development**”), which Development places additional demand on the Public Infrastructure Improvements, defined below; and,

WHEREAS, pursuant to Division (C) of R.C. 5709.40, this Council desires to create an incentive district of the Parcels comprising the Development (the “**National and Haber Incentive District**”); and,

WHEREAS, as required by Division (A)(5)(f) of R.C. 5709.40, the City Engineer has certified to this Council that (i) the National and Haber Incentive District is less than 300 acres in size, (ii) the National and Haber Incentive District is enclosed by a continuous boundary, and (iii) the existing public infrastructure is inadequate to meet the residential, commercial, or industrial development needs of the National and Haber Incentive District, as evidenced by the City’s written economic development plan, which is on file with the Clerk of the Council; and,

WHEREAS, pursuant to Division (C)(4) of R.C. 5709.40, this Council has determined to grant the TIF Exemption (as defined herein) from real estate taxation for all Improvements to the Property within the National and Haber Incentive District for seventy-five percent (75%) of such Improvements for ten (10) years; and,

WHEREAS, this Council (i) has determined that it is necessary and appropriate and in the best interests of the City to provide for annual service payments in lieu of real property taxes with respect to the Property pursuant to R.C. 5709.42 and (ii) desires to facilitate the construction of the public infrastructure improvements described in **EXHIBIT B** attached hereto and incorporated herein by reference (the “**Public Infrastructure Improvements**”); and,

WHEREAS, in connection with the construction of the Development, the City and the Developer desire to execute a tax increment financing agreement substantially in the form attached hereto and incorporated herein as **EXHIBIT C** (the “**TIF Agreement**”), which TIF Agreement provides for the construction of the Development and for the financing of the Public Infrastructure Improvements, as defined herein and in the TIF Agreement; and,

WHEREAS, notice of this proposed ordinance has been delivered to the Boards of Education of the Northmont City School District (“**Northmont City Schools**”) and the Miami Valley Career Technology Center (“**Miami Valley Career Tech**,” and together with Northmont City Schools, the “**School Districts**”) pursuant to R.C. 5709.40 and R.C. 5709.83; and,

WHEREAS, this Council acknowledges that this ordinance is being adopted after a duly conducted public hearing, with prior notice, via first class mail, of such public hearing provided not later than thirty (30) days to every real property owner whose property is located in the boundaries of the National and Haber Incentive District, and said notice included a map of the incentive district, an overlay relating thereto, and information to property owners as to excluding their property from the incentive district, as appropriate, all in accordance with Division (C)(2)(a) of R.C. 5709.40; and,

WHEREAS, this Council acknowledges that it has received an affirmative statement from the owners of all the Parcels (i.e., 100% of the Property) located within the National and Haber Incentive District (i) otherwise waiving the notice requirement set forth in Division (C)(2)(a) of R.C. 5709.40 with respect to all of the Property, (ii) affirming that the owners thereof have no intention of excluding any of the Property from the National and Haber Incentive District, and (iii) requesting that this Council proceed with the enactment of this ordinance.

NOW, THEREFORE, be it ordained by the legislative authority of the Municipality of Clayton, Montgomery County, Ohio, that:

Section 1. Creation of Incentive District. Pursuant to Division (C) of R.C. 5709.40, this Council hereby creates the National and Haber Incentive District, which consists of the Parcels specifically identified and depicted in Exhibit A attached hereto, and further declares that the Improvements to the Property are a public purpose.

Section 2. Authorization of TIF Exemption. Under Division (C) of R.C. 5709.40, this Council hereby exempts from taxation seventy-five percent (75%) of the Improvement as a public purpose for a period of ten (10) years (the “**TIF Exemption**”). The TIF Exemption with respect to all Property in the National and Haber Incentive District shall commence with the first day of the tax year following the effective date of this ordinance and for which an Improvement on any Parcel in the National and Haber Incentive District would have first appeared on the tax list and duplicate of real and public utility property were it not for the exemption granted by this ordinance (the “**Commencement Date**”), and in all cases, the National and Haber Incentive District and the TIF Exemption shall end with respect to all Property in the National and Haber Incentive District on the date that is the earlier of (a) ten years after the Commencement Date or (b) the date on which the City can no longer require service payments in lieu of taxes, either by law, or because the costs of all Public Infrastructure Improvements are paid for, all in accordance with the requirements of R.C. 5709.40, R.C. 5709.42, and R.C. 5709.43.

Section 3. Service Payments and Property Tax Rollback Payments. As provided in R.C. 5709.42, this Council hereby directs and requires the owners of Parcels within the National and Haber Incentive District (the “**Owners**”) to make annual service payments in lieu of taxes with respect to the Improvement allocable to each such Owner’s Parcel to the County Treasurer of Montgomery County, Ohio (the “**County Treasurer**”) on or before the final dates for payment of real property taxes. Each service payment in lieu of taxes, including any penalties and interest at the then-current rate established under R.C. 323.121 and R.C. 5703.47, will be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement if it were not subject to the TIF Exemption. Such service payments in lieu of taxes, penalties and interest, and any other payments with respect to each Improvement that are received by the County Treasurer in connection with the reduction required by R.C. 319.302, R.C. 321.24, R.C. 323.152 and R.C. 323.156, as the same may be amended from time-to-time, or any successor provisions, as the same may be amended from time-to-time (the “**Property Tax Rollback Payments**,” and together with the annual service payments in lieu of taxes and penalties and interest described above, the “**Service Payments**”), will be allocated and distributed in accordance with Section 5 of this ordinance.

Section 4. Creation of TIF Fund. This Council hereby establishes, pursuant to and in accordance with the provisions of R.C. 5709.43, the Seneca Drive Municipal Public Improvement Tax Increment Equivalent Fund (the “**TIF Fund**”), into which shall be deposited all of the Service Payments distributed to the City with respect to the Improvements to Parcels of the Property by or on behalf of the County Treasurer, as provided in R.C. 5709.42. The City may use amounts deposited into the TIF Fund to pay any costs associated with the Public Infrastructure Improvements approved by the City, including, but not limited to, the “**costs of permanent improvements**” described in Division (B) of R.C. 133.15. The TIF Fund will be maintained in the custody of the City and will exist so long as such Service

Payments are collected and used for the purposes described in this Section 5. Then the TIF Fund is to be dissolved and any surplus funds remaining in the TIF Fund will be transferred to the City's general fund, all as set forth under Division (D) of R.C. Section 5709.43.

Section 6. Distribution of Funds. At the same time and in the same manner as real property tax distributions, the County Treasurer shall distribute the Service Payments to the City to be deposited in the TIF Fund, and the City shall then distribute the Service Payments as follows:

FIRST, unless so distributed by the County Treasurer or the County Auditor of Montgomery County, Ohio (the "**County Auditor**"), to compensate each appropriate taxing authority, in an amount equal to the amount of taxes each such authority would have received had this ordinance not been adopted, as to renewal levies with an increase, replacement levies, or additional levies, as appropriate, all as are described under Division (F) of R.C. 5709.40; and,

SECOND, to be deposited into the TIF Fund and then distributed according to the terms and conditions of the TIF Agreement.

The City shall then distribute Service Payments on deposit in the TIF Fund to pay or reimburse the City or the Developer, respectively, for the costs of Public Infrastructure Improvements constructed by the City or the Developer, respectively, according to the terms and conditions of the TIF Agreement. The Service Payments are hereby directed one hundred percent (100%) to general public infrastructure improvements, as they comprise the Public Infrastructure Improvements set forth herein. The TIF Fund is to remain in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the TIF Fund is to be dissolved and any surplus funds remaining therein are to be transferred to the City's General Fund, all in accordance with R.C. 5709.43.

Section 7. TIF Agreement and Further Authorizations. This Council hereby approves the TIF Agreement, with any changes that are not inconsistent with this ordinance and not substantially adverse to the City and which shall be conclusively evidenced by the signing of the TIF Agreement by the Mayor, to which this Council further hereby authorizes execution on behalf of the City. This Board further authorizes and directs the Mayor or other appropriate officers of the City to provide such information and certifications and execute and deliver, or accept delivery of such instruments, as are necessary and appropriate to implement this ordinance and the TIF Agreement.

Section 8. Application for Real Property Tax Exemption and Remission. This Council hereby authorizes the Mayor or other appropriate officers of the City to prepare and sign any applications for real property tax exemption pursuant to R.C. 5709.911, the provisions of which govern the priority status of the exemptions provided under this ordinance.

Section 9. Tax Incentive Review Council. This Council hereby designates the Montgomery County Tax Incentive Review Council (the "**TIRC**") as the tax incentive review council that shall review annually all exemptions from taxation resulting from this ordinance and any other matters as may properly come before the TIRC, in accordance with R.C. 5709.85.

Section 10. Nondiscriminatory Hiring Practices. In accordance with R.C. 5709.832, this Council hereby determines that no employer located in the National and Haber Incentive District is to deny any individual employment based on considerations of race, religion, sex, disability, color, national origin, or ancestry.

Section 11. Ohio Department of Development. Pursuant to Division (I) of R.C. 5709.40, the Mayor is hereby directed to deliver a copy of this ordinance to the Director of the Ohio Department of Development ("**ODOD**") within fifteen (15) days after its passage. On or before March 31 of each year

that the TIF Exemption remains in effect, the Mayor or other authorized officer of this City shall prepare and submit, or cause to be prepared and submitted, to the Director of ODOD the status report required under Division (I) of R.C. 5709.40.

Section 12. Open Meetings. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision-making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with Ohio's Sunshine Laws, including R.C. 121.22.

Section 13. Effective Date. This ordinance shall take effect and be in full force from and after the earliest period allowed by law.

ADOPTED BY COUNCIL ON JUNE 16, 2022

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## **RESOLUTIONS – SINGLE READING AND IMMEDIATE ENACTMENT**

### **RESOLUTION NO. R – 05 – 22 – 41**

#### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ESO SOLUTIONS, INC. FOR A RECORDS MANAGEMENT SYSTEM FOR THE FIRE DEPARTMENT IN ORDER TO EFFECUTATE THE PURPOSES OF THE JOINT EMERGENCY SERVICES COLLABORATIVE MEMORANDUM OF UNDERSTANDING IN A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$26,552.33, SAID AMOUNT TO BE SHARED AMONG THE CITIES OF CLAYTON, ENGLEWOOD, AND UNION**

**WHEREAS**, via enactment of Resolution No. R-03-20-17 on March 19, 2020, City Council authorized the City Manager to sign a Joint Emergency Services Collaborative Memorandum of Understanding on behalf of the City of Clayton, Ohio with the cities of Englewood, Ohio and Union, Ohio; and

**WHEREAS**, in order to effectively and efficiently carry out the purposes of said Joint Emergency Services Collaborative Memorandum of Understanding, Fire Chief Brian Garver has requested authorization to enter into a contract with ESO Solutions, Inc. for a records management system for the fire department collaborative with the total contract price of \$26,552.33 being shared among the Cities of Clayton, Englewood, and Union as follows:

Clayton: \$8,198.16 or 31% of the total cost;  
Englewood: \$13,678.70 or 51% of the total cost;  
Union: \$4,675.47 or 18% of the total cost; and

**WHEREAS**, this purchase is exempt from competitive bidding per Clayton Charter Section 8.02(C)(1) and Ordinance No. 01-21-01 enacted February 18, 2021.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the City Manager is hereby authorized to enter into a contract with ESO Solutions, Inc. for a new records management system for the fire department collaborative at a total cost not to exceed \$26,552.33, said total cost to be shared among the Cities of Clayton, Englewood, and Union as follows:

Clayton: \$8,198.16 or 31% of the total cost;  
Englewood: \$13,678.70 or 51% of the total cost;  
Union: \$4,675.47 or 18% of the total cost.

2. That the City Manager is further authorized to enter into any additional agreements or Memorandum of Understanding with the Cities of Englewood and Union to effectuate the cost sharing of the records management system as enumerated herein.
3. That this Resolution shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Resolution or which imposes additional requirements for effectiveness or validity.

ADOPTED BY COUNCIL ON MAY 19, 2022

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**RESOLUTION NO. R – 05 – 22 – 42**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A RENEWAL AGREEMENT WITH ANTHEM BLUE CROSS BLUE SHIELD FOR THE PROVISION OF GROUP HEALTH INSURANCE BENEFITS FROM SEPTEMBER 1, 2022 THROUGH AUGUST 31, 2023**

**WHEREAS**, via enactment of Resolution No. R- 11-20-59 on November 19, 2020, Council authorized the City to become a member of the Ohio Benefits Cooperative (“OBC”) thereby permitting the City to purchase medical, dental, and life insurance through said Cooperative; at the time, the City renewed for a period of 8 months in order to synchronize with the OBC’s benefit period; and

**WHEREAS**, working with OBC, health insurance quotes were received and reviewed; and

**WHEREAS**, renewal of the current Anthem policy via OBC permits continuation of the contract plan at the best and lowest price reasonably possible maintaining a consistent benefit level; and

**WHEREAS**, City Staff has reviewed the information provided and recommends renewal with Anthem.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the City Manager is hereby authorized to accept the proposal of and enter into a renewal agreement with Anthem Blue Cross Blue Shield for the provision of group health insurance benefits through the Ohio Benefits Cooperative from September 1, 2022 through August 31, 2023.
2. That this Resolution shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Resolution or which imposes additional requirements for effectiveness or validity.

ADOPTED BY COUNCIL ON MAY 19, 2022

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