

# CITY OF CLAYTON, OHIO

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## RESOLUTIONS AND ORDINANCES

February 1, 2024

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### OLD BUSINESS

**ORDINANCES: COUNCIL VOTED TO REMOVE THE FOLLOWING ORDINANCE FROM ITS AGENDA AND NO VOTE WAS CONDUCTED THEREON.**

### ORDINANCE NO. O – 12 – 23 – 28

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SELL A 3.7884 ACRE PARCEL OF PROPERTY LOCATED AT THE CORNER OF NATIONAL ROAD AND PROACTION DRIVE AND BEARING PARCEL I.D. NO. M60 03102 0112 TO BELLA SORELLA PIZZA COMPANY, LLC FOR A PRICE OF TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) AND SUBJECT TO THE PROVISIONS CONCERNING FORGIVENESS OF THE LOAN FOR THE PURCHASE PRICE IN RETURN FOR MAINTAINING AN AGREED LEVEL OF EMPLOYMENT AND OTHER CONDITIONS AS CONTAINED WITHIN A CERTAIN PURCHASE AND SALE AGREEMENT WITH THE PURCHASER AND DECLARING AN EMERGENCY**

**WHEREAS**, Article XVIII, Section 3 of the Ohio Constitution and Clayton Charter Article II permit the City to exercise all powers of local self-government; and

**WHEREAS**, Clayton Charter Section 5.04(B)(10) designates the City Manager as chief executive and administrator and authorizes the City Manager to execute on behalf of the City all contracts and agreements; and

**WHEREAS**, Council has designated the position of Development Director to assist the Mayor and City Manager and to coordinate functions and engage in negotiations related to economic and community development; and

**WHEREAS**, the City Manager and Development Director with input and guidance from Clayton City Council have successfully negotiated an arrangement with Bella Sorella Pizza Company, LLC for the sale to Bella Sorella Pizza Company, LLC of a 3.7884 acre parcel of property (“Subject Property” or “Property”) located at the corner of National Road and Proaction Drive and bearing Parcel I. D. No. M60 03102 0112; and

**WHEREAS**, Bella Sorella Pizza Company, LLC intends to construct a restaurant at the Subject Property which restaurant will initially employ approximately 12 employees (and eventually at least 18 employees) with an initial annual payroll of at least \$375,000.00; and

**WHEREAS**, the construction and operation of said restaurant will provide significant benefits to the City of Clayton, and the Northmont Community as well as to Montgomery County; and

**WHEREAS**, the Subject Property has been available for sale or development, but has been unused since being acquired by the City and in its current state is not needed for municipal purposes; and

**WHEREAS**, the terms of the sale, including provisions for the forgiveness of the \$200,000.00 purchase price over a five-year period conditioned upon the maintaining of specified payroll and employment levels and other conditions, are contained within the Purchase and Sale Agreement appended hereto; and

**WHEREAS**, without immediate approval and execution of the Purchase and Sale Agreement, the purchase of the 3.7884 acre tract cannot proceed, the City cannot enter into the Purchase and Sale Agreement with Bella Sorella Pizza Company, LLC, and benefits that would otherwise be available to the residents of the City of Clayton will be delayed or otherwise placed at risk.

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

1. That Council hereby finds and determines the Subject Property is no longer needed for municipal purposes and the City Manager is hereby authorized to execute a Purchase and Sale Agreement in a form substantially similar to the attachment hereto (**Exhibit A**) (with such modifications as deemed appropriate by the Law Department), with Bella Sorella Pizza Company, LLC for the sale of a 3.7884 acre tract of property located at the corner of National Road and Proaction Drive and bearing Parcel I.D. No. M60 03102 0112 at a price of Two Hundred Thousand Dollars (\$200,000.00). The City Manager is further authorized to pay closing costs, if any, as specified by the applicable purchase contract(s) and settlement statements (said additional costs not to exceed the spending authority granted to the City Manager per Clayton Codified Ordinance Section 121.01) in order to effectuate the sale of said Property and to transfer at closing said Property. The City Manager and Finance Director are authorized to execute all documents and take all necessary actions to close on said Property.
2. That this Ordinance shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Ordinance or which imposes additional requirements for effectiveness or validity.
3. That in accordance with Clayton Charter Section 4.031(B) the requirement that this enactment be read on two (2) separate days is dispensed with by affirmative vote of at least five (5) of the members of Council.
4. That, immediate approval of the sale of the Subject Property is necessary and will result in the prompt construction of material improvements to the Subject Property, the hiring of substantial numbers of new employees, the increase of tax revenues to the City, and enhancement to the economic health, safety, and welfare of the Clayton Community at large. Accordingly, in accordance with Charter Section 4.033(A) this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the City and shall therefore be in full force and effect from and immediately upon affirmative vote of at least five (5) of the members of Council.

**NEW BUSINESS**

**ORDINANCES (FIRST OF TWO READINGS)**

**ORDINANCE NO. O – 02 – 24 – 01**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE AGREEMENT WITH KATE’S PIZZA PLACE, LLC AND FURTHER AUTHORIZING TRANSFER AT CLOSING FOR THE PURCHASE PRICE OF \$50,000.00 PLUS CLOSING COSTS AND BROKER FEE OF THE PUBLIC PROPERTY BEARING PARCEL ID NUMBER M60 03102 0112 LOCATED AT THE CORNER OF NATIONAL ROAD AND PROACTION DRIVE WITHIN THE CITY OF CLAYTON, OHIO AND CONTAINING 3.7884 ACRES**

**WHEREAS**, Article XVIII, Section 3 of the Ohio Constitution permits Clayton to exercise its power of local self-government; and

**WHEREAS**, via adoption of Ordinance O-01-07-02 on January 18, 2007, Council enacted Clayton Codified Ordinance Section 117.01 which provides, “Upon a vote of *two-thirds* of the members of Council, the sale, lease or other conveyance and transfer of an interest in real property no longer needed for municipal purposes may be approved on such terms as are deemed beneficial to the City and dispensing with any requirements for publication and/or competitive bidding.”

**WHEREAS**, Council finds and determines that the subject real property bearing Parcel ID Number M60 03102 0112 located at the corner of National Road and Proaction Drive within the City of Clayton, Ohio and containing 3.7884 acres is no longer needed for municipal purposes and therefore authorizes the sale of same to Kate’s Pizza Place, LLC.

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

1. That the City of Clayton Council hereby authorizes the City Manager to enter into a Purchase Agreement (with such modifications as deemed appropriate by the Law Department) with Kate’s Pizza Place, LLC with a purchase price of \$50,000.00 plus additional closing costs, if any, as specified by the applicable purchase contract(s) and settlement statements plus a broker fee, all said amounts to not be in excess of the City Manager’s spending limit as delineated in current Clayton Codified Ordinance 121.01 (current limit is \$35,000.00) in order to effectuate the sale of said real property no longer needed for municipal purposes bearing Parcel ID Number M60 03102 0112 located at the corner of National Road and Proaction Drive within the City of Clayton, Ohio and containing 3.7884 acres and to transfer at closing said real property and to execute all documents and take all necessary action to close on said property.
2. That this Ordinance shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Ordinance or which imposes additional requirements for effectiveness or validity.
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 February 1, 2024 and February 15, 2024.
4. That in accordance with Clayton Charter Section 4.031(H) this enactment shall become effective thirty days after its second reading and enactment.

**NOTE: THE FOLLOWING ORDINANCE DID NOT RECEIVE A SECOND TO THE MOTION MADE BY MEMBER HENNING TO APPROVE AND THEREFORE NO VOTE WAS TAKEN ON THIS ORDINANCE.**

**ORDINANCE NO. O – 02 – 24 – 02**

**AN ORDINANCE TO REPEAL CURRENT CLAYTON CODIFIED ORDINANCE CHAPTER 1519 (“FIREWORKS”) AND REPLACE WITH UPDATED VERSION OF CLAYTON CODIFIED ORDINANCE CHAPTER 1519 (“FIREWORKS”) APPENDED HERETO AS EXHIBIT A**

**WHEREAS**, with the passage of Ohio House Bill 172, as of July 1, 2022, Ohioans can legally discharge 1.4G consumer fireworks in Ohio on specified dates and at specified times unless a political subdivision chooses to ban their use; and

**WHEREAS**, the Council of the City of Clayton, Ohio has considered the matter and determined it to be in the best interests of the health, safety, and welfare of the citizens of Clayton to ban the use of consumer fireworks as further delineated in the attached **Exhibit A**.

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

1. That current Clayton Codified Ordinance Chapter 1519 (“Fireworks”) is hereby repealed and replaced with the updated version of Clayton Codified Ordinance Chapter 1519 (“Fireworks”) attached hereto as **Exhibit A** and incorporated by reference.
2. That this Ordinance shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Ordinance or which imposes additional requirements for effectiveness or validity.
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 February 1, 2024 and February 15, 2024.
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 FEBRUARY 15, 2024

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**NOTE: COUNCIL VOTED TO TABLE THE BELOW ORDINANCE.**

**ORDINANCE NO. O – 02 – 24 – 03**

**AN ORDINANCE REPEALING ORDINANCE NO. O-05-23-08 WHICH ADOPTED THE PLANNING COMMISSION’S RECOMMENDATION TO APPROVE, WITH SPECIFIED CONDITIONS, THE APPLICATION OF CLAYTON PROPERTIES GROUP, INC. DBA ARBOR HOMES, FOR A CHANGE IN ZONING FROM RURAL CONSERVATION DISTRICT- 2 (RCD-2) TO PLANNED DEVELOPMENT DISTRICT (PDD) AND TO FURTHER APPROVE THE PRELIMINARY DEVELOPMENT PLAN FOR 42.99 ACRES OF PROPERTY LOCATED ALONG PHILLIPSBURG-UNION ROAD AND HABER ROAD AND BEARING PARCEL I.D. NO. M60 03006 0009 (TO BE CALLED “SALEM SPRINGS”) WITHIN THE CITY OF CLAYTON, OHIO**

**WHEREAS**, on or about March 6, 2023, an application was filed by Clayton Properties Group, Inc. dba Arbor Homes, with consent of the property owner, for property located along Phillipsburg-Union Road and Haber Road consisting of Parcel I.D. Number M60 03006 0009 and containing 42.99 acres within the City of Clayton, Ohio (“Subject Property”)(to be called “Salem Springs”) and requesting a zoning change for same from Rural Conservation District-2 (RCD-2) to Planned Development District (PDD) and further requesting approval of the proposed Preliminary Development Plan for said subject property; and

**WHEREAS**, the Clayton Planning Commission held a public hearing on March 27, 2023 on said re-zoning and Preliminary Development Plan request at which time any and all persons were given an opportunity to be heard thereon, and the Clayton Planning Commission, at said meeting, *voted to approve as submitted the re-zoning and Preliminary Development Plan request with the following conditions: “(1) That the proposed development has a minimum lot width of 60’; and (2) That the applicant addresses the comments provided in the plan review letter from Planning Staff sent to the applicant on Mach 24, 2023”*; and

**WHEREAS**, the Clayton City Council held a public hearing on May 4, 2023, on the aforesaid re-zoning and Preliminary Development Plan request at which time any and all persons were given an opportunity to be heard thereon; and

**WHEREAS**, on July 20, 2023, Council adopted Ordinance No. O-05-23-08 (*Exhibit A*) adopting the Planning Commission’s *recommendation of approval of the re-zoning and Preliminary Development Plan request for the Subject Property with the following conditions: “(1) That the proposed development has a minimum lot width of 60’; and (2) That the applicant addresses the comments provided in the plan review letter from Planning Staff sent to the applicant on Mach 24, 2023.”*

**WHEREAS**, a Petitioner’s Committee was formed per Clayton Charter Section 10.02 seeking the referendum of Ordinance No. O-05-23-08 and on August 25, 2023, the Montgomery County Board of Elections provided its Certification Form certifying the referendum petition contained a sufficient number of valid signatures to be placed on the ballot and said referendum issued is scheduled to appear on the March 19, 2024 ballot; and

**WHEREAS**, Clayton Charter Section 10.04(A)(2) provides, “Council, at any time, may consider the proposed initiative ordinance *or may reconsider the referred ordinance by voting its repeal. ...*; and

**WHEREAS**, Clayton Charter Section 10.04(C) provides, “An initiative or referendum petition may be withdrawn at any time prior to the fifth day preceding the day scheduled for the election by filing with the Board of Elections a request for withdrawal signed by a majority of the members of the Petitioner’s Committee. Upon the filing of such request, the petition shall have no further force or effect, and all proceedings thereon shall be terminated and any election held thereon deemed to be void and of no effect.”

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

1. That, in accordance with Charter Section 10.04(A)(2), the City Council hereby REPEALS Ordinance No. 05-23-08 adopted on July 20, 2023.
2. That this Ordinance shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Ordinance or which imposes additional requirements for effectiveness or validity.
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 February 1, 2024 and February 15, 2024.
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 FEBRUARY 15, 2024

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**RESOLUTIONS (SINGLE READING AND IMMEDIATE ENACTMENT)**

**RESOLUTION NO. R – 02 – 24 – 13**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT BID AND AWARD CONTRACT FOR RESIDENTIAL SOLID WASTE COLLECTION TO RUMPKE OF OHIO, INC. FOR A THREE-YEAR PERIOD COMMENCING JULY 1, 2024 WITH AN OPTION OF TWO ADDITIONAL YEARS IN ONE-YEAR INCREMENTS**

**WHEREAS**, the Clayton City Manager has solicited bids for residential solid waste collection, said solicitation having been made in accordance with the provisions of Charter Section 8.02; and

**WHEREAS**, said bids have been received and reviewed by the City Manager and staff and the bid submitted by Rumpke of Ohio, Inc. is recommended for acceptance as being the lowest and best, responsive bid submitted by a responsible bidder.

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

1. That the City Manager is authorized to accept the bid proposal of and to enter into an agreement with Rumpke of Ohio, Inc. for residential solid waste collection in accordance with the terms stated in the bid solicitation for a three-year period commencing July 1, 2024 with an option for two additional years in one-year increments.
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 FEBRUARY 1, 2024

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**RESOLUTION NO. R – 02 – 24 – 14**

**RESOLUTION APPOINTING MAYOR WILLIAM D. DUNCAN TO THE  
MONTGOMERY COUNTY 9-1-1 PROGRAM REVIEW COMMITTEE  
PURSUANT TO OHIO REVISED CODE SECTION 128.06(A)(5)**

**WHEREAS**, pursuant to Ohio Revised Code Section 128.06(A)(5), a member of the Montgomery County 9-1-1 program review committee shall be a member of the legislative authority of a municipal corporation in the county selected by the majority of the legislative authorities of municipal corporations in the county pursuant to resolutions they adopt; and

**WHEREAS**, Mayor William D. Duncan is a member of the City Council for the City of Oakwood, Ohio, thereby meeting the qualifications and eligibility requirements for service upon the Montgomery County 9-1-1 Program Review Committee, as per Ohio Revised Code Section 128.06(A)(5); and

**WHEREAS**, the Council of the City of Clayton, Montgomery County, Ohio ("City Council") considers Mayor William D. Duncan to be imminently qualified to serve as a member of the Montgomery County 9-1-1 program review committee; and

**WHEREAS**, City Council desires to designate Centerville Mayor Brooks Compton to be the first alternate to Mayor William D. Duncan, in the event that Mayor Duncan is no longer a member of the legislative authority of the City of Oakwood.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Clayton, Montgomery County, Ohio, as follows:

**Section 1.** That pursuant to Section 128.06(A)(5) of the Ohio Revised Code, City Council hereby selects and designates Mayor William D. Duncan, a member of the City Council of the City of Oakwood, Ohio, as a member of the Montgomery County 9-1-1 program review committee.

**Section 2.** If Mayor William D. Duncan is no longer a member of the City Council of the City of Oakwood, Ohio, then City Council hereby selects and designates Centerville Mayor Brooks Compton, a member of the City Council of the City of Centerville, Ohio, as the first alternate to be the member of the Montgomery County 9-1-1 program review committee.

**Section 3.** Council hereby finds and determines that all formal actions relative to the passage of this legislation were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 4.** That this Resolution shall take effect from and after the earliest time allowed by law.