



CITY OF KETTERING

DONALD E. PATTERSON, MAYOR • BILL LAUTAR, VICE MAYOR
BRUCE E. DUKE • JACQUE FISHER • TONY KLEPACZ • ROB SCOTT • JOSEPH D. WANAMAKER

KETTERING COUNCIL AGENDA

May 8, 2018

Kettering Government Center – South Building
3600 Shroyer Rd. Kettering, Ohio 45429

6:00 P.M. **WORKSHOP** Kettering Room
7:30 P.M. **REGULAR MEETING** Council Chambers

PRESENTATION OF THE COLORS

PLEDGE OF ALLEGIANCE

INVOCATION

APPROVAL OF MINUTES

April 24, 2018 - Council Meeting & Workshop Minutes

PROCLAMATIONS, SPECIAL PRESENTATIONS, AWARDS, SPECIAL RESOLUTIONS, APPOINTMENTS TO BOARDS AND COMMISSION

Appointment	Sister Cities Committee- Bloom Beloved (Term ending 12/31/2018)
Proclamation	National Police Week
Proclamation	Older Americans Month

PUBLIC HEARINGS

PUBLIC COMMENT ON LEGISLATION

(5 Minute Limit per Speaker)

ORDINANCES IN SECOND READING

1. To rezone 2339 South Dixie Drive (Planning Commission Case No. PC 18-005).

RESOLUTIONS

2. Authorizing the City Manager to enter into one or more agreements for maintenance and repair of emergency vehicles.

3. Authorizing the sale of City-owned property located at 1490 West Dorothy Lane.

4. Authorizing the City Manager to execute a quit claim deed transferring the City-owned property at 1055 Wiles Drive to the Montgomery County Land Reutilization Corporation.

5. Amending Resolution No. 10109-18 and authorizing the City Manager to contract for Valleywood Drive Improvements- Phase 2 (Cemetery Lane to East Dorothy Lane), City Project No. 02-232B.

ORDINANCES IN FIRST READING

6. To repeal and amend various sections of Chapter 672 of the Codified Ordinances regarding weapons control and declaring an emergency.

7. Enacting Codified Ordinance Chapter 743- Medical Marijuana to prohibit the cultivation, processing, and dispensing of medical marijuana.

8. To rezone 1725 East David Road and 489 Hempstead Station Drive (Planning Commission Case No. PC-17-035).

CERTIFICATIONS AND PETITIONS

MANAGER'S REPORT/COMMUNITY UPDATE

OTHER BUSINESS NOT ON WRITTEN AGENDA

Audience Participation (5 Minute Limit per Speaker)

CITY COUNCIL REPORT/UPDATE

The City of Kettering invites people with disabilities to enjoy our programs, services, parks, and facilities. Contact Anna Breidenbach at anna.breidenbach@ketteringoh.org or call 296-2439 for more information about our accessibility, inclusion, and special programs initiatives. For TTY assistance, contact Ohio Relay Service at 800-750-0750.

KETTERING CITY CALENDAR
2018

May 7	7:00 p.m.	Planning Commission
May 8	4:00 p.m. 6:00 p.m. 7:30 p.m.	Partners for Healthy Youth Council Workshop City Council Meeting
May 14	7:00 p.m.	Board of Zoning Appeals
May 16	8:00 a.m.	Volunteer Advisory Council
May 21	7:00 p.m. 7:00 p.m. 7:30 p.m.	Planning Commission Board of Community Relations Sister Cities
May 22	6:00 p.m. 7:30 p.m.	Council Workshop City Council Meeting
May 28	All Day	Government Center Closed- Memorial Day
June 4	7:00 p.m.	Planning Commission
June 11	7:00 p.m.	Board of Zoning Appeals
June 12	4:00 p.m. 6:00 p.m. 7:30 p.m.	Partners for Healthy Youth Council Workshop City Council Meeting

Office of the Mayor

Proclamation

Whereas:

The Congress of the United States of America has designated the week of May 13, 2018 to be dedicated as "National Police Week"; and

WHEREAS: *The law enforcement officers are our guardians of life and property, defenders of the individual right to be free men, warriors in the war against crime, and dedicated to the preservation of life, liberty and the pursuit of happiness; and*

WHEREAS: *The City of Kettering desires to honor the valor, service and dedication of its own Police Officers.*

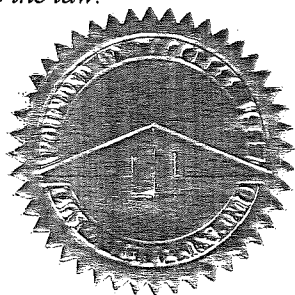
NOW, THEREFORE, I, Donald E. Patterson, Mayor of the City of Kettering, Ohio, do hereby declare

May 13 – May 19, 2018

to be

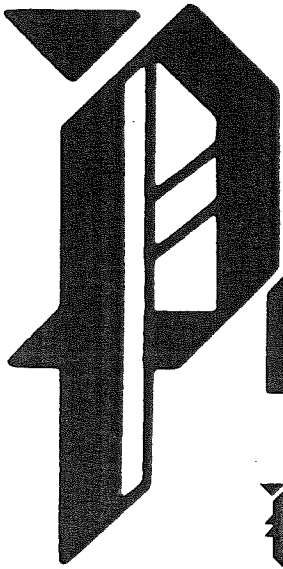
POLICE MEMORIAL WEEK

in the City of Kettering, Ohio, and call upon our citizens to honor and show our sincere appreciation for the Police Officers of this City by deed, remark and attitude. I call upon all of our citizens to make every effort to express their thanks to our men and women who make it possible for us to leave our homes and family in safety each day and to return to our homes knowing they are protected by those willing to sacrifice their lives, if necessary, to guard our loved ones, property and government against all who would violate the law.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Kettering, Ohio, to be affixed this 8th day of May in the Year of our Lord, Two Thousand and Eighteen.

DONALD E. PATTERSON
Mayor of the City of Kettering, Ohio



Office of the Mayor

Proclamation

Whereas:

The City of Kettering is a community in which many citizens age 60 and over make their home; and

WHEREAS: *The City of Kettering is committed to valuing all individuals and recognizing their ongoing life achievements; and*

WHEREAS: *The older adults in Kettering play an important role by continuing to contribute experience, knowledge, wisdom, and accomplishments; and*

WHEREAS: *Our older adults are active community members involved in volunteering, mentorship, arts and culture, and civic engagement; and*

WHEREAS: *Recognizing the successes of community elders encourages their ongoing participation and further accomplishments; and*

WHEREAS: *Our community can provide opportunities to allow older citizens to continue to flourish by emphasizing the importance of elders and their leadership by recognizing their continued achievements; presenting opportunities for older Americans to share their wisdom, experience, and skills and recognizing the older adults as a valuable asset in strengthening American communities.*

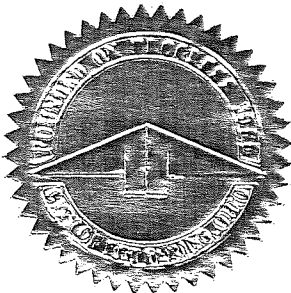
NOW, THEREFORE, I, Donald E. Patterson, Mayor of the City of Kettering, Ohio, do hereby proclaim

MAY 2018

to be

OLDER AMERICANS MONTH

in the City of Kettering, Ohio and urge everyone to take time this May to honor our older adults and the professionals, family members, and citizens who care for them.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Kettering, Ohio, to be affixed this 8th day of May in the Year of our Lord, Two Thousand and Eighteen.

DONALD E. PATTERSON
Mayor of the City of Kettering, Ohio

CITY OF KETTERING, OHIO

AN ORDINANCE

By:

No.

TO REZONE 2339 SOUTH DIXIE DRIVE (PLANNING
COMMISSION CASE NO. PC 18-005)

WHEREAS, on March 19, 2018, after publication and issuance of notice as required by the City of Kettering Zoning Code, a public hearing was conducted by the City of Kettering Planning Commission concerning an application to rezone a parcel of land located at 2339 South Dixie Drive (Auditor's Parcel No. N64 00307 0005) (the "Property") to R-2 Neighborhood Residence District; and

WHEREAS, the Planning Commission recommended approval of the proposed zoning change; and

WHEREAS, on April 10, 2018, after publication and issuance of notice as required by the Zoning Code, this City Council held a public hearing with evidence presented by the Planning and Development Department along with the recommendation of the Planning Commission to approve the application, and all parties were afforded the opportunity to be heard and present evidence in support of their positions;

NOW, THEREFORE, Be It Ordained by the Council of the City of Kettering, Ohio, that:

Section 1. Having considered the report and recommendation of the Planning Commission and the criteria set forth in Sections 1153.12.9, Consistency, through 1153.12.15, Other Factors, of Chapter 1153 of the Zoning Code, the staff report and evidence presented at the public hearing, sound planning and zoning practices, the City's adopted plans, goals, and policies, the intent of the Zoning Code, and the public health, safety and welfare requirements underlying the Zoning Code, City Council finds that the application for rezoning should be approved.

Section 2. Based on the foregoing, the Property is rezoned to R-2 Neighborhood Residence District.

Section 3. As appropriate and necessary, the official Zoning Map of the City of Kettering, Ohio is hereby revised and amended to reflect the zone change; and Section 1133.02 of the Kettering Codified Ordinances, which adopts the Zoning Map by reference, is hereby reenacted effective as of the first effective date of this Ordinance so as to include the map revision in the Zoning Code. The Director of the Planning and Development Department is directed to make such appropriate revisions on the official Zoning Map of the City.

Section 4. This ordinance shall take full force and effect from and after the earliest period provided by law.

Passed by Council this _____ day of _____ 2018.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Planning and Development Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ENTER INTO ONE
OR MORE AGREEMENTS FOR MAINTENANCE AND REPAIR
OF EMERGENCY VEHICLES**

Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. Pursuant to Subsection "I" of Section 152.02 of the Codified Ordinances of the City of Kettering, this Council hereby authorizes the City Manager to enter into one or more agreements with Fire Apparatus Service and Repair for maintenance and repair of emergency vehicles. The City Manager is further authorized to enter into any amendment(s) to said agreements(s) that the City Manager deems to be in the interests of the City.

Section 2. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2018.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER, III,
Law Director

Estimated Cost: \$180,000.00
Amount Budgeted: \$180,000.00
Acct. No. 0700-72353

(Requested by: Fire Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE SALE OF CITY-OWNED PROPERTY
LOCATED AT 1490 WEST DOROTHY LANE**

Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. Council hereby authorizes the sale of the City-owned property located at 1490 West Dorothy Lane consisting of two parcels of land: (1) Lot No. 4 of The Hills and Dales Redevelopment, Section One (Auditor's Parcel No. N64 04019 0004); and (2) Lot No. 13 of The Hills and Dales Redevelopment, Section Four (Auditor's Parcel No. N64 04019 0013) (collectively "the Property") for the gross sale price of \$629,000. The City Manager is authorized to sign any necessary agreements and instruments for this transaction, including any amendments thereto, that the City Manager deems necessary and in the interest of the City.

Section 2. The Property is hereby declared as surplus property and no longer required for municipal purposes effective as of the date of closing.

Section 3. This Resolution shall take full force and effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2018.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI
Clerk of Council

THEODORE A. HAMER, III,
Law Director

(Requested by: City Manager's Office)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO EXECUTE A QUIT
CLAIM DEED TRANSFERRING THE CITY-OWNED PROPERTY
AT 1055 WILES DRIVE TO THE MONTGOMERY COUNTY
LAND REUTILIZATION CORPORATION**

WHEREAS, the Montgomery County Land Reutilization Corporation ("MCLRC") has received Neighborhood Initiative Program ("NIP") funds to demolish structures in neighborhoods; and

WHEREAS, the City is a participant in the NIP and desires to have the structure on the City-owned property at 1055 Wiles Drive demolished;

NOW THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. The City Manager is hereby authorized to execute a quit claim deed transferring the City-owned property at 1055 Wiles Drive ("the Property") to the MCLRC for inclusion in the NIP.

Section 2. The Property is hereby declared as surplus property and no longer required for municipal purposes effective as of the date the quit claim deed is executed.

Section 3. This Resolution shall take full force and effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2018.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER, III,
Law Director

(Requested by: Planning and Development Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AMENDING RESOLUTION NO. 10109-18 AND AUTHORIZING
THE CITY MANAGER TO CONTRACT FOR VALLEYWOOD
DRIVE IMPROVEMENTS – PHASE 2 (CEMETERY LANE TO
EAST DOROTHY LANE), CITY PROJECT NO. 02-232B**

WHEREAS, Resolution No. 10109-18 authorized the City Manager to advertise for bids and contract for the Valleywood Drive Improvements – Phase 2 (Cemetery Lane to East Dorothy Lane), City Project No. 02-232B; and

WHEREAS, the original estimated cost was \$200,000; and

WHEREAS, the low bid for the Project is \$261,437.50; and

WHEREAS, it is unlikely that rebidding this project will produce a lower bid;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. Resolution No. 10109-18 is amended so that the City Manager is authorized to contract for the Valleywood Drive Improvements – Phase 2 Project in the amount of \$261,437.50. The City Manager is also authorized to enter into any contract amendments that, in the City Manager’s opinion, are in the interests of the City.

Section 2. This Resolution shall take full force and effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2018.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER, III,
Law Director

Estimated Cost: \$261,437.50
Amount Budgeted: \$200,000.00
Acct. No.: 5257-77750

(Requested by: Engineering Department)

CITY OF KETTERING, OHIO
AN EMERGENCY ORDINANCE

By:

No.

**TO REPEAL AND AMEND VARIOUS SECTIONS
OF CHAPTER 672 OF THE CODIFIED
ORDINANCES REGARDING WEAPONS CONTROL
AND DECLARING AN EMERGENCY**

WHEREAS, the Ohio General Assembly enacted a statewide uniform firearms law which provided that municipalities could not adopt stricter firearm regulations than those contained in the Ohio Revised Code; and

WHEREAS, the Ohio Supreme Court ruled that it was not a violation of Ohio's home rule provisions for the Ohio General Assembly to prohibit municipalities from enacting their own ordinances regulating firearm possession and sale that are in conflict with the firearm regulations enacted by the Ohio General Assembly in the Ohio Revised Code; and

WHEREAS, it is necessary to reconcile Codified Ordinance Chapter 672 with the Ohio Revised Code concerning the regulation of firearms;

NOW, THEREFORE, Be It Ordained by the Council of the City of Kettering, State of Ohio, at least five of the members concurring, that:

Section 1. Sections 672.01, 672.02, 672.03, 672.04, 672.05, 672.06, 672.07, 672.08, 672.09, and 672.10 of the Codified Ordinances are repealed; Sections 672.11, 672.12, 672.13, and 672.14 are amended and renumbered to read as set forth in Exhibit A, attached hereto and incorporated herein; and new Section 672.02 is enacted to read as set forth in Exhibit A.

Section 2. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety, which shall be effective upon passage, in order to conform, as soon as possible, the Codified Ordinances regulating firearms to requirements of the Ohio Revised Code.

Section 3. Council hereby finds that this Ordinance was deliberated upon and passed in open meetings in compliance with Section 121.22 of the Ohio Revised Code.

Passed by Council this _____ day of _____ 2018.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Law Department)

EXHIBIT A

(11 pages including this page)

Key to Proposed Amendments:

1. Existing language appears in regular type. Example: text
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~
3. New language to be added appears in underline. Example: text

672.01 DEFINITIONS.

As used in this chapter:

- (a) "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon. "Deadly weapon" shall also mean any pistol, bowie knife, dirk, brass knuckles, billy, blackjack, gravity blade knife, switch blade knife, or any knife with a blade fitted with a mechanical device for automatic release of the blade, or similar weapon. (Ord. 2805-78. Passed 6-13-78.)
- (b) "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm and any firearm which is inoperable but which can readily be rendered operable.
- (c) "Handgun" means any firearm designed to be fired while being held in one hand.
- (d) "Semi-automatic firearm" means any firearm designed or specially adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with single function of the trigger.
- (e) "Automatic firearm" means any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. "Automatic firearm" also means any semi-automatic firearm designed or specially adapted to fire more than eighteen cartridges without reloading, other than a firearm chambering only .22 caliber short, long or long rifle cartridges.
- (f) "Sawed-off firearm" means a shotgun with a barrel less than eighteen inches long, or a rifle with a barrel less than sixteen inches long, or a shotgun or rifle less than twenty-six inches long overall.
- (g) "Zip-gun" means any of the following:
- (1) Any firearm of crude and extemporized manufacture;
 - (2) Any device, including, without limitation, a starter's pistol, not designed as a firearm, but which is specially adapted for use as such;
 - (3) Any Industrial tool, signaling device or safety device, not designed as a firearm, but which as designed is capable of use as such, when possessed, carried or used as a firearm.
- (h) "Explosive device" means any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. "Explosive device" includes, without limitation, any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel which has been knowingly tampered with or arranged so as to explode.
- (i) "Incendiary device" means any firebomb and any device designed or specially adapted to cause physical harm to persons or property by means of fire and consisting of an incendiary substance or agency and a means to ignite it.
- (j) "Dangerous ordnance" means any of the following, except as provided in subsection (k) hereof:
- (1) Any automatic or sawed-off firearm, or zip-gun;
 - (2) Any explosive device or incendiary device;
 - (3) Nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid and other high explosives, amatol, tritonal, tetrytol, pentolite, pecretol, cyclotol and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting

powder and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating or demolitions;

(4) Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo or similar weapon, designed and manufactured for military purposes, and the ammunition therefor.

(k) "Dangerous ordnance" does not include any of the following:

(1) Any firearm, including a military weapon and the ammunition therefor, and regardless of its actual age, which employs a percussion cap or other obsolete ignition system, or which is designed and safe for use only with black powder;

(2) Any pistol, rifle or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition therefor, unless such firearm is an automatic or sawed-off firearm;

(3) Any cannon or other artillery piece which, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;

(4) Black powder, priming quills and percussion caps possessed and lawfully used to fire a cannon of a type defined in subparagraph (3) hereof during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers and percussion caps possessed and lawfully used as a propellant or ignition device in small arms or small arms ammunition;

(5) Dangerous ordnance which is inoperable or inert and cannot readily be rendered operable or activated, and which is kept as a trophy, souvenir, curio or museum piece;

(6) Any device which is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 921(A)(4), and any amendments or additions thereto or re-enactment thereof, and regulations issued thereunder.

672.02 CARRYING CONCEALED WEAPONS.

(a) No person shall knowingly carry or have concealed on his person or concealed ready at hand, any deadly weapon.

(b) This section does not apply to officers, agents or employees of this or any other state or the United States, or to law enforcement officers, authorized to carry concealed weapons or dangerous ordnance, and acting within the scope of their duties.

(c) It is an affirmative defense to a charge under this section of carrying or having control of a weapon other than dangerous ordnance that the actor was not otherwise prohibited by law from having the weapon, and that any of the following applies:

(1) The weapon was carried or kept ready at hand by the actor for defensive purposes, while he was engaged in or was going to or from his lawful business or occupation, which business or occupation was of such character or was necessarily carried on in such manner or at such a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent man in going armed.

- (2) ~~The weapon was carried or kept ready at hand by the actor for defensive purposes, while he was engaged in a lawful activity, and had reasonable cause to fear a criminal attack upon himself or a member of his family, or upon his home, such as would justify a prudent man in going armed.~~
- (3) ~~The weapon was carried or kept ready at hand by the actor for any lawful purpose and while in his own home.~~
- (4) ~~The weapon was being transported in a motor vehicle for any lawful purpose, and was not on the actor's person, and, if the weapon was a firearm, was carried in compliance with the applicable requirements of Section 672.04(c).~~

~~(d) Whoever violates this section is guilty of carrying concealed weapons, a misdemeanor of the first degree, provided the offender has not previously been convicted of a violation of this section or of any offense of violence and provided the weapon involved is not a firearm which is either loaded or for which the offender has ammunition ready at hand and provided the weapon involved is not dangerous ordnance, and provided the offense is not committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved. Punishment shall be as provided in Section 698.02.~~

~~672.03 USING WEAPONS WHILE INTOXICATED.~~

~~(a) No person while under the influence of alcohol, or any drug of abuse, shall carry or use any firearm or dangerous ordnance.~~

~~(b) Whoever violates this section is guilty of using weapons while intoxicated, a misdemeanor of the first degree.~~

~~672.04 IMPROPERLY HANDLING FIREARMS IN A MOTOR VEHICLE.~~

~~(a) No person shall knowingly discharge a firearm while in or on a motor vehicle.~~

~~(b) No person shall knowingly transport or have a loaded firearm in a motor vehicle in such manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.~~

~~(c) No person shall knowingly transport or have a firearm in a motor vehicle unless it is unloaded and is carried in one of the following ways:~~

- ~~(1) In a closed package, box or case;~~
- ~~(2) In a compartment which can be reached only by leaving the vehicle;~~
- ~~(3) In plain sight and secured in a rack or holder made for the purpose;~~
- ~~(4) In plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.~~

~~(d) This section does not apply to officers, agents or employees of this or any other state or the United States, or to law enforcement officers, authorized to carry or have loaded or accessible firearms in motor vehicles, and acting within the scope of their duties.~~

~~(e) The affirmative defenses contained in Section 672.02(c)(1) and (2) are affirmative defenses to a charge under subsection (b) or (c) hereof.~~

~~(f) As used in this section, "unloaded" means, with respect to a firearm employing a percussion cap, flintlock or other obsolete ignition system, when the weapon is uncapped, or when the priming charge is removed from the pan.~~

~~(g) Whoever violates this section is guilty of improperly handling firearms in a motor vehicle. Violation of subsection (a) or (b) hereof is a misdemeanor of the first degree. Violation of subsection (c) hereof is a misdemeanor of the fourth degree. Punishment shall be as provided in Section 698.02.~~

672.05 UNLAWFUL POSSESSION OF DANGEROUS ORDNANCE.

~~(a) No person shall knowingly acquire, have, carry or use any dangerous ordnance.~~

~~(b) This section does not apply to:~~

- ~~(1) Officers, agents or employees of this or any other state or the United States, members of the Armed Forces of the United States or the organized militia of this or any other state, and law enforcement officers, to the extent that any such person is authorized to acquire, have, carry or use dangerous ordnance and is acting within the scope of his duties;~~
- ~~(2) Importers, manufacturers, dealers and users of explosives, having a license or user permit issued and in effect pursuant to the "Organized Crime Control Act of 1970," 84 Stat. 952, 18 U. S. C. 843, and any amendments or additions thereto or re-enactments thereof, with respect to explosives and explosive devices lawfully acquired, possessed, carried or used under the laws of this State and applicable Federal law;~~
- ~~(3) Importers, manufacturers and dealers having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the "Gun Control Act of 1968" 82 Stat. 1213, 18 U.S.C. 923, and any amendments or additions thereto or re-enactments thereof, with respect to dangerous ordnance lawfully acquired, possessed, carried or used under the laws of this State and applicable Federal law;~~
- ~~(4) Persons to whom surplus ordnance has been sold, loaned or given by the Secretary of the Army pursuant to 70A Stat. 262 and 263, 10 U.S.C. 4684, 4685 and 4686, and any amendments or additions thereto or re-enactments thereof, with respect to dangerous ordnance, when lawfully possessed and used for the purposes specified in such sections;~~
- ~~(5) Owners of dangerous ordnance registered in the National Firearms Registration and Transfer Record pursuant to the Act of October 22, 1968, 82 Stat. 1229, 26 U.S.C. 5841, and any amendments or additions thereto or re-enactments thereof, and regulations issued thereunder.~~
- ~~(6) Carriers, warehousemen and others engaged in the business of transporting or storing goods for hire, with respect to dangerous ordnance lawfully transported or stored in the usual course of their business and in compliance with the laws of this State and applicable Federal law;~~
- ~~(7) The holders of a license or temporary permit issued and in effect pursuant to Section 672.07, with respect to dangerous ordnance lawfully acquired, possessed, carried or used for the purposes and in the manner specified in such license or permit.~~

(c) Whoever violates this section is guilty of unlawful possession of dangerous ordnance, a misdemeanor of the first degree. Punishment shall be as provided in Section 698.02.

672.06 IMMUNITY FROM PROSECUTION.

(a) No person who acquires, possesses or carries a firearm or dangerous ordnance in violation of Section 672.05 shall be prosecuted for such violation if he reports his possession of firearms or dangerous ordnance to any law enforcement authority, describes the firearms or dangerous ordnance in his possession and where they may be found and voluntarily surrenders the firearms or dangerous ordnance to the law enforcement authority. A surrender is not voluntary if it occurs when the person is taken into custody or during a pursuit or attempt to take the person into custody, under circumstances indicating that the surrender is made under threat of force.

(b) Evidence obtained from or by reason of an application under Section 672.07 for a permit to possess dangerous ordnance, shall not be used in a prosecution of the applicant for any violation of Section 672.05.

672.07 LICENSE OR PERMIT TO POSSESS DANGEROUS ORDNANCE.

(a) Upon application to the Safety Director or Police Chief of the Municipality, and upon payment of the fee specified in subsection (h) hereof, a license or temporary permit shall be issued to qualified applicants to acquire, possess, carry or use dangerous ordnance, for the following purposes:

Contractors, wreckers, quarrymen, mine operators and other persons regularly employing explosives in the course of a legitimate business, with respect to explosives and explosive devices acquired, possessed, carried or used in the course of such business;

Farmers, with respect to explosives and explosive devices acquired, possessed, carried or used for agricultural purposes as defined in Ohio R. C. 3743.01;

Scientists, engineers and instructors, with respect to dangerous ordnance acquired, possessed, carried or used in the course of bona fide research or instruction;

Financial institution and armored car company guards, with respect to automatic firearms lawfully acquired, possessed, carried or used by any such person while acting within the scope of his duties;

In the discretion of the Safety Director or Police Chief, any responsible person, with respect to dangerous ordnance lawfully acquired, possessed, carried or used for a legitimate research, scientific, educational, industrial or other proper purpose.

(b) Application for a license or temporary permit under this section shall be in writing under oath to the Safety Director or Police Chief of the Municipality. The application shall be accompanied by an application fee of fifty dollars (\$50.00) when the application is for a license, and an application fee of five dollars (\$5.00) when the application is for a temporary permit. The fees shall be paid into the General Fund of the Municipality. The application shall contain the following information:

The name, age, address, occupation and business address of the applicant, if he is a natural person, or the name, address and principal place of business of the applicant, if the applicant is a corporation;

A description of the dangerous ordnance for which a permit is requested;

~~A description of the place or places where and the manner in which the dangerous ordnance is to be kept, carried and used;~~

~~A statement of the purposes for which the dangerous ordnance is to be acquired, possessed, carried or used;~~

~~Such other information as the Safety Director or Police Chief may require in giving effect to this section.~~

~~(c) Upon investigation, the Safety Director or Police Chief shall issue a license or temporary permit only if all of the following apply:~~

~~The applicant is not otherwise prohibited by law from acquiring, having, carrying or using dangerous ordnance;~~

~~The applicant is age twenty-one or over, if he is a natural person;~~

~~It appears that the applicant has sufficient competence to safely acquire, possess, carry or use the dangerous ordnance, and that proper precautions will be taken to protect the security of the dangerous ordnance and insure the safety of persons and property;~~

~~It appears that the dangerous ordnance will be lawfully acquired, possessed, carried and used by the applicant for a legitimate purpose.~~

~~(d) The license or temporary permit shall identify the person to whom it is issued, identify the dangerous ordnance involved and state the purposes for which the license or temporary permit is issued, state the expiration date, if any, and list such restrictions on the acquisition, possession, carriage or use of the dangerous ordnance as the Safety Director or Police Chief considers advisable to protect the security of the dangerous ordnance and insure the safety of persons and property.~~

~~(e) A temporary permit shall be issued for the casual use of explosives and explosive devices and other consumable dangerous ordnance, and shall expire within thirty days of its issuance. A license shall be issued for the regular use of consumable dangerous ordnance or for any nonconsumable dangerous ordnance, which license need not specify an expiration date, but the Safety Director or Police Chief may specify such expiration date, not earlier than one year from the date of issuance, as he considers advisable in view of the nature of the dangerous ordnance and the purposes for which the license is issued.~~

~~(f) The dangerous ordnance specified in a license or temporary permit may be obtained by the holder anywhere in the State. The holder of a license may use such dangerous ordnance anywhere in the State. The holder of a temporary permit may use such dangerous ordnance only within the territorial jurisdiction of the Municipality.~~

~~(g) The Safety Director or Police Chief shall forward to the State Fire Marshal a copy of each license or temporary permit issued pursuant to this section, and a copy of each record of a transaction in dangerous ordnance and of each report of lost or stolen dangerous ordnance, given to the Police Department as required by Section 672.09(a)(2) and (3).~~

~~672.08 FAILURE TO SECURE DANGEROUS ORDNANCE.~~

~~(a) No person, in acquiring, possessing, carrying or using any dangerous ordnance, shall negligently fail to take proper precautions:~~

- (1) To secure the dangerous ordnance against theft or against its acquisition or use by any unauthorized or incompetent person;
- (2) To insure the safety of persons and property.

(b) Whoever violates this section is guilty of failure to secure dangerous ordnance, a misdemeanor of the second degree. Punishment shall be as provided in Section 698.02.

~~672.09 UNLAWFUL TRANSACTIONS IN WEAPONS.~~

(a) No person shall:

- (1) Manufacture, possess for sale, sell or furnish to any person other than a law enforcement agency for authorized use in police work, any brass knuckles, cestus, billy, blackjack, sandbag, switchblade knife, spring blade knife, gravity knife or similar weapon;
- (2) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license or permit showing him to be authorized to acquire dangerous ordnance pursuant to Section 672.05, or negligently fail to take a complete record of the transaction and forthwith forward a copy of such record to the County Sheriff or Safety Director or Police Chief of the Municipality;
- (3) Knowingly fail to report to the Police Department forthwith the loss or theft of any firearm or dangerous ordnance in such person's possession or under his control.

(b) Whoever violates this section is guilty of unlawful transactions in weapons. Violation of subsection (a)(1) or (2) hereof is a misdemeanor of the second degree. Violation of subsection (a)(3) hereof is a misdemeanor of the fourth degree. Punishment shall be as provided in Section 698.02.

~~672.10 IMPROPERLY FURNISHING FIREARMS TO A MINOR.~~

(a) No person shall:

- (1) Sell any firearm to a person under the age of eighteen;
- (2) Sell any handgun to a person under the age of twenty-one;
- (3) Furnish any firearm to a person under the age of eighteen, except for purposes of lawful hunting, or for purposes of instruction in firearm safety, care, handling or marksmanship under the supervision or control of a responsible adult.

(b) Whoever violates this section is guilty of improperly furnishing firearms to a minor, a misdemeanor of the second degree. Punishment shall be as provided in Section 698.02.

~~672.11-03 SALE OF EXPLOSIVES TO MINORS.~~

(a) No person shall sell, give away or otherwise dispose of or deliver to any person under twenty-one years of age any explosives~~explosive~~, as defined in Ohio R.C. 3743.01(A)2923.11, whether such person is acting on their own behalf~~for himself~~ or for any other person.

(b) The offense established under this section is a strict liability offense and strict liability is a culpable mental state for purposes of Ohio R.C. Section 2901.20. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(b) Whoever violates this section shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).

~~672.12-04~~ SALE OF FIREWORKS.

(a) No person shall possess for sale at retail, or sell at retail, or discharge, ignite or explode any fireworks, as defined herein, within the Municipality, except as provided in Section ~~672.13~~672.05.

The term "fireworks" means any combustible or explosive compositions, or any substance or combination of substances or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, but shall not mean or include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps containing twenty-five hundredths grains or less of explosive compounds are used, provided they are so constructed that the hand cannot come in contact with the cap when in place for the explosion, and toy pistol paper or plastic caps which contain less than twenty hundredths grains of explosive mixture.

(b) The offense established under this section is a strict liability offense and strict liability is a culpable mental state for purposes of Ohio R.C. Section 2901.20. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(b) Whoever violates this section shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).

~~672.13-05~~ FIREWORKS DISPLAY PERMITS.

Upon written permission secured from the Fire Chief, fireworks may be used for public or private exhibitions of fireworks in connection with fairs, carnivals or other celebrations. Application for such permits shall be made to the Chief and shall be issued under such reasonable regulations to protect the safety of persons or property as the Chief may prescribe. In such cases parties in charge of such exhibitions shall be held strictly responsible for any damage to persons or property resulting from the use of fireworks so used. Fireworks being held in storage for such exhibitions must be kept in a closed wooden box or tarpaulin until they are to be used. Section 672.12 and this section do not prohibit any wholesaler, dealer or jobber from selling at wholesale such fireworks as are permitted to be used by such sections or the sale of fireworks to be shipped directly out of the State.

~~672.14-01~~ POINTING AND DISCHARGING FIREARMS.

(a) No person shall discharge any cannon, pistol, or other firearm, of any kind whatsoever, or any air rifle, pellet gun, gas gun, BB gun or other similar object, or any bow and arrow, crossbow, or other similar object, within the City. This section shall not prohibit the firing of a military salute or the firing of weapons by members of the United States Armed Forces acting under military authority and shall not apply to law enforcement officers in the proper enforcement of the law; or to any person in the proper exercise of the right of defense. No person shall fire any cannon, gun

or other firearm within the City except in proper position for firing salutes or by command of a proper military or police officer or game warden in the performance of official duty. This prohibition shall not restrain farmers from discharging firearms to protect their crops and farm animals from attacks by predatory animals nor shall it apply to gun clubs in existence on November 26, 1957, provided the shooting activities of such clubs are confined to industrial tracts of ground. In the case of existing gun clubs, their firing ranges shall be no closer than 510 feet to any dwelling unit. The offense established under this section is a strict liability offense and strict liability is a culpable mental state for purposes of Ohio R.C. Section 2901.20. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(b) "Firearm" has the same meaning as in Ohio R.C. 2911.11. No person shall discharge within the corporate limits any air gun or air rifle loaded with shot or other solid missile.

(c) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the fourth degree. Punishment shall be as provided in Section 698.02.

(d) Notwithstanding anything else to the contrary, if the court finds that the victim suffered physical harm as a result of the negligent commission of this offense, whoever violates any provision of this section is guilty of a misdemeanor of the first degree.

672.02 THROWING OR PROJECTING MISSILES.

(a) No person shall recklessly throw or propel a missile or other object at or toward a person, structure, vehicle, or other property which might be injured or damaged thereby, or strike or wound a person or injure or damage any such property by such act.

(b) Whoever violates this section is guilty of a minor misdemeanor. Punishment shall be as provided in Section 698.02.

(c) Notwithstanding anything else to the contrary, if the court finds that the victim suffered physical harm as a result of the commission of this offense, whoever violates any provision of this section is guilty of a misdemeanor of the second degree.

CITY OF KETTERING, OHIO
AN EXPENDITED ORDINANCE

By:

No.

**ENACTING CODIFIED ORDINANCE CHAPTER 743 – MEDICAL
MARIJUANA TO PROHIBIT THE CULTIVATION, PROCESSING,
AND DISPENSING OF MEDICAL MARIJUANA**

WHEREAS, Substitute House Bill 523 legalized the cultivating, processing, and dispensing of medical marijuana in the State of Ohio on September 8, 2016; and

WHEREAS, Ohio Revised Code Section 3796.29 authorizes a municipality to limit the number or entirely prohibit medical marijuana cultivators, processors, or retail dispensaries licensed under the same Section; and

WHEREAS, Article 18 of the Ohio State Constitution grants authority to municipalities to exercise all powers of local self-government, including the ability to limit or prohibit land uses, such as the cultivation, processing, and dispensing of medical marijuana; and

WHEREAS, Kettering City Council previously enacted a moratorium on the cultivation, processing, and retail dispensing of medical marijuana in the City of Kettering in order to give City staff time to research and make recommendations related to the benefits and consequences of allowing, limiting, or prohibiting the cultivation, processing, and/or dispensing of medical marijuana within City limits; to review the rules and regulations required by Substitute House Bill 523, and to prepare any necessary changes to the City's Codified Ordinances; and

WHEREAS, under Substitute House Bill 523, the Ohio Department of Commerce, the Ohio Board of Pharmacy, and the State Medical Board of Ohio published proposed rules and regulations on medical marijuana dispensaries, cultivators, and processors; on the issuance of certificates to physicians wishing to recommend medical marijuana to patients; and the registration of patients and caregivers wishing to purchase and use medical marijuana; and

WHEREAS, Kettering City Council has reviewed City staff research on these rules and regulations along with reports published by the States of California, Colorado, and Washington, where medical marijuana is currently legally cultivated, processed, and dispensed; and

WHEREAS, these studies reported the following negative effects from the legalization of medical marijuana: (1) increases in medical marijuana related crime including: DUIs, robberies, burglaries, assaults, murder, money laundering, drug trafficking, illegal weapons possession and sales, illegal drug transactions, organized crime, and gang activity; (2) increases in illegal diversion of medical marijuana, including the illegal resale of medical marijuana to juveniles, and the use of fake or fraudulent medical ID cards to obtain medical marijuana; and (3) negative impacts on land uses surrounding medical marijuana enterprises including: an increase in noise, traffic, parking issues, loitering, panhandling, street dealing, electrical fires, chemical explosions, excessive energy and water use, pollution and pesticide use from cultivators and processors, noxious odors emanating from dispensaries, and loss of patrons from businesses surrounding medical marijuana enterprises; and

WHEREAS, Marijuana (cannabis) is classified as a Schedule I controlled substance under the Federal Controlled Substances Act, meaning the manufacture, distribution, dispensation, and possession of marijuana with the intent to manufacture, distribute, or dispense is a crime under federal law; and

WHEREAS, the Federal law prohibits banks and other financial institutions from doing business with medical marijuana enterprises because it is illegal to transmit funds derived from marijuana-related transactions; and

WHEREAS, the moratorium on the cultivation, processing, and retail dispensing of medical marijuana expires on May 31, 2018; and

WHEREAS, it is in the best interest of the public health, safety, and welfare to prohibit the cultivation, processing, and retail dispensing of medical marijuana in the City of Kettering; and

WHEREAS, Kettering City Council has complied with all of the administrative and legislative procedures necessary for the adoption of Chapter 743 of the Codified Ordinances of Kettering;

NOW, THEREFORE, Be It Ordained by the Council of the City of Kettering, County of Montgomery, and State of Ohio, at least five of the members concurring, that:

Section 1. New Chapter 743 of the Codified Ordinances of Kettering is enacted to read as follows:

Chapter 743 Medical Marijuana

743.01 Definitions.

- (a) For purposes of this Chapter, the words “marijuana,” “medical marijuana,” “patient,” “caregiver,” “cultivation,” “cultivator,” “processing,” “processor,” “retail dispensary,” and “retail dispensing” and their grammatical derivatives, shall have the same meanings as defined or described in Chapter 3796 of the Ohio Revised Code.

743.02 Prohibition.

- (a) The cultivation, processing, and dispensing of medical marijuana is prohibited within the corporate limits of the City of Kettering, Ohio regardless of whether a cultivator, processor, or retail dispensary has a medical marijuana cultivator, processor, or dispensary license in the State of Ohio or elsewhere. “Processing,” “cultivating,” and “dispensing” includes the delivery and sale of medical marijuana. No person or entity shall fail to obey any provision of this Chapter.
- (b) Nothing herein shall prohibit patients, registered with the state board of pharmacy to use medical marijuana, or caregivers, registered with the state board of pharmacy to administer medical marijuana to their patients, from exercising their rights under Chapter 3796 of the Ohio Revised Code.

743.03 Violation.

- (a) Whoever violates any provision of this Chapter shall be guilty of a misdemeanor in the first degree. Each day that a violation continues shall be deemed a separate offense. Punishment shall be as provided in Section 698.02 of the Codified Ordinances.
- (b) A violation of this Chapter is a strict liability offense, and strict liability is a culpable mental state for purposes of Ohio Revised Code Section 2901.20. The designation of a violation of any provision of this Chapter as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

Section 2. If any section, subsection, sentence, clause, phrase, or portion of Chapter 743 is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. This is an expedited ordinance under Section 4-6 of the City Charter and shall be effective May 22, 2018. The Clerk of this Council shall publish a summary of this ordinance within two weeks after its adoption.

Passed by Council this _____ day of _____ 2018.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Law Department)

CITY OF KETTERING, OHIO

AN ORDINANCE

By:

No.

TO REZONE 1725 EAST DAVID ROAD AND 489 HEMPSTEAD STATION DRIVE (PLANNING COMMISSION CASE NO. PC-17-035)

WHEREAS, on March 19, 2018, after publication and issuance of notice as required by the zoning regulations of this City, a public hearing was conducted by the City of Kettering Planning Commission concerning an application to rezone three parcels of land to O-Office District: (1) 4745 Hempstead Station Drive (Auditor's Parcel No. N64 04416 0008) (the "City Parcel"); (2) 1725 East David Road (Auditor's Parcel No. N64 04526 002) (the "SAA Parcel"); and (3) 489 Hempstead Station Drive (Auditor's Parcel No. N64 03404 0031) (the "Vectren Parcel"); and

WHEREAS, the Planning Commission recommended approval of the proposed zoning change; and

WHEREAS, on April 10, 2018, after publication and issuance of notice as required by the zoning regulations of this City, this City Council held a public hearing with evidence presented by the Planning and Development Department along with the recommendation of the Planning Commission to approve the application, and all parties were afforded the opportunity to be heard and present evidence in support of their positions;

NOW, THEREFORE, Be It Ordained by the Council of the City of Kettering, Ohio, that:

Section 1. Having considered the report and recommendation of the Planning Commission and the criteria set forth in Sections 1153.12.9, Consistency, through 1153.12.15, Other Factors, of Chapter 1153 of the Zoning Code, the staff report and evidence presented at the public hearing, sound planning and zoning practices, the City's adopted plans, goals, and policies, the intent of the Kettering Zoning Code, and the public health, safety and welfare requirements underlying the Zoning Code, City Council finds that the application for rezoning should be approved for the SAA Parcel and the Vectren Parcel. However, City Council finds that requested rezoning of the City Parcel requires further study and defers making any decision regarding the City Parcel to a later date.

Section 2. Based on the foregoing, the SAA Parcel and the Vectren Parcel are rezoned to O-Office District.

Section 3. As appropriate and necessary, the official Zoning Map of the City of Kettering, Ohio is hereby revised and amended to reflect the zone change; and Section 1133.02 of the Kettering Codified Ordinances, which adopts the Zoning Map by reference, is hereby reenacted effective as of the first effective date of this Ordinance so as to include the map revision in the Zoning Code. The Director of the Planning and Development Department is directed to make such appropriate revisions on the official Zoning Map of the City.

Section 4. This ordinance shall take full force and effect from and after the earliest period provided by law.

Passed by Council this _____ day of _____ 2018.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Planning and Development Department)