



CITY OF KETTERING

DONALD E. PATTERSON, MAYOR • BILL LAUTAR, VICE MAYOR
BRUCE E. DUKE • JACQUE FISHER • TONY KLEPACZ • ROBERT SCOTT • JOSEPH D. WANAMAKER
**KETTERING COUNCIL
AGENDA**

November 26, 2019

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

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

PLEDGE OF ALLEGIANCE

INVOCATION

APPROVAL OF MINUTES

November 12, 2019 - Council Meeting & Workshop Minutes

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

PUBLIC HEARINGS

PUBLIC COMMENT ON LEGISLATION

(5 Minute Limit per Speaker)

ORDINANCES IN SECOND READING

RESOLUTIONS

1. Authorizing the City Manager to contract with the Montgomery County Public Defender Commission and the Montgomery County Public Defender Office to provide mandated legal counsel to indigent persons appearing in the Kettering Municipal Court.
2. Authorizing the City Manager to enter into a participation agreement with the Board of County Commissioners of Montgomery County, Ohio for the Economic Development/Government Equity (ED/GE) Program.
3. Authorizing the City Manager to purchase a stryker power cot and power load system.
4. To make supplemental appropriations for current expenses and other expenditures of the City of Kettering, State of Ohio, during the fiscal year ending December 31, 2019.

ORDINANCES IN FIRST READING

5. Providing for the issuance and sale of bonds in the maximum principal amount of \$6,825,000 for the purpose of paying the costs of refunding bonds previously issued by the city for the purpose of improving the city's recreation and park facilities by constructing, equipping and furnishing the expansion, addition and renovation of the Recreation Center and by improving various parks by providing equipment, recreational facilities and site improvements for recreational purposes, and declaring an emergency.
6. To amend various sections of Chapters 191 and 192 of the Codified Ordinances regarding income tax and declare an emergency.
7. Vacating an unused pedestrian access easement at 1930-2000 Composite Drive (Planning Commission Case No. PC-19-007) and declaring an emergency.

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 wishes to make certain that all citizens have the opportunity to actively participate in their local government. If you have a disability and require accommodations to participate in a Council meeting, please contact the Clerk of Council at 296-2416 so that reasonable modifications can be made.

KETTERING CITY CALENDAR **2019**

November 25	7:30 p.m.	Sister Cities
November 26	6:00 p.m. 7:30 p.m.	Council Workshop City Council Meeting
November 28	All Day	Government Center Closed
November 29	All Day	Government Center Closed
December 2	7:00 p.m.	Planning Commission
December 3	5:00 p.m. 7:30 p.m.	Budget Workshop City Council Meeting

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO CONTRACT
WITH THE MONTGOMERY COUNTY PUBLIC
DEFENDER COMMISSION AND THE MONTGOMERY
COUNTY PUBLIC DEFENDER OFFICE TO PROVIDE
MANDATED LEGAL COUNSEL TO INDIGENT PERSONS
APPEARING IN THE KETTERING MUNICIPAL COURT**

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

Section 1. The City Manager is authorized to enter into an agreement with the Montgomery County Public Defender Commission and the Montgomery County Public Defender Office to provide constitutionally mandated legal counsel to indigent persons charged with violations of City ordinances for which the penalty or any possible adjudication includes the potential loss of liberty. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

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 _____ 2019.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A HAMER III,
Law Director

Estimated Cost:	\$55,000.00
Included in 2020 Budget:	\$55,000.00
Acct. No.:	1780-72550

(Requested by: Law Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ENTER INTO A
PARTICIPATION AGREEMENT WITH THE BOARD OF
COUNTY COMMISSIONERS OF MONTGOMERY COUNTY,
OHIO FOR THE ECONOMIC DEVELOPMENT/GOVERNMENT
EQUITY (ED/GE) PROGRAM**

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

Section 1. The City Manager is authorized to enter into a participation agreement with the Board of County Commissioners of Montgomery County, Ohio and to take all other action necessary for the City of Kettering to participate in the Montgomery County Economic Development/Government Equity (ED/GE) Program beginning January 1, 2020 through December 31, 2029. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

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

Passed by Council this _____ day of _____ 2019.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A HAMER III,
Law Director

Estimated Cost: \$0
Funds Available: \$0
Acct. No.:

(Requested by: Economic Development Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO PURCHASE A
STRYKER POWER COT AND POWER LOAD SYSTEM**

WHEREAS, the City received a Safety Intervention Program Grant from the Ohio Bureau of Workers' Compensation to assist in the purchase and installation of a new power cot and power load system.

NOW, THEREFORE, 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, the City Manager is authorized to contract for the purchase and installation of a Stryker power cot and power load system. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

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 _____ 2019.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

Estimated Cost: \$45,916.57
Amount Budgeted: \$45,916.57
Acct. No. General Fund

(Requested by: Fire Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

TO MAKE SUPPLEMENTAL APPROPRIATIONS FOR CURRENT
EXPENSES AND OTHER EXPENDITURES OF THE CITY OF
KETTERING, STATE OF OHIO, DURING THE FISCAL YEAR
ENDING DECEMBER 31, 2019

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

Section 1. To provide for the current expenses and other expenditures of the City of Kettering during the fiscal year ending December 31, 2019, the following supplemental sums are set aside and appropriated:

A. <u>From the General Fund:</u>		
TRANSFERS TO OTHER FUNDS		
Street Maintenance Fund		\$150,000.00
Police Pension Fund		\$50,000.00
B. <u>From the Street Maintenance Fund:</u>		
STREET DEPARTMENT		
Operating Expenses		\$480,000.00
C. <u>From the Police Pension Fund:</u>		
POLICE DEPARTMENT		
Personal Service		\$50,000.00
D. <u>From the Debt Service Fund:</u>		
DEBT SERVICE		
Operating Expenses		\$60,000.00
OTHER FINANCING USE		\$6,852,000.00
E. <u>From the Capital Improvement Fund:</u>		
DRAINAGE		\$17,000.00
OTHER		\$25,000.00

Section 2. The Director of Finance is authorized to adjust appropriations within any fund or department as long as the adjustments made do not exceed the total appropriation authorized within that fund or department.

Section 3. The Clerk of Council is authorized and directed to forward a copy of this Resolution to the Montgomery County Auditor.

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

Passed by Council this _____ day of _____ 2019.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER, III
Law Director

Estimated Cost: \$7,484,000.00 net transfers
Amount Budgeted: \$0
Acct. Nos. Various

(Requested by: Finance Department)

CITY OF KETTERING, OHIO
AN EMERGENCY ORDINANCE

By:

No.

PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$6,825,000 FOR THE PURPOSE OF PAYING THE COSTS OF REFUNDING BONDS PREVIOUSLY ISSUED BY THE CITY FOR THE PURPOSE OF IMPROVING THE CITY'S RECREATION AND PARK FACILITIES BY CONSTRUCTING, EQUIPPING AND FURNISHING THE EXPANSION, ADDITION AND RENOVATION OF THE RECREATION CENTER AND BY IMPROVING VARIOUS PARKS BY PROVIDING EQUIPMENT, RECREATIONAL FACILITIES AND SITE IMPROVEMENTS FOR RECREATIONAL PURPOSES, AND DECLARING AN EMERGENCY.

WHEREAS, at the election held on November 4, 2008 (the "2008 Election"), on the question of issuing bonds of the City in the principal amount of \$12,300,000 for the purpose stated in Section 2 and of levying taxes outside the six-mill limitation provided by the City Charter to pay debt charges on those bonds, the requisite majority of those voting on the question voted in favor of it; and

WHEREAS, pursuant to the 2008 Election and Ordinances No. 4123-09 passed on May 12, 2009 and No. 4125-09 passed May 26, 2009 (collectively, the "Series 2009 Bond Ordinance"), the City previously issued bonds in the principal amount of \$12,300,000, dated May 28, 2009 (the "Series 2009 Bonds"), for the purpose described in Section 2; and

WHEREAS, this Council finds and determines that it will be in the City's best interest to issue general obligation bonds in accordance with Chapter 133 of the Ohio Revised Code in the maximum principal amount of \$6,825,000 (the "Bonds") in order to refund at a lower rate of interest all or a portion of the outstanding Series 2009 Bonds (collectively, the "Outstanding Series 2009 Bonds"), which Outstanding Series 2009 Bonds are subject to prior redemption at the option of the City at a redemption price of 100% of par plus any accrued interest to their redemption date; and

WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to this Council that the estimated life or period of usefulness of the Improvement described in Section 2 is at least five (5) years and that the maximum maturity of the Bonds described in Section 2 is December 1, 2028;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Kettering, Montgomery County, Ohio, at least five members concurring, that:

Section 1. Definitions and Interpretation. In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

"Authorized Denominations" means the minimum denominations or any integral multiple in excess thereof as set forth in the Certificate of Award.

"Bond Proceedings" means, collectively, this Ordinance, the Certificate of Award, the Escrow Agreement and such other proceedings of the City, including the Bonds, that provide collectively for, among other things, the rights of holders of the Bonds.

“Bond Register” means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 5.

“Bond Registrar” means the Director of Finance, the Original Purchaser or a bank or trust company authorized to do business in the State of Ohio, as designated by the Director of Finance in the Certificate of Award pursuant to Section 4 as the initial authenticating agent, bond registrar, transfer agent and paying agent for the Bonds and until appointment of a successor Bond Registrar and, thereafter, “Bond Registrar” shall mean the successor Bond Registrar.

“Bonds” means, collectively, the Serial Bonds and the Term Bonds, each as is designated as such in the Certificate of Award.

“Certificate of Award” means the certificate authorized by Section 6, to be executed by the Director of Finance, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

“City” means the City of Kettering, Ohio.

“City Manager” means the City Manager of the City or any person serving in an interim or acting capacity with respect to that office.

“Clerk of Council” means the Clerk of Council (also known as the Municipal Clerk) of the City or any person serving in an interim or acting capacity with respect to that office.

“Closing Date” means the date of physical delivery of, and payment of the purchase price for, the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“Director of Finance” means the Director of Finance of the City or any person serving in an interim or acting capacity with respect to that office.

“Escrow Agreement” means the Escrow Agreement between the City and the Escrow Trustee, as it may be modified from the form on file with the Clerk of Council and executed by the City Manager and the Director of Finance, all in accordance with Section 10.

“Escrow Fund” means the City of Kettering, Ohio – Series 2019 Refunding Escrow Fund created pursuant to Section 10 and in accordance with the Escrow Agreement.

“Escrow Trustee” means a bank or trust company authorized to do business in the State of Ohio and designated by the Director of Finance in the Certificate of Award pursuant to Section 10 as the initial escrow trustee for the Refunded Bonds under the Escrow Agreement and until a successor Escrow Trustee shall have become such pursuant to the provisions of the Escrow Agreement and, thereafter, “Escrow Trustee” shall mean the successor Escrow Trustee.

“Financing Costs” shall have the meaning given in Section 133.01 of the Ohio Revised Code.

“Interest Payment Dates” means, unless otherwise specified in the Certificate of Award, June 1 and December 1 of each year that the Bonds are outstanding, commencing on the date specified in the Certificate of Award.

“Mandatory Redemption Date” shall have the meaning set forth in Section 3(b).

“Mandatory Sinking Fund Redemption Requirements” shall have the meaning set forth in Section 3(e)(i).

“Original Purchaser” means Zions Bancorporation, National Association or such other purchaser of the Bonds specified in the Certificate of Award.

“Principal Payment Dates” means, unless otherwise specified in the Certificate of Award, December 1 in each of the years as determined by the Director of Finance in the Certificate of Award, provided that the first Principal Payment Date shall occur no later than the earliest maturity date of the Refunded Bonds, and provided further that in no case shall the final Principal Payment Date exceed the maximum maturity limitation referred to in the preambles hereto, all of which determinations shall be made by the Director of Finance in the Certificate of Award in such manner as to be in the best interest of and financially advantageous to the City.

“Redemption Date” means the date designated by the Director of Finance in the Certificate of Award as the earliest practicable date on which the Refunded Bonds shall be redeemed in accordance with Section 10, provided that such Redemption Date shall be no later than ninety (90) days following the Closing Date.

“Refunded Bonds” means, collectively, the principal maturities of the Outstanding Series 2009 Bonds to be determined by the Director of Finance in the Certificate of Award as the maturities the refunding of which will be in the best interest of and financially advantageous to the City.

“Regulations” means Treasury Regulations issued pursuant to the Code or to the statutory predecessor of the Code.

“Serial Bonds” means those Bonds designated as such and maturing on the dates set forth in the Certificate of Award, bearing interest payable on each Interest Payment Date and not subject to mandatory sinking fund redemption.

“Term Bonds” means those Bonds designated as such and maturing on the date or dates set forth in the Certificate of Award, bearing interest payable on each Interest Payment Date and subject to mandatory sinking fund redemption.

The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

Section 2. Authorized Principal Amount and Purpose; Application of Proceeds. This Council determines that it is necessary and in the best interest of the City to issue bonds of this City in the maximum principal amount of \$6,825,000 (the “Bonds”) for the purpose of paying the costs of refunding bonds previously issued by the City for the purpose of improving the City’s recreation and park facilities by constructing, equipping and furnishing the expansion, addition and renovation of the Recreation Center and by improving various parks by providing equipment, recreational facilities and site improvements for recreational purposes (the “Improvement”). The Bonds shall be issued pursuant to Chapter 133 of the Ohio Revised Code, the Charter of the City, the 2008 Election, this Ordinance and the Certificate of Award.

The principal amount of Bonds to be issued shall not exceed the maximum principal amount specified in this Section 2 and shall be an amount determined by the Director of Finance in the Certificate of Award to be the principal amount of Bonds that is required to be issued at this time for the purpose stated in this Section 2, taking into account the costs of refunding the Refunded Bonds, other City monies available for the purpose, the estimates of the Financing Costs and the interest rates on the Bonds. The Refunded Bonds shall be determined by the Director of Finance in the Certificate of Award as the maturities of the Outstanding Series 2009 Bonds the refunding of which will be in the best interest of and financially advantageous to the City.

The proceeds from the sale of the Bonds received by the City (or withheld by the Original Purchaser on behalf of the City) shall be paid into the proper fund or funds, and those proceeds are hereby appropriated and shall be used for the purpose for which the Bonds are being issued, including without limitation but only to the extent not paid by others, the payment of the costs of issuing and servicing the Bonds, printing and delivery of the Bonds, legal services including obtaining the approving legal opinion of bond counsel, fees and expenses of any municipal advisor, paying agent, escrow trustee, verification agent, bidding agent and rating agency, any fees or premiums relating to municipal bond insurance or other security arrangements determined necessary by the Director of Finance, and all other Financing Costs and costs incurred incidental to those purposes. The Certificate of Award may authorize the Original Purchaser to withhold certain proceeds from the purchase price of the Bonds to provide for the payment of Financing Costs related to the Bonds on behalf of the City. Any portion of those proceeds received by the City representing premium (after payment of any Financing Costs identified in the Certificate of Award) shall be used to pay costs of refunding the Refunded Bonds and/or be paid into the Bond Retirement Fund, with such determination being made by the Director of Finance in the Certificate of Award, consistent with the Director of Finance's determination of the best interest of and financially advantageous to the City. Any portion of those proceeds received by the City representing accrued interest shall be paid into the Bond Retirement Fund.

Section 3. Denominations; Dating; Principal and Interest Payment and Redemption Provisions. The Bonds shall be issued in one lot and only as fully registered bonds, in Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as provided in the Certificate of Award; provided that their dated date shall not be more than sixty (60) days prior to the Closing Date. If requested by the Original Purchaser, the Director of Finance is hereby authorized to prepare one bond representing the aggregate principal amount of Bonds maturing on all of the Principal Payment Dates, all as set forth in the Certificate of Award. The Bonds may be issued as (i) a single fully registered Serial Bond with principal installments payable in amounts equal to the principal amounts of the Bonds stated to mature or be payable pursuant to Mandatory Sinking Fund Redemption Requirements on the respective Principal Payment Dates or (ii) one or more fully registered Term Bonds with Mandatory Sinking Fund Redemption Requirements in amounts equal to the principal amount of the Bonds stated to mature or be payable pursuant to Mandatory Sinking Fund Redemption Requirements on the respective Principal Payment Dates.

(a) Interest Rates and Payment Dates. The Bonds shall bear interest at the rate or rates per year and computed on the basis as shall be determined by the Director of Finance, subject to subsection (c) of this Section 3, in the Certificate of Award. Interest on the Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

(b) Principal Payment Schedule. The Bonds shall mature or be payable pursuant to Mandatory Sinking Fund Redemption Requirements on the Principal Payment Dates in principal amounts as shall be determined by the Director of Finance, subject to subsection (c) of this Section 3, in the Certificate of Award, which determination shall be in the best interest of and financially advantageous to the City.

Consistent with the foregoing and in accordance with the Director of Finance's determination of the best interest of and financially advantageous to the City, the Director of Finance shall specify in the Certificate of Award (i) the aggregate principal amount of Bonds to be issued as Serial Bonds, the Principal Payment Date or Dates on which those Bonds shall be stated to mature and the principal amount thereof that shall be stated to mature on each such Principal Payment Date and (ii) the aggregate principal amount of Bonds to be issued as Term Bonds, the Principal Payment Date or Dates on which those Bonds shall be stated to mature, the principal amount thereof that shall be stated to mature on each such Principal Payment Date, the Principal Payment Date or Dates on which Term Bonds shall be subject to mandatory sinking fund redemption (each a "Mandatory Redemption Date") and the principal amount thereof that shall be payable

pursuant to Mandatory Sinking Fund Redemption Requirements on each Mandatory Redemption Date.

(c) Conditions for Establishment of Interest Rates and Principal Payment Dates and Amounts. The rate or rates of interest per year to be borne by the Bonds and the principal amount of Bonds maturing or payable pursuant to Mandatory Sinking Fund Redemption Requirements on each Principal Payment Date, shall be such as to demonstrate a net present value savings to the City due to the refunding of the Refunded Bonds, after taking into account all expenses related to that refunding and the issuance of the Bonds.

(d) Payment of Debt Charges. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal of and any premium on a Bond shall be paid on each Principal Payment Date and interest shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15th day preceding that Interest Payment Date; provided, however, that so long as the entire principal amount of the Bonds is represented by a single certificate, payment of principal and interest may be made by wire or check or draft mailed to the person in whose name the Bond was registered on the applicable date of payment, with presentation and surrender of said certificate to be made to the Bond Registrar after payment of principal and interest at final maturity.

(e) Redemption Provisions. The Bonds shall be subject to redemption prior to stated maturity as follows:

(i) Mandatory Sinking Fund Redemption of Term Bonds. If any of the Bonds are issued as Term Bonds, the Term Bonds shall be subject to mandatory redemption in part by lot and be redeemed pursuant to mandatory sinking fund redemption requirements, at a redemption price of 100% of the principal amount redeemed, plus accrued interest to the redemption date, on the applicable Mandatory Redemption Dates and in the principal amounts payable on those Dates, for which provision is made in the Certificate of Award (such Dates and amounts being referred to as the "Mandatory Sinking Fund Redemption Requirements").

The aggregate of the moneys to be deposited with the Bond Registrar for payment of principal of and interest on any Term Bonds on each Mandatory Redemption Date shall include an amount sufficient to redeem on that Date the principal amount of Term Bonds payable on that Date pursuant to the Mandatory Sinking Fund Redemption Requirements (less the amount of any credit as hereinafter provided).

The City shall have the option to deliver to the Bond Registrar for cancellation Term Bonds in any aggregate principal amount and to receive a credit against the then current or any subsequent Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) of the City, as specified by the Director of Finance, for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so delivered. That option shall be exercised by the City on or before the 45th day preceding any Mandatory Redemption Date with respect to which the City wishes to obtain a credit, by furnishing the Bond Registrar a certificate, signed by the Director of Finance, setting forth the extent of the credit to be applied with respect to the then current or any subsequent Mandatory Sinking Fund Redemption Requirement for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so delivered. If the certificate is not timely furnished to the Bond Registrar, the current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) shall not be reduced. A credit against the then current or any subsequent Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation), as specified by the Director of Finance, also shall be received by the City for any Term Bonds

which prior thereto have been redeemed (other than through the operation of the applicable Mandatory Sinking Fund Redemption Requirements) or purchased for cancellation and canceled by the Bond Registrar, to the extent not applied theretofore as a credit against any Mandatory Sinking Fund Redemption Requirement, for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so redeemed or purchased and canceled.

Each Term Bond so delivered, or previously redeemed, or purchased and canceled, shall be credited by the Bond Registrar at 100% of the principal amount thereof against the then current or subsequent Mandatory Sinking Fund Redemption Requirements (and corresponding mandatory redemption obligations), as specified by the Director of Finance, for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so delivered, redeemed or purchased and canceled.

(ii) Optional Redemption. The Bonds of the maturities and interest rates specified in the Certificate of Award (if any are so specified) shall be subject to optional redemption by and at the sole option of the City, in whole or in part in Authorized Denominations, on the dates and at the redemption prices (expressed as a percentage of the principal amount to be redeemed), plus accrued interest to the redemption date, to be determined by the Director of Finance in the Certificate of Award; provided that the redemption price for any optional redemption date shall not be greater than 103%.

If optional redemption of Term Bonds at a redemption price exceeding 100% of the principal amount to be redeemed is to take place as of any Mandatory Redemption Date applicable to those Term Bonds, the Term Bonds, or portions thereof, to be redeemed optionally shall be selected by lot prior to the selection by lot of the Term Bonds of the same maturity (and interest rate within a maturity if applicable) to be redeemed on the same date by operation of the Mandatory Sinking Fund Redemption Requirements. Bonds to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the Director of Finance to the Bond Registrar, given upon the direction of the City by passage of an ordinance or adoption of a resolution. That notice shall specify the redemption date and the principal amount of each maturity (and interest rate within a maturity if applicable) of Bonds to be redeemed, and shall be given at least 45 days prior to the redemption date or such shorter period as shall be acceptable to the Bond Registrar.

(iii) Partial Redemption. If fewer than all of the outstanding Bonds are called for optional redemption at one time and Bonds of more than one maturity (or interest rate within a maturity if applicable) are then outstanding, the Bonds that are called shall be Bonds of the maturity or maturities and interest rate or rates selected by the City. If fewer than all of the Bonds of a single maturity (or interest rate within a maturity if applicable) are to be redeemed, the selection of Bonds of that maturity (or interest rate within a maturity if applicable) to be redeemed, or portions thereof in Authorized Denominations, shall be made by the Bond Registrar by lot in a manner determined by the Bond Registrar. In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than the Authorized Denominations are then outstanding, each Authorized Denomination unit of principal thereof shall be treated as if it were a separate Bond of the Authorized Denomination. If it is determined that one or more, but not all, of the Authorized Denomination units of principal amount represented by a Bond are to be called for redemption, then, upon notice of redemption of an Authorized Denomination unit or units, the registered owner of that Bond shall surrender the Bond to the Bond Registrar (A) for payment of the redemption price of the Authorized Denomination unit or units of principal amount called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (B) for issuance, without charge to the registered owner, of a new Bond or Bonds of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and

unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

(iv) Notice of Redemption. The notice of the call for redemption of Bonds shall identify (A) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (B) the redemption price to be paid, (C) the date fixed for redemption, and (D) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Bond Registrar on behalf of the City by mailing a copy of the redemption notice by first-class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption in whole or in part at the registered owner's address shown on the Bond Register maintained by the Bond Registrar at the close of business on the 15th day preceding that mailing. Failure to receive notice by mail or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

(v) Payment of Redeemed Bonds. In the event that notice of redemption shall have been given by the Bond Registrar to the registered owners as provided above, there shall be deposited with the Bond Registrar on or prior to the redemption date, moneys that, in addition to any other moneys available therefor and held by the Bond Registrar, will be sufficient to redeem at the redemption price thereof, plus accrued interest to the redemption date, all of the redeemable Bonds for which notice of redemption has been given. Notice having been mailed in the manner provided in the preceding paragraph hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and, subject to the provisions of Section 3(d), upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus accrued interest to the redemption date. If moneys for the redemption of all of the Bonds and portions thereof to be redeemed, together with accrued interest thereon to the redemption date, are held by the Bond Registrar on the redemption date, so as to be available therefor on that date and, if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If those moneys shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption. All moneys held by the Bond Registrar for the redemption of particular Bonds shall be held in trust for the account of the registered owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds; provided that any interest earned on the moneys so held by the Bond Registrar shall be for the account of and paid to the City to the extent not required for the payment of the Bonds called for redemption.

Section 4. Execution and Authentication of Bonds; Appointment of Bond Registrar. The Bonds shall be signed by the City Manager and the Director of Finance, in the name of the City and in their official capacities; provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, shall be numbered as determined by the Director of Finance in order to distinguish each Bond from any other Bond, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to Chapter 133 of the Ohio Revised Code, the Charter of the City, the 2008 Election, this Ordinance and the Certificate of Award.

The Director of Finance is designated as initial Bond Registrar; provided, however, if following passage of this Ordinance, the Director of Finance determines that circumstances are such that it would be in the best economic interest of the City to appoint an alternate Bond Registrar, then the Director of Finance is hereby authorized to designate in the Certificate of Award a bank or trust company authorized to do business in the State of Ohio to act as the initial Bond Registrar. The Director of Finance shall

provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Certificate of Award, except to the extent paid or reimbursed pursuant to the Certificate of Award, from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond Proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 5. Registration; Transfer and Exchange.

(a) Bond Register. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep the Bond Register at its main office. Subject to the provisions of Section 3(d), the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond Proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section 5. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

(b) Transfer and Exchange. Any Bond may be exchanged for Bonds of any Authorized Denomination upon presentation and surrender at the main office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the main office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any Authorized Denomination or Denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond Proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond Proceedings as the Bonds surrendered upon that exchange or transfer. Neither the City nor the Bond Registrar shall be required to make any exchange or transfer of (i) Bonds then subject to call for redemption between the 15th day preceding the mailing of notice of Bonds to be redeemed and the date of that mailing, or (ii) any Bond selected for redemption, in whole or in part.

Section 6. Sale of the Bonds to the Original Purchaser. The Director of Finance is authorized to sell the Bonds at private sale to the Original Purchaser at a purchase price, not less than 97% of the aggregate principal amount thereof, as shall be determined

by the Director of Finance in the Certificate of Award, plus accrued interest (if any) on the Bonds from their date to the Closing Date, and shall be awarded by the Director of Finance with and upon such other terms as are required or authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law and the provisions of this Ordinance. The Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Bonds with one or more other bond issues of the City into a consolidated bond issue pursuant to Section 133.30(B) of the Ohio Revised Code in which case a single Certificate of Award may be utilized for the consolidated bond issue if appropriate and consistent with the terms of this Ordinance.

The Director of Finance shall sign and deliver the Certificate of Award and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price.

The Mayor, the City Manager, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, each are authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The actions of the Mayor, the City Manager, the Director of Finance, the Director of Law, the Clerk of Council or other City officials, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Bonds are hereby ratified and confirmed.

Section 7. Provision for Tax Levy. There shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be without limitation, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Bonds when and as the same fall due.

Section 8. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Code or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Bonds will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Director of Finance or any other officer of the City having responsibility for issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Bonds as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or interest thereon or assisting compliance with

requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties with respect to the Bonds, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments with respect to the Bonds, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds. The Director of Finance or any other officer of the City having responsibility for issuance of the Bonds is specifically authorized to designate the Bonds as "qualified tax-exempt obligations" if such designation is applicable and desirable, and to make any related necessary representations and covenants.

Each covenant made in this Section with respect to the Bonds is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Bonds (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Bonds from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Bonds.

Section 9. Rating, Bond Insurance and Financing Costs.

(a) Application for Rating or Bond Insurance. If, in the judgment of the Director of Finance, the filing of an application for (i) a rating on the Bonds by one or more nationally-recognized rating agencies, or (ii) a policy of insurance from a company or companies to better assure the payment of principal of and interest on the Bonds, is in the best interest of and financially advantageous to this City, the Director of Finance is authorized to prepare and submit those applications, to provide to each such agency or company such information as may be required for the purpose, and to provide further for the payment of the cost of obtaining each such rating or policy, except to the extent otherwise paid or reimbursed pursuant to the Certificate of Award, from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose. The Director of Finance is hereby authorized, to the extent necessary or required, to enter into any agreements, in the name of and on behalf of the City, that the Director of Finance determines to be necessary in connection with the obtaining of that bond insurance.

(b) Financing Costs. The expenditure of the amounts necessary to pay any Financing Costs in connection with the Bonds, to the extent not paid by the Original Purchaser in accordance with the Certificate of Award, is authorized and approved, and the Director of Finance is authorized to provide for the payment of any such amounts and costs from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 10. Call for Redemption; Escrow Trustee; Escrow Agreement; Escrow Fund. To provide for the payment of the principal of and interest on the Refunded Bonds, the Director of Finance is hereby authorized to designate in the Certificate of Award a bank or trust company authorized to do business in the State of Ohio to act as the Escrow Trustee. The City Manager and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Escrow Agreement between the City and the Escrow Trustee, in substantially the form as is now on file with the Clerk of Council. The Escrow Fund provided for in the Escrow Agreement is hereby created. The Escrow Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance, on behalf of the City, all of which shall be conclusively evidenced by the signing of the Escrow Agreement or amendments thereto. The Director of Finance shall provide for the payment of the

services rendered and for reimbursement of expenses incurred pursuant to the Escrow Agreement, except to the extent paid or reimbursed by the Original Purchaser in accordance with the Certificate of Award, from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Acting pursuant to the Series 2009 Bond Ordinance which authorized the Series 2009 Bonds, the Refunded Bonds, as determined by the Director of Finance in the Certificate of Award to be refunded and called for redemption, are hereby called for redemption on the earliest practicable date as set forth in the Certificate of Award (the "Redemption Date") at the required redemption price of the principal amount thereof, and the Director of Finance is hereby authorized and directed to cause those Refunded Bonds to be called for redemption on the Redemption Date and arrange for the notice of redemption to be given in accordance with the applicable provisions of the Series 2009 Bond Ordinance. For informational purposes, a certified copy of this Ordinance shall be sent by the Director of Finance to the current bond registrar for the Refunded Bonds.

In order to provide for the payment of the (a) interest on the Refunded Bonds on each interest payment date following the Closing Date and through the Redemption Date, (b) principal and mandatory sinking fund payments (if any in each case) of the Refunded Bonds maturing on or prior to the Redemption Date, and (c) principal of the Refunded Bonds to be called for redemption on the Redemption Date, the City covenants and agrees with the Escrow Trustee and with the owners of the Refunded Bonds that the City will take, and will cause the Escrow Trustee to take, all steps required by the terms of the Escrow Agreement to carry out such payments. The City will provide from the proceeds of the Bonds and other available funds in accordance with this Ordinance, moneys and investments sufficient to pay in full the (a) interest on the Refunded Bonds on each interest payment date following the Closing Date and through the Redemption Date, (b) principal and mandatory sinking fund payments (if any in each case) of the Refunded Bonds maturing on or prior to the Redemption Date, and (c) principal of the Refunded Bonds to be called for redemption on the Redemption Date. The City covenants and agrees with the Escrow Trustee and with the owners of the Refunded Bonds that the City will take, and will cause the Escrow Trustee to take, all steps required by the terms of this Ordinance, Section 133.34 of the Ohio Revised Code, and the Escrow Agreement to carry out such payments so that the Refunded Bonds are not deemed to be outstanding.

There shall be delivered to the Escrow Trustee for the Escrow Fund proceeds to be received from the sale of the Bonds and other available funds which may be invested, and if invested shall be invested in United States Treasury Obligations ("Treasury Securities"), State and Local Government Series ("SLG Securities") or other direct obligations of, or obligations guaranteed as to both principal and interest by, the United States of America as defined in Section 133.34 of the Ohio Revised Code (direct obligations and guaranteed obligations together with the SLG Securities, collectively, the "Securities"), and to the extent not invested in Securities, shall otherwise be held in cash in the Escrow Fund.

The Securities and such portion of the moneys in the Escrow Fund which may be held in cash may, to the extent determined by the Director of Finance that it would be in the best interest of and financially advantageous to the City, be certified by an independent public accounting firm of national reputation in a written report (the "Verification Report") to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any moneys in the Escrow Fund to be held in cash as contemplated by the Verification Report, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom, to cause the Refunded Bonds to be deemed to be not outstanding as provided for in Section 133.34 of the Ohio Revised Code. The balance of those proceeds, less any amount thereof contemplated by the Verification Report to be held in cash in the Escrow Fund and less any amount otherwise provided for herein, shall be used for the payment of costs related to the refunding and the issuance of the Bonds. The Director of Finance is hereby authorized to retain and designate in the Certificate of Award an independent public accounting firm of national reputation to prepare and deliver the Verification Report.

At the direction of the Director of Finance, the Escrow Trustee or the Original Purchaser is authorized to apply and subscribe for SLG Securities on behalf of the City. Further, if the Director of Finance determines that it would be in the best interest of and financially advantageous to the City to purchase Treasury Securities for deposit into the Escrow Fund, the Director of Finance or any other officer of the City, on behalf of the City and in their official capacity, may purchase and deliver such obligations, engage the services of a municipal advisor, placement agent, bidding agent or similar entity for the purpose of facilitating the bidding, purchase and delivery of such obligations for, and any related structuring of, the Escrow Fund, execute such instruments as are deemed necessary to engage such services for such purpose, and provide further for the payment of the cost of obtaining such services, except to the extent paid by the Original Purchaser in accordance with the Certificate of Award, from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose.

Any such Securities, and moneys, if any, in addition thereto contemplated by the Verification Report to be held in cash, shall be held by the Escrow Trustee in trust and committed irrevocably to the payment of the principal of and accrued interest on the Refunded Bonds.

Section 11. Bond Counsel. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Bonds and rendering at delivery related legal opinions, all as set forth in the form of engagement letter from that firm which is now on file in the office of the Clerk of Council. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services, that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Bonds, if available, and otherwise from available moneys in the General Fund.

Section 12. Municipal Advisor. The services of Baker Tilly Municipal Advisors, LLC, as municipal advisor, are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Bonds. In rendering those municipal advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Bonds, if available, and otherwise from available moneys in the General Fund.

Section 13. Certification and Delivery of Ordinance and Certificate of Award. The Clerk of Council is directed to promptly deliver or cause to be delivered a certified copy of this Ordinance and an executed copy of the Certificate of Award to the County Auditor of Montgomery County, Ohio.

Section 14. Satisfaction of Conditions for Bond Issuance. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them

legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 7) of the City are pledged for the timely payment of the debt charges on the Bonds; that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds; and that the Bonds are being authorized and issued pursuant to Chapter 133 of the Ohio Revised Code, the Charter of the City, the 2008 Election, this Ordinance, the Certificate of Award and other authorizing provisions of law.

Section 15. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any of its committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

Section 16. Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public interest of the City, and for the further reason that this Ordinance is required to be immediately effective in order to permit the prompt issuance and sale of the Bonds, which is necessary to enable the City to take advantage of favorable interest rates and realize a savings in interest costs by refunding the Refunded Bonds and thereby preserve its credit; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed by Council this _____ day of _____ 2019.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Finance Department)

CITY OF KETTERING, OHIO
AN EMERGENCY ORDINANCE

By:

No.

**TO AMEND VARIOUS SECTIONS OF CHAPTERS
191 AND 192 OF THE CODIFIED ORDINANCES
REGARDING INCOME TAX AND DECLARE AN
EMERGENCY**

WHEREAS, House Bill (H.B.) 49 of the 132nd General Assembly, the State's general appropriations bill for the biennium, included uncodified Section 803.100 purporting to require that municipalities adopt certain municipal income tax provisions that are also adopted within H.B. 49 to authorize State officials to collect and administer municipal net profits taxes; and

WHEREAS, Section 803.100 of H.B. 49 references and relies upon Section 718.04(A) of the Ohio Revised Code, which purports to make municipal income taxing authority conditional upon a municipality's adoption of code sections as dictated by the State; and

WHEREAS, although the municipal income tax provisions of H.B. 49, and Section 718.04(A) of the Ohio Revised Code, violate the Home Rule Amendment, the City nevertheless is compelled to adopt H.B. 49's municipal income tax provisions, to avoid any doubt as to its ability to impose a municipal income tax under the terms of Section 803.100 of H.B. 49 and Section 718.04(A) of the Ohio Revised Code; and

WHEREAS, the City is a party to ongoing litigation seeking a declaration that the H.B. 49 municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, and other provisions of Ohio law that usurp the powers of local self-government are unconstitutional, and to enjoin all actions by state officials to implement the H.B. 49 municipal income tax provisions; and

WHEREAS, the City, by enacting this Ordinance, does not concede the legality of H.B. 49's municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, or any other law that is subject to the lawsuit in which the City is participating, and reserves its right to continue prosecution of that lawsuit; and

WHEREAS, further changes were made to Ohio Revised Code Chapter 718 by Substitute House Bill Number 166 of the 133 General Assembly which, for the reasons described above, need to be incorporated into Chapter 192 of the Codified ordinances and clarification also needs to be made regarding the statute of limitations regarding refund requests;

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 192.03, 192.096, and 191.11 of the Codified Ordinances are amended to read as set forth in Exhibit A, attached hereto and incorporated herein.

Section 2. Council hereby expressly finds and determines that it does not concede the legality of H.B. 49's municipal income tax provisions; Section 803.100 of H.B. 49; Section 718.04(A) of the Ohio Revised Code; or any other law that is the subject of the action pending in Case Number 2019-0696 in the Supreme Court of Ohio Franklin County Court of Common Pleas, Case Number 18 AP 000144 in the Court of Appeals of Franklin County, Ohio, and Case Number 2019-0696 in the Supreme Court of Ohio, and that the City reserves its rights to continue its participation in and prosecution of said litigation, and any other litigation challenging the State's authority to dictate municipal tax collection and administration, and that adoption of this Ordinance shall not prejudice the claims of the City of Kettering therein.

Section 3. 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, such emergency arising from the coercive provisions of law found in H.B. 49 and Section 718.04(A) of the Ohio Revised Code and the need for the City to comply with the H.B. 49 municipal income tax provisions and Section 718.04(A) of the Ohio Revised Code if and to the extent they are not declared to be unconstitutional.

Section 4. If any provision of the H.B 49 municipal income tax provisions is found unconstitutional, or is stayed or enjoined, the provisions adopted in Section 1 of this Ordinance shall likewise be stayed.

Passed by Council this _____ day of _____ 2019.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Finance Department)

EXHIBIT A

(15 total 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

192.03 DEFINITIONS

Any term used in this Chapter that is not otherwise defined in this Chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Ohio Revised Code, unless a different meaning is clearly required. Except as provided in section 718.81 of the Ohio Revised Code, if a term used in this Chapter that is not otherwise defined in this Chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Ohio Revised Code, and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.

For purposes of this Section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

Except as otherwise provided in section 718.81 of the Ohio Revised Code, as used in this Chapter:

(1) **"ADJUSTED FEDERAL TAXABLE INCOME,"** for a Person required to file as a C corporation, or for a Person that has elected to be taxed as a C corporation under division 23(E) of this section, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

- (A) Deduct Intangible Income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the Intangible Income relates to assets used in a trade or business or assets held for the production of income;
- (B) Add an amount equal to five percent of Intangible Income deducted under division (1)(A) of this section, but excluding that portion of Intangible Income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;
- (C) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
- (D)
 - (i) Except as provided in division (1)(D)(ii) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
 - (ii) Division (1)(D)(i) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
- (E) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
- (F) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;
- (G) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under Section 4313.02 of the Ohio Revised Code;
- (H) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.
- (I) Deduct any net profit of a Pass-Through Entity owned directly or indirectly by the Taxpayer and included in the Taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (E)(3)(b) of Section 192.063 of this Chapter;
- (J) Add any loss incurred by a Pass-Through Entity owned directly or indirectly by the Taxpayer and included in the Taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with division (E)(3)(b) of Section 192.063 of this Chapter.

If the Taxpayer is not a C corporation, is not a Disregarded Entity that has made the election described in division (4948)(B) of this section, is not a publicly traded partnership that has made the election described in division (23)(E) of this section, and is not an individual, the Taxpayer shall compute adjusted federal taxable income under this section as if the Taxpayer were a C corporation, except guaranteed payments

and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the Taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (1) of this section shall be construed as allowing the Taxpayer to add or deduct any amount more than once or shall be construed as allowing any Taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(2) (A) **"ASSESSMENT"** means any of the following:

- (i) A written finding by the Tax Administrator that a Person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the Municipality;
- (ii) A full or partial denial of a refund request issued under Section 192.096 (B)(2) of this Chapter;
- (iii) A Tax Administrator's denial of a Taxpayer's request for use of an alternative apportionment method, issued under Section 192.062(B)(2) of this Chapter; or
- (iv) A Tax Administrator's requirement for a Taxpayer to use an alternative apportionment method, issued under Section 192.062(B)(3) of this Chapter.

(B) For purposes of division (2)(A)(i), (ii), (iii) and (iv) of this Section, an Assessment shall commence the Person's time limitation for making an appeal to the Local Board of Tax Review pursuant to Section 192.18 of this Chapter, and shall have **"ASSESSMENT"** written in all capital letters at the top of such finding.

(C) **"ASSESSMENT"** does not include notice(s) denying a request for refund issued under Section 192.096 (B)(3) of this Chapter, a billing statement notifying a Taxpayer of current or past-due balances owed to the Municipality, a Tax Administrator's request for additional information, a notification to the Taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a Person or Taxpayer that does not meet the criteria prescribed by division (2)(A) of this section.

(3) **"AUDIT"** means the examination of a Person or the inspection of the books, records, memoranda, or accounts of a Person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax.

(4) **"BOARD OF REVIEW"** has the same meaning as "Local Board of Tax Review".

(5) **"CALENDAR QUARTER"** means the three-month period ending on the last day of March, June, September, or December.

(6) **"CASINO OPERATOR"** and **"CASINO FACILITY"** have the same meanings as in Section 3772.01 of the Ohio Revised Code.

(7) **"CERTIFIED MAIL," "EXPRESS MAIL," "UNITED STATES MAIL," "POSTAL SERVICE,"** and similar terms include any delivery service authorized pursuant to Section 5703.056 of the Ohio Revised Code.

(8) **"COMPENSATION"** means any form of remuneration paid to an employee for personal services.

(9) **"DISREGARDED ENTITY"** means a Single Member Limited Liability Company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

(10) **"DOMICILE"** means the true, fixed and permanent home of the Taxpayer to which, whenever absent, the Taxpayer intends to return.

(11) **"EXEMPT INCOME"** means all of the following:

(A) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state;

(B) (i) Except as provided in division (11)(B)(ii) of this section, Intangible Income;

(ii) A municipal corporation that taxed any type of Intangible Income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th general assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of Intangible Income after 1988 voted in favor thereof at an election held on November 8, 1988.

(C) Social security benefits, railroad retirement benefits, unemployment compensation, Pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (11)(C) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code;

(D) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;

(E) Compensation paid under Section 3501.28 or 3501.36 of the Ohio Revised Code to a Person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars for the Taxable Year. Such compensation in excess of one thousand dollars for the Taxable Year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation;

(F) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations;

(G) Alimony and child support received;

(H) Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages;

(I) Income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code. Division (11)(I) of this section does not apply for purposes of Chapter 5745 of the Ohio Revised Code;

(J) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business;

(K) Compensation or allowances excluded from federal gross income under section 107 of the Internal Revenue Code;

(L) Employee compensation that is not Qualifying Wages as defined in division (34) of this section;

(M) Compensation paid to a Person employed within the boundaries of a United States Air Force base under the jurisdiction of the United States Air Force that is used for the housing of members of the United States Air Force and is a center for air force operations, unless the Person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile;

(N) An S Corporation shareholder's distributive share of net profits of the S Corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code;

(O) All of the Municipal Taxable Income earned by individuals under eighteen years of age;

- (P)
 - (i) Except as provided in divisions (11)(P)(ii), (iii), and (iv) of this section, Qualifying Wages described in division (B)(1) or (E) of Section 192.052 of this Chapter to the extent the Qualifying Wages are not subject to withholding for the Municipality under either of those divisions;
 - (ii) The exemption provided in division (11)(P)(i) of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the Qualifying Wages;
 - (iii) The exemption provided in division (11)(P)(i) of this section does not apply to Qualifying Wages that an employer elects to withhold under division (D)(2) of Section 192.052 of this Chapter;
 - (iv) The exemption provided in division (11)(P)(i) of this section does not apply to Qualifying Wages if both of the following conditions apply:
 - (a) For Qualifying Wages described in division (B)(1) of Section 192.052 of this Chapter, the employee's employer withholds and remits tax on the Qualifying Wages to the municipal corporation in which the employee's principal place of work is situated, or, for Qualifying Wages described in division (E) of Section 192.052 of this Chapter, the employee's employer withholds and remits tax on the Qualifying Wages to the municipal corporation in which the employer's fixed location is located; and
 - (b) The employee receives a refund of the tax described in division (11)(P)(iv)(a) of this section on the basis of the employee not performing services in that municipal corporation.
- (Q)
 - (i) Except as provided in division (11)(Q)(ii) or (iii) of this section, compensation that is not Qualifying Wages paid to a Nonresident individual for personal services performed in the Municipality on not more than twenty days in a Taxable Year.
 - (ii) The exemption provided in division (11)(Q)(i) of this section does not apply under either of the following circumstances:
 - (a) The individual's base of operation is located in the Municipality;
 - (b) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (11)(Q)(ii)(b) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 192.052 of this Chapter.
 - (iii) Compensation to which division (11)(Q) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is Domiciled.
 - (iv) For purposes of division (11)(Q) of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.
- (R) Compensation paid to a Person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another Person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to section 709.023 of the Ohio Revised Code on or after March 27, 2013, unless the Person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence;
- (S) Income the taxation of which is prohibited by the constitution or laws of the United States; and
- (T) Mentally retarded and developmentally disabled employees earning less than the minimum hourly wage while employed at government-sponsored sheltered workshops shall be exempt from the levy of the tax provided herein.

(U) (i) Income derived from disaster work conducted in this state by an out-of-state disaster business during a disaster response period pursuant to a qualifying solicitation received by the business;

(ii) Income of a qualifying employee described in division (A)(14)(a) of section 5703.94 of the Ohio Revised Code, to the extent such income is derived from disaster work conducted in this state by the employee during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;

(iii) Income of a qualifying employee described in division (A)(14)(b) of section 5703.94 of the Ohio Revised Code, to the extent such income is derived from disaster work conducted in this state by the employee during a disaster response period on critical infrastructure owned or used by the employee's employer.

For the purposes of this Chapter, "Out-of-state disaster business," "qualifying solicitation," "qualifying employee," "disaster work," "critical infrastructure," and "disaster response period" have the same meanings as in section 5703.94 of the Ohio Revised Code.

Any item of income that is Exempt Income of a Pass-Through Entity under division (11) of this section is Exempt Income of each owner of the Pass-Through Entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

(12) **"FORM 2106"** means Internal Revenue Service form 2106 filed by a Taxpayer pursuant to the Internal Revenue Code.

(13) **"GENERIC FORM"** means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or Other Payer, estimated municipal income taxes, or annual municipal income tax liability, including a request for refund.

(14) **"INCOME"** means the following:

(A) (i) For Residents, all income, salaries, Qualifying Wages, commissions, and other compensation from whatever source earned or received by the Resident, including the Resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the Resident and any net profit of the Resident, except as provided in division (23)(E) of this section;

(ii) For the purposes of division (14)(A)(i) of this section:

(a) Any Net Operating Loss of the Resident incurred in the Taxable Year and the Resident's distributive share of any Net Operating Loss generated in the same Taxable Year and attributable to the Resident's ownership interest in a Pass-Through Entity shall be allowed as a deduction, for that Taxable Year and the following five Taxable Years, against any other Net Profit of the Resident or the Resident's distributive share of any net profit attributable to the Resident's ownership interest in a Pass-Through Entity until fully utilized, subject to division (14)(A)(iv) of this section;

(b) The Resident's distributive share of the net profit of each Pass-Through Entity owned directly or indirectly by the Resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior Taxable Year and applied to reduce the entity's net profit for the current Taxable Year.

(iii) Division (14)(A)(ii) of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S Corporation unless shareholders' distributive shares of net profits from S Corporations are subject to tax in the municipal corporation as provided in division 11(N) or division 14(E) of this Section;

(iv) Any amount of a Net Operating Loss used to reduce a Taxpayer's Net Profit for a Taxable Year shall reduce the amount of Net Operating Loss that may be carried forward to any subsequent year for use by that Taxpayer. In no event shall the cumulative deductions for all Taxable Years with respect to a Taxpayer's Net Operating Loss exceed the original amount of that Net Operating Loss available to that Taxpayer.

(B) In the case of Nonresidents, all income, salaries, Qualifying Wages, commissions, and other compensation from whatever source earned or received by the Nonresident for work done, services performed or rendered, or activities conducted in the Municipality, including any Net

Profit of the Nonresident, but excluding the Nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the Nonresident;

(C) For Taxpayers that are not individuals, Net Profit of the Taxpayer;

(D) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the Taxpayer is a professional gambler for federal income tax purposes, the Taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in Section 192.081 of this Chapter; and

(E) INTENTIONALLY LEFT BLANK.

(15) **"INTANGIBLE INCOME"** means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible Income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(16) **"INTERNAL REVENUE CODE"** means the "Internal Revenue Code of 1986," 100 Sta. 2085, 26 U.S.C.A. 1, as amended.

(17) **"LIMITED LIABILITY COMPANY"** means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

(18) **"LOCAL BOARD OF TAX REVIEW"** and **"BOARD OF TAX REVIEW"** means the entity created under Section 192.18 of this Chapter.

(19) **"MUNICIPAL CORPORATION"** means, in general terms, a status conferred upon a local government unit by state law, giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under section 715.691, 715.70, 715.71, or 715.74 of the Ohio Revised Code.

(20) (A) **"MUNICIPAL TAXABLE INCOME"** means the following:

(i) For a Person other than an individual, Income apportioned or situated to the Municipality under Section 192.062 of this Chapter, as applicable, reduced by any Pre-2017 Net Operating Loss Carryforward available to the Person for the Municipality;

(ii) (a) For an individual who is a resident of a municipal corporation other than a Qualified Municipal Corporation, Income reduced by Exempt Income to the extent otherwise included in Income, then reduced as provided in division (20)(B) of this section, and further reduced by any Pre-2017 Net Operating Loss Carryforward available to the individual for the Municipality;

(b) For an individual who is a resident of a Qualified Municipal Corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the Qualified Municipal Corporation from the Qualified Municipal Corporation's tax on or before December 31, 2013. If a Qualified Municipal Corporation, on or before December 31, 2013, exempts income earned by individuals who are not residents of the Qualified Municipal Corporation and net profit of Persons that are not wholly located within the Qualified Municipal Corporation, such individual or Person shall have no Municipal Taxable Income for the purposes of the tax levied by the Qualified Municipal Corporation and may be exempted by the Qualified Municipal Corporation from the requirements of section 718.03 of the Ohio Revised Code.

(iii) For an individual who is a Nonresident of the Municipality, Income reduced by Exempt Income to the extent otherwise included in Income and then, as applicable, apportioned or situated to the Municipality under Section 192.062 of this Chapter, then reduced as provided in division (20)(B) of this section, and further reduced by any Pre-2017 Net Operating Loss Carryforward available to the individual for the Municipality.

(B) In computing the Municipal Taxable Income of a Taxpayer who is an individual, the Taxpayer may subtract, as provided in division (20)(A)(ii)(a) or (iii) of this section, the amount of the individual's employee business expenses reported on the individual's Form 2106 that the

individual deducted for federal income tax purposes for the Taxable Year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the Taxpayer is a resident, the Taxpayer may deduct all such expenses allowed for federal income tax purposes. For a municipal corporation in which the Taxpayer is not a resident, the Taxpayer may deduct such expenses only to the extent the expenses are related to the Taxpayer's performance of personal services in that nonresident municipal corporation.

- (21) "MUNICIPALITY" and "KETTERING" means the City of Kettering, Ohio.
- (22) "NET OPERATING LOSS" means a loss incurred by a Person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.
- (23) (A) "NET PROFIT" for a Person other than an individual means adjusted federal taxable income reduced by any Net Operating Loss incurred by the person in a taxable year beginning on or after January 1, 2017, subject to the limitations of division (23)(C) of this section.
 - (B) "NET PROFIT" for a Person who is an individual means the individual's net profit required to be reported on Schedule C, Schedule E, or Schedule F reduced by any Net Operating Loss carried forward. For the purposes of this division, the Net Operating Loss carried forward shall be calculated and deducted in the same manner as provided in division (23)(C) of this section.
 - (C)
 - (i) The amount of such Net Operating Loss shall be deducted from Net Profit to the extent necessary to reduce Municipal Taxable Income to zero, with any remaining unused portion of the Net Operating Loss carried forward to not more than five consecutive Taxable Years following the Taxable Year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized;
 - (ii) No Person shall use the deduction allowed by division (23)(C) of this section to offset Qualifying Wages;
 - (iii)
 - (a) For Taxable Years beginning in 2018, 2019, 2020, 2021, or 2022, a Person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty per cent of the amount of the deduction otherwise allowed by division (23)(C)(i) of this section;
 - (b) For Taxable Years beginning in 2023 or thereafter, a Person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (23)(C) of this section without regard to the limitation of division (23)(C)(iii)(a) of this section;
 - (iv) Any Pre-2017 Net Operating Loss Carryforward deduction that is available may be utilized before a Taxpayer may deduct any amount pursuant to division (23)(C) of this section;
 - (v) Nothing in division (23)(C)(iii)(a) of this section precludes a Person from carrying forward, for use with respect to any return filed for a Taxable Year beginning after 2018, any amount of Net Operating Loss that was not fully utilized by operation of division (23)(C)(iii)(a) of this section. To the extent that an amount of Net Operating Loss that was not fully utilized in one or more Taxable Years by operation of division (23)(C)(iii)(a) of this section is carried forward for use with respect to a return filed for a Taxable Year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (23)(C)(iii)(a) of this section shall apply to the amount carried forward;
 - (D) For the purposes of this Chapter, and notwithstanding division (23)(A) of this section, net profit of a Disregarded Entity shall not be taxable as against that Disregarded Entity, but shall instead be included in the net profit of the owner of the Disregarded Entity.
 - (E)
 - (i) For purposes of this Chapter, "publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.
 - (ii) For the purposes of this Chapter, and notwithstanding any other provision of this Chapter, the net profit of a publicly traded partnership that makes the election described in division (23)(E) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.

(iii) A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. Once the election is made, the election is binding for a five-year period beginning with the first Taxable Year of the initial election. The election continues to be binding for each subsequent five-year period unless the Taxpayer elects to discontinue filing municipal income tax returns as a C corporation for municipal purposes under division (E)(iv) of this section.

(iv) An election to discontinue filing as a C corporation must be made in the first year following the last year of a five-year election period in effect under division (E)(iii) of this section. The election to discontinue filing as a C corporation is binding for a five-year period beginning with the first Taxable Year of the election and continues to be binding for each subsequent five-year period unless the Taxpayer elects to discontinue filing municipal income tax returns as a partnership for municipal purposes. An election to discontinue filing as a partnership must be made in the first year following the last year of a five-year election period.

(v) The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but division (E) of this section applies to all municipal corporations in which an individual owner of the partnership resides.

(vi) The individual owners of the partnership not filing as a C Corporation shall be required to file with their municipal corporation of residence and report their distributive share of partnership net profit.

(24) **"NONRESIDENT"** means an individual that is not a resident of the Municipality.

(25) **"OHIO BUSINESS GATEWAY"** means the online computer network system, created under section 125.30 of the Ohio Revised Code, that allows Persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

(26) **"OTHER PAYER"** means any Person, other than an individual's employer or the employer's agent, who pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and Video Lottery Terminal Sales Agents.

(27) **"PASS-THROUGH ENTITY"** means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S Corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. "Pass-through entity" does not include a trust, estate, grantor of a grantor trust, or Disregarded Entity.

(28) **"PENSION"** means the following:

(A) For taxable years beginning on or after January 1, 2016 through December 31, 2019, any amount paid to an employee or former employee that is reported to the recipient on an IRS Form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS Form W-2, Wage and Tax Statement, or successor form.

(B) For taxable years beginning on or after January 1, 2020, a Retirement Benefit Plan, regardless of whether the plan satisfies the qualifications described under section 401(a) of the Internal Revenue Code, including amounts that are taxable under the "Federal Insurance Contributions Act", Chapter 21 of the Internal Revenue Code, excluding employee contributions and elective deferrals, and regardless of whether such amounts are paid in the same taxable year in which the amounts are included in the employee's wages, as defined by section 3121(a) of the Internal Revenue Code.

(29) **"PERSON"** includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S Corporations, governmental entities, and any other entity.

(30) **"POSTAL SERVICE"** means the United States Postal Service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.

(31) **"POSTMARK DATE," "DATE OF POSTMARK,"** and similar terms include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course of its business and marked on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery.

(32) (A) **"PRE-2017 NET OPERATING LOSS CARRYFORWARD"** means any Net Operating Loss incurred in a Taxable Year beginning before January 1, 2017, to the extent such loss was permitted by a resolution or ordinance of the Municipality that was adopted by the Municipality before January 1, 2016, to be carried forward and utilized to offset Income or Net Profit generated in the Municipality in future Taxable Years.

(B) For the purpose of calculating Municipal Taxable Income, any Pre-2017 Net Operating Loss Carryforward may be carried forward to any Taxable Year, including Taxable Years beginning in 2017 or thereafter, for the number of Taxable Years provided in the resolution or ordinance or until fully utilized, whichever is earlier.

(33) **"QUALIFIED MUNICIPAL CORPORATION"** means a municipal corporation that, by resolution or ordinance adopted on or before December 31, 2011, adopted Ohio adjusted gross income, as defined by section 5747.01 of the Ohio Revised Code, as the income subject to tax for the purposes of imposing a municipal income tax.

(34) **"QUALIFYING WAGES"** means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(A) Deduct the following amounts:

(i) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code;

(ii) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or Other Payer;

(iii) INTENTIONALLY LEFT BLANK;

(iv) INTENTIONALLY LEFT BLANK; and

(v) Any amount included in wages that is Exempt Income.

(B) Add the following amounts:

(i) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986;

(ii) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Division (34)(B)(ii) of this section applies only to those amounts constituting ordinary income;

(iii) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (34)(B)(iii) of this section applies only to employee contributions and employee deferrals;

(iv) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages;

(v) Any amount received that is treated as self-employment income for federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code; and

(vi) Any amount not included in wages if all of the following apply:

(a) For the Taxable Year the amount is employee compensation that is earned outside of the United States and that either is included in the Taxpayer's gross income for federal income tax purposes or would have been included in the

Taxpayer's gross income for such purposes if the Taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;

(b) For no preceding Taxable Year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;

(c) For no succeeding Taxable Year will the amount constitute wages; and

(d) For any Taxable Year the amount has not otherwise been added to wages pursuant to either division (34)(B) of this section or section 718.03 of the Ohio Revised Code, as that section existed before the effective date of H.B. 5 of the 130th general assembly, March 23, 2015.

(35) **"RELATED ENTITY"** means any of the following:

(A) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the Taxpayer's outstanding stock;

(B) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the Taxpayer's outstanding stock;

(C) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (35)(D) of this section, provided the Taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock; or

(D) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (35)(A) to (C) of this section have been met.

(36) **"RELATED MEMBER"** means a Person that, with respect to the Taxpayer during all or any portion of the Taxable Year, is either a Related Entity, a component member as defined in section 1563(b) of the Internal Revenue Code, or a Person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a Person is a related member under this division, "twenty per cent" shall be substituted for "5 percent" wherever "5 percent" appears in section 1563(e) of the Internal Revenue Code.

(37) **"RESIDENT"** means an individual who is domiciled in the Municipality as determined under Section 192.042 of this Chapter.

(38) **"RETIREMENT BENEFIT PLAN"** means an arrangement whereby an entity provides benefits to individuals either on or after their termination of service because of retirement or disability. Retirement Benefit Plan does not include wage continuation payments, severance payments, or payments made for accrued personal or vacation time.

(39) **"S CORPORATION"** means a Person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its Taxable Year.

(40) **"SCHEDULE C"** means Internal Revenue Service Schedule C (Form 1040) filed by a Taxpayer pursuant to the Internal Revenue Code.

(41) **"SCHEDULE E"** means Internal Revenue Service Schedule E (Form 1040) filed by a Taxpayer pursuant to the Internal Revenue Code.

(42) **"SCHEDULE F"** means Internal Revenue Service Schedule F (Form 1040) filed by a Taxpayer pursuant to the Internal Revenue Code.

(43) **"SINGLE MEMBER LIMITED LIABILITY COMPANY"** means a limited liability company that has one direct member.

(44) **"SMALL EMPLOYER"** means any employer that had total revenue of less than five hundred thousand dollars during the preceding Taxable Year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains; dividends, and other investment income; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment

from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.

(4544) **"TAX ADMINISTRATOR"** means the individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this Chapter, and also includes the following:

- (A) A municipal corporation acting as the agent of another municipal corporation;
- (B) A Person retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the Person in whole or in part on a contingency basis; and
- (C) The Central Collection Agency (CCA) or the Regional Income Tax Agency (RITA) or their successors in interest, or another entity organized to perform functions similar to those performed by the Central Collection Agency and the Regional Income Tax Agency.

Tax Administrator does not include the Tax Commissioner.

(4645) **"TAX COMMISSIONER"** means the tax commissioner appointed under section 121.03 of the Ohio Revised Code.

(4746) **"TAX RETURN PREPARER"** means any individual described in section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.

(4847) **"TAXABLE YEAR"** means the corresponding tax reporting period as prescribed for the Taxpayer under the Internal Revenue Code.

(4948) (A) **"TAXPAYER"** means a Person subject to a tax levied on income by a municipal corporation in accordance with this Chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (498)(B)(i) of this section, a Disregarded Entity.

- (B) (i) A Single Member Limited Liability Company that is a Disregarded Entity for federal tax purposes may be a separate Taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate Taxpayer or did not file for its Taxable Year ending in 2003, if all of the following conditions are met:
 - (a) The limited liability company's single member is also a limited liability company;
 - (b) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004;
 - (c) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate Taxpayer under division (L) of section 718.01 of the Ohio Revised Code as this section existed on December 31, 2004;
 - (d) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member; and
 - (e) The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.
- (ii) For purposes of division (498)(B)(i)(e) of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's Taxable Year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its Taxable Year ending in 2003 was at least four hundred thousand dollars.

(5049) **"TAXPAYERS' RIGHTS AND RESPONSIBILITIES"** means the rights provided to Taxpayers in sections 718.11 , 718.12 , 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011 , and 5717.03 of the Ohio Revised Code and any corresponding ordinances of the Municipality, and the responsibilities of Taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with

Chapter 718 of the Ohio Revised Code and resolutions, ordinances, and rules adopted by a municipal corporation for the imposition and administration of a municipal income tax.

~~(5150)~~ **"VIDEO LOTTERY TERMINAL"** has the same meaning as in section 3770.21 of the Ohio Revised Code.

~~(5254)~~ **"VIDEO LOTTERY TERMINAL SALES AGENT"** means a lottery sales agent licensed under Chapter 3770 of the Ohio Revised Code to conduct Video Lottery Terminals on behalf of the state pursuant to section 3770.21 of the Ohio Revised Code.

192.096 REFUNDS

(A) Upon receipt of a request for a refund, the Tax Administrator of the Municipality, in accordance with this section, shall refund to employers, agents of employers, Other Payers, or Taxpayers, with respect to any income or withholding tax levied by the Municipality:

- (1) Overpayments of more than ten dollars;
- (2) Amounts paid erroneously if the refund requested exceeds ten dollars.

(B) (1) Except as otherwise provided in this Chapter, returns setting forth a request for refund shall be filed with the Tax Administrator within three years after the tax was due or paid, whichever is later. Any documentation that substantiates the Taxpayer's claim for a refund must be included with the return filing. Failure to remit all documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses or other pertinent factors on the return will cause delay in processing, and / or disallowance of undocumented credits or losses. For purposes of this section, the date the tax was due shall be the due date of the applicable return required to be filed under Sections 192.051(H) and 192.091 of this Chapter.

(2) On filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount to the appropriate Municipal official for payment. Except as provided in division (B)(3) of this section, the Tax Administrator shall issue an Assessment to any Taxpayer whose request for refund is fully or partially denied. The Assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the Assessment.

(3) If a Tax Administrator denies in whole or in part a refund request included within the Taxpayer's originally filed annual income tax return, the Tax Administrator shall notify the Taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an Assessment that may be appealed under Section 192.18 of this Chapter.

(C) A request for a refund that is received after the last day for filing specified in division (B) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:

- (1) The request is delivered by the Postal Service, and the earliest Postal Service Postmark Date on the cover in which the request is enclosed is not later than the last day for filing the request;
- (2) The request is delivered by the Postal Service, the only Postmark Date on the cover in which the request is enclosed was affixed by a private postal meter, the Postmark Date is not later than the last day for filing the request, and the request is received within seven days of such last day; or
- (3) The request is delivered by the Postal Service, no Postmark Date was affixed to the cover in which the request is enclosed or the Postmark Date so affixed is not legible, and the request is received within seven days of the last day for making the request.

(D) Interest shall be allowed and paid on any overpayment by a Taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any Taxable Year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in division (A)(4) of Section 192.10 of this Chapter.

(E) As used in this section, "withholding tax" has the same meaning as in section 192.10 of this Chapter.

**SECTION 191.11 COLLECTION OF UNPAID TAXES AND REFUND OF
OVERPAYMENTS**

- A. All taxes, penalties, and interest imposed by this Tax Code may be collected by civil suit or other proceeding as other debts of like amount are recoverable, together with any court costs, collection expenses, and reasonable attorney's fees incurred in collection. Such collection shall not preclude any criminal prosecution. Except in the case of fraud, omission of twenty-five percent (25%) of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three (3) years from the time the tax was due or the return was filed, whichever is later. However, in the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. In those cases in which the U.S. Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitation, the period within which an additional assessment may be made by the Tax Manager shall be one (1) year from the time of final determination of the federal tax liability.
- B. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years after such payment was made, or the return was filed, or within three (3) months after final determination of the federal tax liability, whichever is later. However, refunds of tax withheld from nonqualified deferred compensation plans (ndcp) will only be made in accordance with Ohio Revised Code Section 718.021. For nonresident individuals with Kettering tax withheld, the date the return was filed shall be the date that the Employer's Annual Withholding Reconciliation was filed in accordance with Section 191.06(D) of this Chapter.
- C. Income tax paid to the City of Kettering which should have been paid to another municipality, may be refunded subject to the three-year limitation on refunds. Income tax that should have been paid to the City of Kettering, but was paid to another municipality, shall be subject to recovery by the City of Kettering. The City of Kettering will allow a non-refundable credit for any amount owed the City of Kettering that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than the City of Kettering tax rate. If the City of Kettering tax rate is higher, the tax representing the net difference of the rates shall be paid to the City of Kettering and is also subject to collection by the City of Kettering.
- D. Additional amounts of less than five Dollars (\$5.00) shall not be refunded or assessed unless such assessment results from income which the taxpayer has failed to report.
- E. Any valid claim for a refund of overpaid taxes shall, except as hereinafter provided, earn interest at the rate fixed by Ohio Revised Code Section 5703.47. Such interest shall be computed from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the complete return is filed, whichever is later, no interest shall be allowed on the refunded overpayment. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return.
- F. Every taxpayer shall retain all records necessary to compute the taxpayer's tax liability for a period of six (6) years from the date the taxpayer's return is filed or the withholding taxes are paid.
- G. The determination of tax liability of non-residents working in and out of the corporate limits is to be computed by the formula of the total number of days worked in the city divided by the total number of days worked (excluding vacation, holiday and sick days) during the year and the resulting percentage applied to the total annual income from wages. The tax manager may require employer certification of the basis for refund of taxes.
- H. Payments on delinquent amounts shall be applied in the following manner:
 - 1. To unpaid penalty and interest assessments in the order in which such assessments became due.
 - 2. To the taxes owed for any previous year in the order in which such taxes became due.
 - 3. To the taxpayer's current estimated tax liability.

CITY OF KETTERING, OHIO
AN EMERGENCY ORDINANCE

By:

No.

**VACATING AN UNUSED PEDESTRIAN ACCESS EASEMENT AT 1930-
2000 COMPOSITE DRIVE (PLANNING COMMISSION CASE NO. PC-
19-007) AND DECLARING AN EMERGENCY**

WHEREAS, on October 7, 2019 the Planning Commission considered and recommended approval of an application to vacate an unused public pedestrian access easement running north-south across 1930-2000 Composite Drive and more particularly described as Lot 2 of Kettering Business Park Section Five Plat Book 185, Page(s) 13A of the Plat records of Montgomery County, Ohio (the "Property"); and

WHEREAS, on November 12, 2019, this Council held a public hearing on the application and Planning Commission's recommendation and all owners of Property were notified of the public hearing and during the public hearing no party came forward in opposition; and

WHEREAS, this Council is satisfied that there is good cause for the vacation, that the vacation will not be detrimental to the public interest, and that such vacation should be made;

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. Approval is hereby granted for the vacation of the "Public Pedestrian Access Easement" shown on the attached Exhibit A.

Section 2. The Clerk of Council is directed and authorized to prepare a certified copy of this Ordinance, and the Planning and Development Director of this City is hereby directed and authorized to accept the certified copy of this Ordinance from the Clerk of Council and, upon satisfaction of all Planning Commission conditions, if any, to further cause that same certified ordinance and any other necessary documents to be properly delivered to the Montgomery County Recorder for appropriate recordation. The City Manager is authorized to sign any instruments necessary to effectuate the vacation.

Section 3. 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, so that closing of the sale of the subject property can occur before the end of the month and take advantage of favorable interest rates.

Passed by Council this _____ day of _____ 2019.

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)

EXHIBIT A

(2 pages, including this page)

