



## CITY OF KETTERING

PEGGY LEHNER, MAYOR • JACQUE FISHER, VICE MAYOR  
BRUCE E. DUKE • LISA DUVALL • TONY KLEPACZ • JYL HALL • BOB SCOTT

### KETTERING COUNCIL AGENDA

**November 14, 2023**

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

5:00 P.M.      **WORKSHOP**      Deeds Room  
7:30 P.M.      **REGULAR MEETING**      Council Chambers

#### PLEDGE OF ALLEGIANCE

#### INVOCATION

#### APPROVAL OF MINUTES

October 24, 2023- Council Meeting & Workshop Minutes  
November 1, 2023- Joint School Board Meeting 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 contract with Globus Printing & Packaging for printing and mailing services for the Parks, Recreation and Cultural Arts 2024 Activities Guide.
3. Approving amended and restated Homebuyer Assistance Program Guidelines.
4. Authorizing the City Manager to accept a grant from the Ohio Department of Natural Resources for the Miami Valley Research Park Bike Path Project, City Project No. 05-004L.
5. Authorizing the City Manager to enter into and implement a collective bargaining agreement with the International Association of Firefighters Local 2150, which is consistent with a tentative agreement reached by the bargaining teams.
6. Authorizing the City Manager to contract with P&R Communications for technical support, maintenance, installation and repair of the City's radio communications equipment.
7. Accepting the recommendation of the Kettering Planning Commission to deny the application for rezoning in Case No. PC-23-018 concerning the property located at 1490 W. Dorothy Lane.

**OR**

Rejecting the recommendation of the Kettering Planning Commission to deny the application for rezoning in Case No. PC-23-018 concerning the property located at 1490 W. Dorothy Lane.

8. To declare the necessity and intention of acquiring property interests in Project Parcels 3-T of the Danube Court Bridge Rehabilitation Project (City Project No. 03-924A, ODOT Project MOT-Danube Court Bridge Rehab, PID NO. 114100).

**ORDINANCES IN FIRST READING**

9. To amend Section 660.20 of the Codified Ordinances to prohibit illicit discharge of pollutants into the storm drainage system.

**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**  
**2023**

November 13	7:00 p.m.	Board of Community Relations
November 14	4:00 p.m. 5:00 p.m. 7:30 p.m.	Partners for Health Youth Council Workshop City Council Meeting
November 16	6:30 p.m.	Sustainability Committee
November 20	7:00 p.m.	Planning Commission
November 23	All Day	Government Center Closed
November 24	All Day	Government Center Closed
November 27	7:00 p.m. 7:30 p.m.	Board of Zoning Appeals Sister Cities
November 28	6:00 p.m. 7:30 p.m.	Council Workshop City Council Meeting
November 30	5:00 p.m.	Strategic Plan Steering Committee

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 hereby is authorized, on behalf of the City, 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 \_\_\_\_\_ 2023.

\_\_\_\_\_  
PEGGY LEHNER, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A HAMER III,  
Law Director

Estimated Cost: \$50,000.00  
Budgeted in 2024: \$50,000.00  
Acct. No.: 1780-72550

(Requested by: Law Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO CONTRACT WITH  
GLOBUS PRINTING & PACKAGING FOR PRINTING AND  
MAILING SERVICES FOR THE PARKS, RECREATION AND  
CULTURAL ARTS 2024 ACTIVITIES GUIDE**

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 hereby authorized, on behalf of the City, to contract with Globus Printing & Packaging for printing and mailing services for the Parks, Recreation and Cultural Arts 2024 Activities Guide. 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 \_\_\_\_\_ 2023.

\_\_\_\_\_  
PEGGY LEHNER, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER III  
Law Director

Estimated Cost: \$90,000.00  
Included in 2024 Budget: \$90,000.00  
Acct. No. 2400-72740

(Requested by: Parks, Recreation and Cultural Arts Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**APPROVING AMENDED AND RESTATED HOMEBUYER  
ASSISTANCE PROGRAM GUIDELINES**

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

Section 1. The amended and restated Homebuyer Assistance Program Guidelines set forth in Exhibit A, attached hereto and incorporated herein, are approved and adopted.

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 \_\_\_\_\_ 2023.

\_\_\_\_\_  
PEGGY LEHNER, 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

(19 pages including this page)



CITY OF KETTERING

## CDBG Funded HOMEBUYER ASSISTANCE PROGRAM GUIDELINES

### SECTION I: OBJECTIVES OF PROGRAM

To increase the accessibility of homeownership for low- and moderate-income households.

### SECTION II: APPLICANT ELIGIBILITY

- The applicant's total annual household income must be less than or equal to: 80% of the median income level for the Dayton, OH MSA, when purchasing a home in any Kettering neighborhood. Household income includes the earnings of all persons over the age of 18 who will be residing in the home. The income limits by household size are listed in Attachment A of this document. The limits are updated annually, and the program is subject to the most current HUD published limits. The City of Kettering collects 2 full months of paystubs (9 weekly & 5 bi-weekly) and 2 months of bank and asset statements. These documents should come from the most recent two months. More information about income limits, income exclusions is available in Attachment B.
- Homebuyer assistance can be utilized for only first time homebuyers. The applicant must live in the home as a primary residence for a minimum of 5 years, or the loan becomes due immediately. No interest is charged on the down payment assistance or closing cost assistance. The assistance from the City can be used for down payment and/or for closing costs, in excess of the required buyer portion of 50% of the first lender's required down payment. The Subsidy Analysis Worksheet in Attachment F will determine the subsidy from the City of Kettering. Funds are limited to \$10,000.00 per household.
- Potential homebuyers must complete a HUD approved Homebuyer Education Class. The training is available at the Homeownership Center of Greater Dayton's downtown Dayton location, or online ([www.homeownershipdayton.org](http://www.homeownershipdayton.org)). The Homebuyer Class is \$49.99 at the Homeownership Center of Greater Dayton with coupon code HOCDAYTON49. A one on one pre-purchase homebuyer counseling session will be required as well. Pre-approved buyers will be informed how to schedule this session with the HomeOwnership Center staff.
- Potential homebuyers must be able to obtain a commitment from a bank, savings and loan association, credit union or other private lending institution for the funds required for a first mortgage to purchase the home. The first mortgager is required to collect escrow funds and pay the property taxes and homeowner's

insurance premium. The kind of loan the buyer chooses is important. The City of Kettering will not use homebuyer assistance funds to assist a buyer who is using a product such as an ARM or a loan with a balloon payment. FHA & conventional loans are approvable products. Other products are subject to the staff's investigation of the lending product before approval.

- The City of Kettering Homebuyer Assistance will cover the primary lender required down payment and closing costs, not to exceed \$10,000.00 as long as the buyer pays at least 50% of the lender required down payment into the transaction (including prepaids) and the subsidy analysis justifies the total amount requested. Further, additional funds from the clients can't exceed a total of \$2,500.00 from the client at closing unless there is documented funds available (shown through a bank statement typically). The subsidy analysis will use debt to income ratios of 30% of gross for housing and 42% of gross for total debt. Debts exceeding these ratios, if unable to be paid down, will cause the borrower to become ineligible. If more than this amount is needed at the time of closing to make the property affordable, and there are no other documented client funds, program or gift funds available, then the City of Kettering will be unable to contribute.
- Initial income determination and asset determination will be made to assist the client in moving forward in the program, however, final eligibility cannot be determined without the loan documentation as requested by community development staff. Proper documentation includes loan estimates, application to the first lender, lender commitment letter, loan commitment letter, appraisal, real estate contract and more as requested. Near the closing when the check is being requested, a closing disclosure and ALTA Settlement Statement will be required. An inspection of the property will also be required in order to verify the property meets program standards. All approvals will remain contingent on those items as well as the final Closing Disclosure and ALTA settlement statement which are made available usually 3 days before closing. A complete application is considered one that is complete, signed and in which an appraisal, loan estimate, sales contract, loan application, primary lender pre-approval letter is available. The buyer may then have a reviewable application to determine eligibility.

### **SECTION III: PROPERTY ELIGIBILITY**

#### **PROPERTY SELECTION CRITERIA AND RULES:**

The City of Kettering will consider the property's fair market value as listed in the appraisal obtained by the first mortgage lender in the subsidy analysis. Either the appraised value or the sales price, whichever is less will be used in the subsidy analysis. The seller must also be informed that the property will not be acquired by eminent domain if negotiations fail to result in an amicable agreement. (Attachment)E

The house must have sufficient living space for the family wishing to purchase the home. The City will not support overcrowded housing conditions. For the purpose of this program, overcrowding is defined by the City of Kettering Property Maintenance Code. The code may be found online at: <https://www.ketteringoh.org/documents/property-maintenance-code/>. The property must be owner-occupied or vacant. The owner of the home will sign a statement certifying it is owner-occupied or vacant. Homes currently rented are not eligible (unless currently rented by buyer). There is a required vacant owner occupancy form. The property owner must be willing to make repairs as needed to meet the City of Kettering homebuyer assistance program corrections. For this reason, foreclosed homes are not eligible for this program.

Prior to the closing, the house must be free of defects that pose an immediate danger to health and safety. Identified hazards include, but are not limited to, defective furnaces, water heaters, wiring, windows, water leaks, missing hand rails, inoperable or absent smoke detectors, non-grounded outlets, deteriorating roofs, and unsanitary conditions. City of Kettering's Housing Specialists will inspect the property, provide a list of required



corrections and give the owner the opportunity to correct them in order to sell the property. Please see the attached Property Inspection Guidelines in Attachment G.

If the property is located in a flood zone A or V, flood insurance must be purchased prior to or at the loan closing. Properties located in the floodway may not be purchased using City of Kettering homebuyer funds. The City of Kettering requires flood insurance for all properties in the flood zones A or V even when the first lender does not require it (which could be the case if the mortgage is not federally backed). Homes with a Zone X designation are suggested to obtain flood insurance but are not required to have it.

The purchaser must agree to reside in the property, as their principal residence for the 5 year period of affordability as designated in the Mortgage Loan Agreement with the City. The city will use IRS guidance to determine principal residence/primary home. The City of Kettering annually sends a certification of primary residence to the home address. Submitting this form assists in maintaining compliance with the City of Kettering second mortgage and is mandatory to complete each year.

In the event the owner ceases to own or occupy the home during the 5 year affordability period, the homeowner will be required to repay the loan in its entirety immediately. In the event of foreclosure during the affordability period, the amount subject to recapture/repayment is based on the amount of net proceeds from the foreclosure sale available after the first mortgage has been satisfied.

Homebuyers with equity may also be eligible for Housing Rehab programs. You can find more details at: <http://www.ketteringoh.org/departments/planning-development/housing-opportunities/rehabbing-a-home>

#### **SECTION IV: ELIGIBLE ACTIVITIES**

The City will provide a second mortgage loan, not to exceed \$10,000.00 to eligible homebuyers for any combination of the following:

Down payment assistance. Funds can be used as down payment in order to make the property affordable. The City of Kettering can provide up to 50% of the lender required down payment, not to exceed \$10,000 total, as long as the buyer pays the other 50% of the lender required down payment.

Closing cost assistance. Eligible closing costs include appraisal fee, credit report fee, recording fee, processing fee, title examination, origination fee and inspection fees and prepaid fees and other standard closing costs.

#### **SECTION V: APPLICATION PERIOD**

Due to the interest in the program and the limited resources available, assistance will be offered on a first-come, first-serve basis, as funding is available. A waiting list will be kept and numbered whenever a limitation of funds becomes apparent.

#### **SECTION VI: PROGRAM PROCEDURES**

1. Buyer obtains pre-approval for a mortgage from a lender. The monthly payment (including principal, interest, property taxes and insurance) must not exceed 30% of annual gross income.
2. Buyer locates home they wish to purchase and signs a sales agreement contingent upon obtaining mortgage financing and inspection of property by City of Kettering. Realtors should request 60 days for closing from the approval of income eligibility.
3. Buyer completes Down Payment Assistance Program application to determine eligibility for *down payment/closing cost assistance* by providing proof of total household income and total household debt obligations, two (2) months of consecutive bank statements, and 2 months of current pay stubs will be used as documentation. Buyer provides required documentation from the first lender.
4. Potential homebuyers must complete an approved homebuyer education program and individual session with staff from the HomeOwnership Center of Greater Dayton.
5. The City of Kettering will arrange to inspect the desired property for identification of any immediate health and safety problems as defined in "Property Eligibility" as well as any additional code violations per City of Kettering Property Maintenance Code and Kettering Housing Rehabilitation Standards. This inspection does not take place of a standard home inspection that the buyer pays for as the City of Kettering inspection is limited in scope. Please see Attachment G.
6. Buyer will be pre-qualified for assistance pending the residential inspection of the home and final lending documentation.
7. Housing Specialist visits home and conducts inspection. Report is prepared identifying all immediate health and safety issues and code violations requiring repair.  
The City of Kettering receives final financial institution documentation to determine buyer's final approval for assistance. Documentation includes Final Loan Disclosure and ALTA Settlement Statement in order to determine final assistance amount.
8. Financial institution approves loan and sets up loan closing while also informing the City of Kettering. The City will prepare its own closing documents however; both lenders should close at the same time. The first lender should charge for the mortgage recording fee of the City of Kettering's second mortgage, so that the two mortgages can be recorded in the right order.
9. At the closing, the buyer signs a note and mortgage for the amount of assistance provided and agrees to reside in the home for 5 years.

**SECTION VII: PROPERTY TRANSFERRED/REFINANCED**

1. If the home is sold, title transferred or the applicants no longer occupy the home (It is vacant or rented out) as a principal residence within the 5 year Affordability Period the entire loan amount will be due and payable to the City of Kettering. It should be noted that these must be continuous years from the mortgage date. In the event of foreclosure during the affordability period, the amount subject to recapture/repayment is based on the amount of net proceeds from the foreclosure sale available after the first mortgage has been satisfied.
2. The City may subordinate its interest in the property in accordance with the City of Kettering's Housing Rehabilitation Program and Homebuyer Assistance Program subordination policy. See Attachment D.

<b>HUD Income Limits</b>	<b>ATTACHMENT A</b>
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**ATTACHMENT A**  
**Down Payment Assistance Program**  
**2023 Income Guidelines**

Federal legislation and regulations establish the rules affecting this Homebuyer Assistance Program. Because the program is designed to benefit low- and moderate-income persons, eligible program participants must not exceed the U.S. Department of Housing and Urban Development (HUD) Income Limits. These income limits are established annually and typically published in the Federal Register in by mid-year. The City of Kettering uses the most up-to-date income limits and therefore will begin using the revised limits immediately when HUD posts them or on the date that guidelines go into effect. The City of Kettering calculates income using the method called Part 5, annual income.

<b>1 Person</b>	<b>2 Persons</b>	<b>3 Persons</b>	<b>4 Persons</b>	<b>5 Persons</b>	<b>6 Persons</b>	<b>7 Persons</b>	<b>8 Persons</b>
\$49,850	\$57,000	\$64,1000	\$71,2000	\$76,900	\$82,600	\$88,300	\$94,000

## Attachment B: Annual Income Information &amp; Exclusions

**Annual income includes:**

Annual income is the total income from all sources, including any anticipated income to be received within the next 12-month period, of the person(s) residing in the household.

**Income Information:**

Reported wages must be converted into an annual figure. The annualization of income begins with the effective date of the certification and is projected forward 12 months.

Converting Wages into an Annual Figure

The formula used to calculate income from wages will depend on how frequently the applicant/ tenant are being paid.

Refer to the chart below:

Pay Rate	Formula	Examples
Hourly	Hourly Rate × # Hours Worked × 52 Weeks	\$8 (per hour) × 36 (hours) × 52 (weeks) = \$14,680
Weekly	Weekly Rate × 52 Weeks	\$500 (per week) × 52 (weeks) = \$26,000
Bi-Weekly	Bi-Weekly Rate × 26 Pay Periods	\$1,000 (per pay period) × 26 (pay periods) = \$26,000
Semi-Monthly	Semi-Monthly Rate × 24 Pay Periods	\$1,000 (per pay period) × 24 (pay periods) = \$24,000
Monthly	Monthly Rate × 12 Months	\$2,000 (per month) × 12 (months) = \$24,000

Often, when an individual is denied Social Security, the individual will appeal the decision with the Social Security Administration (SSA). If the individual wins their appeal, generally, the SSA will award the individual benefits retroactively to the date of the individual's application for benefits. These delayed amounts must be *excluded* when determining annual income.

If a Social Security recipient has their benefit amount reduced each month to adjust for a prior overpayment, only the amount that is actually provided after the adjustment for the overpayment is *included* when determining annual income.

Any household receiving student financial assistance, regardless of whether or not subsidy is being received, may need to have student financial assistance included in the household's annual income determination. Further, the new regulation does not include an exception for students who are over the age of 23 with a dependent child or students who are living with their parents. This does not include loan proceeds that need to be repaid.

Unearned Income: While payments that fall under this category can include disability compensation, worker's compensation, and severance pay, the most common type of payment is unemployment.

If an individual is receiving unemployment benefits to calculate income the City will annualize the weekly benefit amount by 52 weeks, even if the unemployment benefit letter states that benefits will not be paid out for that length of time. The exception to this rule is if the applicant/tenant receiving the unemployment benefits has verifiable employment occurring in the certification year.

**Income Exclusions:**

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in § 5.403;
- (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
  - i. Amounts received under training programs funded by HUD;
  - ii. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
  - iii. Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
  - iv. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
  - v. Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (8) Temporary, nonrecurring or sporadic income (including gifts);
- (9) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (10) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (11) Adoption assistance payments in excess of \$480 per adopted child;
- (12) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.
- (13) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
- (14) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family.
- (15) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. Note: the following is the updated list from the Federal Register dated May 20, 2014.
- (16) The following is a list of income sources that qualify for that exclusion:

- a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));
- b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (e.g., employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
- c) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
- d) Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
- e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
- f) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, section 6);
- g) The first \$2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;
- h) Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1407-1408), including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109-11, section 327) (as amended);
- i) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056g) (e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program);
- j) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange Liability Litigation*, M.D.L. No. 381 (E.D.N.Y.);
- k) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub.L.96- 420, 25 U.S.C. 1728);
- l) The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- m) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l)); Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L.95-433);
- n) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));
- o) Any allowance paid under the provisions of 38 U.S.C.1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05) children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1821), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);
- p) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602);
- q) Any Allowances, earnings and payments to individuals participating in programs under the Workforce

Investment Act of 1998 (29 U.S.C. 2931(a)(2)); Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C.1780(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

r) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990(25 U.S.C. 1774f (b));

s) Deferred amounts from Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. § 1437a(b)(4));

t) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 *et seq.*) and administered by the Office of Native American Programs;

u) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, 816 F.Supp.2d 10 (Oct 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111- 291);

v) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

w) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

x) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended) and comparable disaster assistance provided by the States, local government, and disaster assistance organizations (42 U.S.C. 5155(d)).



## Summary of Asset Inclusions and Exclusions

ATTACHMENT C

### Asset Information:

An asset is an item of value that can be turned into cash. Annual income includes amounts derived (during the 12-month certification period) from assets to which any member of the family has access.

Household assets, including but not limited to savings accounts, investments, other properties/ collections, must not exceed \$100,000.00. Excluded from that asset limit are: the value of two cars or other vehicles and the value of household goods. Retirement accounts that are restricted from use until the age of retirement are not counted in assets if the owner of the retirement account is not eligible to make withdraws for any reason. However, retirement accounts where you can access the funds under special circumstances may be considered assets or income.

1. Cash held in savings and checking accounts, safe deposit boxes, homes, etc.
2. Revocable trusts
3. Equity in rental property or other capital investments
4. Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts
5. Individual retirement, 401K, and Keogh accounts
6. Retirement and pension funds
7. Cash value of life insurance policies available to the individual before death
8. Personal property being held as an investment
9. Lump-sum receipts or one-time receipts
10. A mortgage or deed of trust held by an applicant

The current amount of any cash that is held in a safe deposit box, coffee can, or even stuffed in a mattress, is considered to be an asset for the purpose of determining annual income. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets. While there is no actual income

For assets where the holder is taking non-periodic withdrawals, the market value of the asset will be calculated by determining the average balance for the previous 6 months. Income from the assets is the amount of interest or dividends expected to be earned in the 12 months following the certification date. Income from the assets may be based on historical information if the interest rate or dividends vary.

For assets where the holder has access to the funds, even if a retirement account, the funds will be counted as an asset.

If an applicant or a tenant has disposed of an asset for \$1,000 less than the asset's Fair Market Value, the asset must still be included as a household asset for 2 years from the date of disposal. Assets disposed of for less than Fair Market Value as a result of a divorce, foreclosure, bankruptcies, or separation, are not considered to be disposed assets.

Determining the Value of a Disposed Asset

The value of the disposed asset (disposed asset value) that is to be included on the household certification is the Cash Value of the asset less any amounts actually received for the asset.

Market Value:  
Costs to Sell (if any)  
Amount Received (if any)  
= Disposed Asset Value

When a household has combined net assets that exceed \$5,000, there is an additional calculation that must be computed in order to determine the asset income to be included when determining the household's annual income.

Two Asset Income Calculations

1. Actual Income
2. Imputed Income

"Imputed" means "attributed" or "assigned." Imputed income from assets is assigning an amount of income solely for the sake of the annual income calculation. The imputed income is not real income. The imputed income is calculated by multiplying the Cash Value of all household assets by the current HUD passbook rate of .06%, as of 9/28/23. HUD will publish the passbook rate annually.

Imputing Asset Income

When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

Imputing asset income on an asset is only required when the net family assets exceed \$50,000, and only if actual income from all the assets cannot be calculated. Net family assets are defined in 24 CFR § 5.603.

Imputing Asset Income IS NOT Required

- ✓ If a household's net family assets exceed \$50,000, but actual income from ALL assets can be determined, imputing income is not required.
- ✓ If a household's net family assets are less than \$50,000, even if actual income cannot be determined for all assets, imputing asset income is not required.

Imputing Asset Income IS Required

- ✓ If a household's net family assets exceed \$50,000, and if the actual income can be computed for some assets, but not all assets, determine the actual income for those assets, then calculate the imputed income for all remaining assets where the actual income cannot be determined, and combine both amounts to account for assets of a combined value of over \$50,000.

Asset Exclusions:

1. Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specifically equipped for persons with disabilities).
2. Interests in Indian trust land.
3. Term life insurance policies (i.e., where there is no cash value).

4. Equity in the cooperative unit in which the family lives.
5. Assets that are part of an active business. "Business" does NOT include rental of properties that are held as investments unless such properties are the applicant's or tenants main occupation.
6. Assets that are NOT effectively owned by the applicant. Assets are not effectively owned when they are held in an individual's name, but (a) the assets and any income they earn accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.

Note: Non-revocable trusts (i.e., irrevocable trusts) are not covered by this paragraph.

7. Assets that are not accessible to the applicant and provide no income to the applicant. Non-revocable trusts are not covered under this paragraph.
8. Retirement accounts while the person is employed and can-not access the funds.

**Community Development Program SUBORDINATION POLICY**

Subordination will be considered only in circumstances relating to the needs of the Borrower.

The borrower shall provide, in writing, the request for subordination at least two weeks (ten business days) before the scheduled closing. The request for subordination must provide the following information: current value of the home; current balance of the mortgage; current mortgage rate and reason for the request. The Community Development Division will provide the lender or title company a list of required documentation. Each subordination request must meet the following conditions:

1. The refinancing of the first mortgage must be a tangible benefit to the borrower such as:
  - A) lower interest rate
  - B) removal or buyout of co-borrower from title (with court order or evidence that the co-borrower no longer resides at property)
  - C) to convert from an ARM to a fixed rate
  - D) to eliminate future balloon obligation
  - E) refinance from Interest Only or Payment Option ARM to a fully amortized product
  - F) shorten loan term to accelerate principal reduction
  - G) extend term to decrease payment
2. The amount of the refinanced loan shall be for the amount equal to and not exceeding the outstanding balance of the loan being refinanced plus reasonable and customary closing costs and fees, including:
  - A) Credit Reports – only the actual cost identified on the credit report(s) may be charged
  - B) Automated Underwriting Fees – The automated underwriting loan review fee cannot exceed the actual amount charged to the lender
  - C) Origination Fee – not to exceed 2% of the original principal amount of the mortgage excluding financed mortgage insurance or guarantee fees
  - D) All other fees must be reasonable as compared to other standard closing docs the City has received.
3. Restrictions:
  - A) Under no circumstances should the closing costs total more than 6% of the total loan amount.
  - B) Under no circumstances can the homeowner get cash out of through refinancing and be approved to subordinate the City of Kettering loan.
  - C) Under no circumstance can the homeowner refinance from a fixed loan to an ARM loan, unless the ARM final interest rate is equal to or less than the current fixed rate.
4. The Mortgagor is performing and complying with all the terms and conditions outlined in the subject Promissory Note and Mortgage, including but not limited to timely loan payments, maintaining the mortgage premises in good repair and in compliance with all governmental requirements.

If the City agrees to consider the requested subordination, when provided with copies of the loan agreement, loan app, loan disclosures, appraisal, loan commitment letter and additional requested documentation, there should be expected to have a period where additional documentation such as Closing Disclosures and ALTA Settlement Statement and associated loan-closing documents will be pertinent and required to be reviewed. All documents must be reviewed by the City of Kettering Planning and Development Department and the Law Department for final determination.

CITY OF KETTERING - STATEMENT OF UNDERSTANDING & NOTICE TO PURCHASER & SELLER

This form must be transmitted from purchaser to seller prior to the loan closing/transfer of title. A signed copy must be provided to the City of Kettering.

For the property situated at: Kettering, Ohio.

1. It is acknowledged that gap financial assistance was requested from the City of Kettering. Even though the City of Kettering is involved, they will not be listed on the property deed, as an owner of record. Furthermore, the purchase of this property was not accomplished with any form of Eminent Domain.

2. The homebuyer assistance program is available for properties that are either

- (1) vacant,
(2) owner-occupied, or
(3) Being purchased by residing tenant.

(Owner Initial) It is hereby confirmed that no tenants have been relocated because of this purchase.

3. The property will be inspected by the City of Kettering for identification of any immediate health and safety problems as well as any additional code violations, as required by the HUD funding that the City of Kettering has been requested to contribute to the purchase of the aforementioned property. A report will be prepared identifying these problems or code violations requiring repair. Funding of the assistance will not be granted until repairs are made and a follow-up inspection report reflects no findings.

4. The Seller nor Purchaser must have no knowledge of existing lead paint in the property.

(Seller initial) (Purchaser initial). It is hereby confirmed that there is no knowledge of lead paint in the property.

By signing this Statement of Understanding, purchaser and seller acknowledge the facts are true.

Purchaser: \_\_\_\_\_

Seller: \_\_\_\_\_

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

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

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Subsidy Analysis

ATTACHMENT F

HOME BUYER MORTGAGE ANALYSIS		Key	
Project:	0	White spaces indicate data entry	
Buyer:			
<b>House Information</b>			
Purchase Price			
Appraised Value			
<b>Bank Requirements</b>			
Bank Rate - Front/End	30%		
Bank Rate - Back/End	42%		
Annual Interest Rate Loan			
Term (Years)	30		
Constant Annual Percent	0.0333		
Loan to Value			
Closing Costs			
<b>Family Information</b>			
Annual Income Annual		\$4.00 Monthly Income	
Taxes		\$0.00 Monthly Taxes	
Annual Insurance		\$0.00 Monthly Insurance	
Total Credit Card Debt			
<b>Debt Capacity</b>			
Monthly Income x Front Rate	\$ -	Debt Service for Loan Using LVR	\$0.00
Taxes	\$ -	+ Monthly Taxes	\$0.00
Insurance	\$ -	+ Monthly Insurance	\$0.00
Other Monthly Housing Cost	\$ -	= Monthly Mortgage Payment	\$0.00
Max. Monthly Debt Service/Back	\$ -		
<b>Debt Capacity (continued)</b>			
Monthly Income x Back Rate	\$ -		
Taxes	\$ -		
Insurance	\$ -		
Other Monthly Housing Cost	\$ -		
Loan Payments			
Credit Card Payments			
Other Monthly Obligation	\$ -		
Max. Monthly Debt Service/Back	\$ -		
<b>Maximum Loan Limits</b>			
Maximum Monthly Debt Service	\$ -		
Maximum Loan Using Front/Back	\$ -		
Maximum Loan Using LVR	\$ -		
Maximum Loan	\$ -		
<b>Permanent Mortgage</b>			
Purchase Price	\$ -	Borrower must pay 50% of the lender required down payment.	
Loan Amount - Down	\$ -		
Payment Needed	\$ -		
Closing Costs	\$ -		
Cash Available from Buyer			
<b>Home Buyer Subsidy</b>			
Not to exceed 50% of Down payment plus closing costs	\$ -		

**Property Maintenance:**

- In addition to the items listed in these guidelines, all structures and premises shall conform to the City of Kettering's Property Maintenance Code concerning health and safety issues, as applicable.
- There shall be no tripping or falling hazards. Handrails and guardrails shall be installed, where required, and adequately secured.

**Deteriorated Paint:**

- All painted surfaces shall be free of peeling, flaking or otherwise deteriorated paint. Deteriorated paint (on structures built prior to 1978) shall be assumed to contain lead-based paint, unless a lead assessment by a licensed lead-based paint risk assessor is conducted and found to be lead safe. Surfaces known or assumed to contain lead paint shall be stabilized and painted by workers certified by HUD or the EPA for Lead Safety for Renovation, Repair, and Painting, and all work done using lead-safe work practices. A Lead Clearance must be obtained after stabilization is complete. The condition causing the deteriorated paint shall also be corrected.

**Permits:**

- All witnessed new installations of components requiring permits (water heater, furnace, electric or plumbing work, etc.) shall have a record of those permits and passing inspections on file with the city. Installed components without record of permits shall have a permit taken out and all inspections completed.

**Electric:**

- Kitchen countertops, bathroom, unfinished basement, garage, exterior and any other outlet within six feet of a sink shall be GFCI-protected.
- All outlets shall be properly wired and installed.
- All splices shall be enclosed in approved junction boxes with covers.
- The main electric panel shall be properly grounded.

**Plumbing:**

- Constant leaking in water supply lines shall be repaired.
- Leaking drain lines, especially those causing damage to other components (mold, rot, etc.) shall be repaired.
- Kitchen and bathroom faucets shall function properly.
- Water heaters shall have a T&P discharge tube.

**HVAC:**

- The heating system shall be capable of supplying heat to all habitable rooms.
- HVAC components (furnace, A/C, ductwork, vents, baseboard heaters, etc.) shall be properly installed.
- Combustion gas venting shall comply with code.

**Roofs & Chimneys:**

- Roofs shall not leak.
- Areas of missing shingles or other roof covering shall be repaired.

- All flashings and drip edges shall function properly.
- Masonry chimneys shall have sound concrete caps.
- Fireplaces shall have functioning dampers and be free of hazards.

Windows:

- Bedroom windows shall open and function properly.
- Cracked or broken glazing shall be replaced.

Doors:

- Exterior doors shall have functioning locks and hardware.
- Bathrooms and bedrooms shall have doors with functioning hardware.

Bathrooms:

- Bathrooms with a bathtub or shower shall have a working window, or a functioning exhaust fan.

Basements & Crawl Spaces:

- Basements and crawl spaces shall be free of extreme moisture and mold.

Environmental:

- Suspected asbestos shall be free of damage and non-friable. A licensed, certified or otherwise approved worker shall complete repairs or removal of suspected asbestos-containing items.
- Extreme mold shall be removed and conditions causing the moisture shall be corrected.

Smoke & CO Detectors:

- Smoke detectors shall be installed in each sleeping room, outside the sleeping room areas, and on each habitable level of the house. Smoke detectors shall be, at a minimum, battery operated and installed according to the manufacturer's instructions.
- A carbon monoxide detector shall be installed outside the sleeping room areas. CO detectors shall be, at a minimum, battery operated and installed according to the manufacturer's instructions. Plug-in type detectors are prohibited.

Miscellaneous:

- Any witnessed items that present a probable health, safety or structurally deficient condition shall be corrected.

Disclaimer:

- The homebuyer inspection does not include environmental testing for radon, mold, lead-based paint, asbestos, carbon monoxide, natural gas or any other hazardous material, gas or fume.
- The homebuyer inspection does not guarantee any aspect of the safety, structural soundness, environmental health or compliance with applicable codes and regulations concerning the inspected property.
- The homebuyer inspection does not guarantee the efficiency or proper function of the HVAC system, water heaters or any other appliance or mechanical system.
- The homebuyer inspection is conducted for the City of Kettering's purposes only and does not take the place of normal pre-sale inspections the buyer may perform or want performed by a private home inspection service.



CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE OHIO DEPARTMENT OF NATURAL RESOURCES FOR THE MIAMI VALLEY RESEARCH PARK BIKE PATH PROJECT, CITY PROJECT NO. 05-004L**

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

Section 1. The City Manager is authorized, on behalf of the City, to take all necessary and proper action to accept a \$122,500.00 grant from the Ohio Department of Natural Resources for the Miami Valley Research Park Bike Path, City Project No. 05-004L. Furthermore, this Council hereby ratifies the grant application and affirms all matters and statements included therein. The City Manager is further authorized to sign any grant agreements and 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 \_\_\_\_\_ 2023.

\_\_\_\_\_  
PEGGY LEHNER, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER III  
Law Director

Estimated Cost: \$350,000.00  
Amount Budgeted in 2024: \$350,000.00

ODNR Grant: \$122,500.00  
City: \$227,500.00  
Acct. No.: 5268-77750

(Requested by: Engineering Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ENTER INTO  
AND IMPLEMENT A COLLECTIVE BARGAINING  
AGREEMENT WITH THE INTERNATIONAL  
ASSOCIATION OF FIREFIGHTERS LOCAL 2150, WHICH  
IS CONSISTENT WITH A TENTATIVE AGREEMENT  
REACHED BY THE BARGAINING TEAMS**

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

Section 1. The City Manager is hereby authorized, on behalf of the City, to enter into a collective bargaining agreement with the International Association of Firefighters Local 2150, which is consistent with a Tentative Agreement reached by the bargaining teams. 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 \_\_\_\_\_ 2023.

\_\_\_\_\_  
PEGGY LEHNER, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

(Requested by: Human Resources Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO CONTRACT WITH  
P & R COMMUNICATIONS FOR TECHNICAL SUPPORT,  
MAINTENANCE, INSTALLATION AND REPAIR OF THE CITY'S  
RADIO COMMUNICATIONS EQUIPMENT**

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 hereby authorized, on behalf of the City, to contract with P&R Communications for technical support, maintenance, installation and repair of the City's radio communications equipment. 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 \_\_\_\_\_ 2023.

\_\_\_\_\_  
PEGGY LEHNER, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III  
Law Director

Estimated Cost:       \$77,940.00  
Budgeted in 2024:    \$78,000.00  
Acct. No.:             0850-72550

(Requested by: Police Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**ACCEPTING THE RECOMMENDATION OF THE KETTERING  
PLANNING COMMISSION TO DENY THE APPLICATION FOR  
REZONING IN CASE NO. PC-23-018 CONCERNING THE  
PROPERTY LOCATED AT 1490 W. DOROTHY LANE**

WHEREAS, on October 2, 2023, after publication and issuance of notice as required by the zoning regulations of this City, a public hearing was conducted by the City of Kettering Planning Commission concerning an application to rezone the property located at 1490 W. Dorothy Lane from EDO-17 to B-Business District; and

WHEREAS, the Planning Commission unanimously recommended denial of the proposed rezoning because the criteria for rezoning it considers as required by the Zoning Code were not met; and

WHEREAS, on October 24, 2023, after publication and issuance of notice as required by the zoning regulations of this City, this City Council held a public hearing with evidence presented by the applicant and the Planning and Development Department, along with the recommendation of the Planning Commission to deny the application, and all parties were afforded the opportunity to be heard and present evidence in support of their positions;

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

Section 1. Having considered the recommendation of the Planning Commission for denial of the application because the criteria for rezoning it considers were not met, the criteria set forth in Sections 1153.12.9, Consistency, through 1153.12.15, Other Factors, of Chapter 1153 of the Zoning Code, sound planning and zoning practices, the City's adopted plans, goals, and policies, the intent of the Kettering Zoning Code, the public health, safety and welfare requirements underlying the Zoning Code, and the evidence presented, this Council finds the criteria do not support rezoning of the land in question to the business zoning district. Business district zoning would allow higher intensity uses than are currently allowed and would negatively impact the Governors Place development, on which the City spent significant effort and resources redeveloping from the defunct and blighted Hills & Dales Shopping Center into its current successful state. The recommendation of the Planning Commission is therefore accepted and the application for rezoning is denied.

Section 2. This Council may subsequently enact a resolution to adopt its conclusions of fact which support this decision.

Section 3. In accordance with Section 4-8 of the City Charter, this Resolution shall take full force and effect immediately upon its adoption.

Passed by Council this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
PEGGY LEHNER, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER III,  
Law Director

(Requested by Council Office)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

REJECTING THE RECOMMENDATION OF THE  
KETTERING PLANNING COMMISSION TO DENY THE  
APPLICATION FOR REZONING IN CASE NO. PC-23-018  
CONCERNING THE PROPERTY LOCATED AT 1490 W.  
DOROTHY LANE

WHEREAS, on October 2, 2023, after publication and issuance of notice as required by the zoning regulations of this City, a public hearing was conducted by the City of Kettering Planning Commission concerning an application to rezone the property located at 1490 W. Dorothy Lane from EDO-17 to B-Business District; and

WHEREAS, the Planning Commission unanimously recommended denial of the proposed rezoning because the criteria for rezoning it considers as required by the Zoning Code were not met; and

WHEREAS, on October 24, 2023, after publication and issuance of notice as required by the zoning regulations of this City, this City Council held a public hearing with evidence presented by the applicant and the Planning and Development Department, along with the recommendation of the Planning Commission to deny the application, and all parties were afforded the opportunity to be heard and present evidence in support of their positions;

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

Section 1. Having considered the recommendation of the Planning Commission for denial of the application because the criteria for rezoning it considers were not met, the criteria set forth in Sections 1153.12.9, Consistency, through 1153.12.15, Other Factors, of Chapter 1153 of the Zoning Code, sound planning and zoning practices, the City's adopted plans, goals, and policies, the intent of the Kettering Zoning Code, the public health, safety and welfare requirements underlying the Zoning Code, and the evidence presented, this Council finds that requirements for rezoning were met. The recommendation of the Planning Commission is rejected.

Section 2. City staff shall prepare an ordinance to rezone the property for consideration by this Council at a future meeting. This Council may subsequently enact a resolution to adopt its conclusions of fact which support this decision.

Section 3. In accordance with Section 4-8 of the City Charter, this Resolution shall take full force and effect immediately upon its adoption.

Passed by Council this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
PEGGY LEHNER, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER III,  
Law Director

(Requested by Council Office)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**TO DECLARE THE NECESSITY AND INTENTION OF  
ACQUIRING PROPERTY INTERESTS IN PROJECT  
PARCELS 3-T OF THE DANUBE COURT BRIDGE  
REHABILITATION PROJECT (CITY PROJECT NO. 03-  
924A, ODOT PROJECT MOT-DANUBE COURT BRIDGE  
REHAB, PID NO. 114100)**

WHEREAS, the City of Kettering desires to implement the Danube Court Bridge Rehabilitation Project (City Project No. 03-924A, ODOT Project MOT-Danube Court Bridge Rehab, PID NO. 114100) (the "Project"); and

WHEREAS, the Project will benefit and preserve the public peace, health, safety, and welfare of this City by constructing and repairing public roads and related appurtenances and making new improvements as specified in the Project plans; and

WHEREAS, the acquisition of certain interests in real estate is necessary for completion of said Project;

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

Section 1. This Council deems it necessary to and, in accordance with law, declares its intention to appropriate a temporary easement in Project Parcel 3-T as described in Exhibit A, attached hereto and incorporated herein (the "Property"). Persons and entities that may claim an interest in the Property are identified in Exhibit A.

Section 2. The purpose of this appropriation is for the improvement of public roads as specified in the Project Plans. All elements of the Project are for the purpose of benefiting the public peace, health, safety, and welfare of this City.

Section 3. The Law Director or the Law Director's designee is authorized and directed to cause written notice of the adoption of this Resolution to be given to the owner(s), person(s) in possession of, or having an interest of record in, the Property or their authorized agent. The notice will be served by a person designated for that purpose and return made in the manner provided for the service and return of summons in civil actions. The Law Director or the Law Director's designee is further authorized, if necessary, to cause notice to be given by publication once a week for three consecutive weeks in a newspaper of general circulation in this City or as provided in R.C. §7.16.

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 \_\_\_\_\_ 2023.

\_\_\_\_\_  
PEGGY LEHNER, Mayor

ATTEST:

CERTIFICATE OF APPROVAL:

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER III  
Law Director

Estimated Cost:     \$300.00  
Amount Available:   \$300.00  
Acct. No.:           5250-77750 (temporary right-of-way)

(Requested by Engineering Department)

**EXHIBIT A**

**Danube Court Bridge Rehabilitation Project (City Project No. 03-924A, ODOT Project MOT-Danube Court Bridge Rehab, PID NO. 114100)**

**Parcel 3-T (Temporary)**

3-T = 0.0025 acres ± temporary easement

**Property Address/Location:**

2309 Danube Court, Kettering, OH 45420

**Owner(s) and Other Parties claiming an Interest:**

TSM Partners LTD

LCNB National Bank fka Eaton National Bank & Trust

**Value of Interest To Be Acquired:**

Parcel 3T - \$300.00

**Legal descriptions of Parcel(s) 3-T follow this page.**



EXHIBIT A

LPA RX 887 T  
Ver. Date 09/08/22

Page 1 of 2  
Rev. 07/09  
PID 114100

PARCEL 3-T  
MOT-KETTERING DANUBE CT BRD REHAB  
TEMPORARY EASEMENT FOR THE PURPOSE OF  
PERFORMING THE WORK NECESSARY FOR  
SIDEWALK INSTALLATION  
FOR 12 MONTHS FROM DATE OF ENTRY BY  
CITY OF KETTERING, OHIO

(Surveyor's description of the premises follows)

Situate in the City of Kettering, County of Montgomery, State of Ohio, Section 17, Town 2, Range 6 M.Rs., being part of Lot 419 of Rosewood Gardens Section 4, as recorded in Plat Book XX, Page 48 of the Plat Records of Montgomery County, Ohio and a 0.3030 acre parcel of land owned by TSM Partners, LTD, as recorded in IR DEED 11-020827 of the records of the Montgomery County Recorder's Office and being more particularly described as follows:

Being on the LEFT side of the centerline of right-of-way of Danube Court, as shown on the MOT-Kettering Danube Ct Brd Centerline Location Plan as recorded in Plat Book 240, Page 41 (I.R. Plat 23-00015602) and being located within the following described points in the boundary thereof:

All references herein to station and offset are to the centerline of right-of-way of Danube Court.

**BEGINNING** at the southeast corner of said Lot 419, also being on the existing north right-of-way line of Danube Court, being located at 25.00 feet left, Station 11+24.68;

thence with the north right-of-way line of Danube Court *North 84°19'49" West* for a distance of *42.06 feet* to a point being located at 25.00 feet left, Station 10+82.62;

thence with a temporary easement line the following 2 courses:

1.) *North 05°40'11" East* for a distance of *6.00 feet* to a point being located at 31.00 feet left, Station 10+82.62;

2.) *South 84°19'49" East* for a distance of *42.06 feet* to a point being located at 31.00 feet left, Station 11+24.68;

thence with the Grantor's east property line, being the east line of said Lot 419 *South 05°40'11" West* for a distance of *6.00 feet* to the **POINT OF BEGINNING**.

The above described area is contained within Montgomery County Auditor's Parcel Number N64 02303 0024 and contains 0.0025 acres, more or less, and being subject to all legal highway and any easements or restrictions of record.

EXHIBIT A

Page 2 of 2  
Rev. 07/09

LPA RX 887 T  
Ver. Date 09/08/22

PID 114100

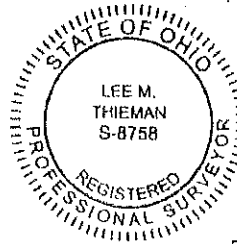
Prior instrument reference as of the date this survey was prepared; IR DEED 11-020827 in the Deed Records of Montgomery County, Ohio.

This description was prepared and reviewed on September 8, 2022 by the City of Kettering Engineering Department.

This description is based on a survey made under the direction and supervision of Lee M. Thieman, Registered Surveyor Number 8758 in October 2020.

Monuments referred to as iron pins set are 30 inch long No. 5 iron pin with a yellow cap stamped "City of Kettering". Right-of-way monuments called for as set herein will be set upon the completion of the acquisition process.

All bearings shown are for project use only. They are based on 1983 North American Datum (2011 Adjustment) State Plane Coordinates (Ohio South Zone 3402) as determined by the City of Kettering.



  
\_\_\_\_\_  
Lee M. Thieman, Ohio Registered Surveyor No. 8758

3/10/2023  
Date

CITY OF KETTERING, OHIO

AN ORDINANCE

By:

No.

**TO AMEND SECTION 660.20 OF THE CODIFIED ORDINANCES TO PROHIBIT ILLICIT DISCHARGE OF POLLUTANTS INTO THE STORM DRAINAGE SYSTEM**

WHEREAS, the United States Congress passed the Clean Water Act of 1972, with a later amendment to establish the National Pollutant Discharge Elimination System. This law requires local jurisdictions like Kettering to effect six control measures, one of which is controls against illicit discharge into storm drainage systems; and

WHEREAS, illicit discharge of pollutants into storm drainage systems reduces the viability of our waters for drinking and washing, recreation, food sources, and wildlife habitat. Common pollutants often include wastewater, cooking fluids, motor oil, paint, and other chemicals; and

WHEREAS, prohibiting the illicit discharge of pollutants into storm drainage systems will help improve and maintain the quality of our groundwater, streams, rivers, lakes, and oceans;

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

Section 1. Section 660.20 of the Codified Ordinances is amended and renumbered to read as follows:

**660.20 ILLICIT DISCHARGE INTO STORM DRAINAGE SYSTEM.**

- (a) No person shall negligently place or cause to be placed in any storm drainage system or part thereof any refuse, paper, plant material, earthen fill, or any other material whatsoever which by its nature or placement would cause an obstruction to the flow or rate of flow.
- (b) No person shall negligently place or cause to be placed any pollutant or wastewater in any storm drainage system or part thereof or into any water body or other area that drains into the storm drainage system.
- (c) No person shall negligently erect or maintain any structure over any part of the storm drainage system so as to interfere with storm water flow, or the maintenance or cleaning of the storm drainage system infrastructure.
- (d) No person shall negligently uncover, make any connections with or opening into, use, alter, or disturb any part of the storm drainage system without obtaining written approval from the City of Kettering and/or its authorized agent(s).
- (e) No person shall negligently install, cause to be installed, or maintain any illicit connection to the storm drainage system.
- (f) No person shall negligently cause any illegal discharge to the storm drainage system.
- (g) No person causing or contributing to the occurrence of any prohibition contained in subsections (a)-(f) shall negligently fail to take all reasonable actions to prevent contamination of or damage to the storm drain system.
- (h) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage. The owner of any house, building, or property used for human occupancy, employment, recreation or other purposes, situated within the City and abutting any street, alley or right-of-way in which there is now located or may in the

future be located, a public sanitary sewer is required at their expense to install suitable toilet facilities therein, and to connect such facilities directly with the public sanitary sewer in accordance with applicable law within ninety days after date of official notice to do so, provided that the public sanitary sewer is within 100 feet of the property line.

(i) Whoever violates any provision of this Section 660.20 is guilty of an unclassified misdemeanor on the first offense, the penalty for which shall be a fine not more than one thousand dollars (\$1,000.00). Each subsequent violation of the same provision by the same person shall constitute a fourth degree misdemeanor. Each day that a violation continues shall be deemed a separate offense. In addition to any financial sanction or combination of financial sanctions under C.O. 698.02(c), the court shall sentence the offender to make restitution to the City of Kettering for the economic costs to the City to repair, replace and/or remediate the violation of this ordinance. The court shall only consider economic costs identified at the time of sentencing. No sanction imposed under this Section shall preclude the City or another person from bringing a civil action against the offender.

(j) The presence of any of the conditions prohibited in subsections (a)-(f) constitutes a nuisance subject to abatement by the City under C.O. Chapter 1328 and R.C. 715.44. The costs of abatement may be recovered as provided by applicable law. The fact that a criminal case has been filed against a defendant for violation of this section shall not prohibit the City from abating the nuisance, nor shall proceeding with such abatement waive or prevent criminal cases from being filed for such violations.

(k) It is an affirmative defense to a charge of unlawful discharge under division (b) or (f) of this Section that the discharge was not contaminated and was one of the following exempted types:

- (1) A discharge authorized by, and in full compliance with, a valid NPDES Permit (other than the NPDESP for discharges from the STORM DRAINAGE SYSTEM);
- (2) A discharge or flow resulting from firefighting by the fire department;
- (3) A discharge or flow of fire protection water that does not contain pollutants or materials that the Fire Code requires to be contained and treated prior to discharge, in which case treatment, adequate to remove harmful quantities of pollutants, must have occurred prior to discharge;
- (4) Agricultural storm water runoff;
- (5) A discharge or flow from water line flushing or disinfection that contains no harmful quantity of total residual chlorine (TRC) or any other chemical used in line disinfection;
- (6) A discharge or flow from lawn watering, or landscape irrigation;
- (7) A discharge or flow from a diverted stream flow or natural spring;
- (8) A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
- (9) Uncontaminated groundwater infiltration (as defined at 40 C.F.R. 35.2005(20)) to the storm drainage system;
- (10) Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;
- (11) A discharge or flow from a potable water source not containing any pollutant or hazardous material;

(12) A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;

(13) A discharge or flow from individual residential car washing;

(14) A discharge or flow from a riparian habitat or wetland;

(15) A discharge or flow from cold water (or hot water with prior written permission of the City) used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance; or

(16) Drainage from a private residential swimming pool containing no harmful quantities of chlorine or other chemicals. Drainage from swimming pool filter backwash is prohibited.

(I) For the purposes of this Section 660.20, the following terms, phrases, words, and their derivations shall have the meanings as set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include the plural number, words in the feminine include the masculine, and words in the masculine include the feminine. The words "shall", "must", and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "sections" or "subsections" are, unless otherwise specified, references to sections or subsections in this section. Defined terms remain defined terms whether or not capitalized. Words used in this Section may be the same as words used in other sections of the Codified Ordinances. However, the definitions of words used in this Section may be different than those used in other sections.

Contaminated: Containing any amount of any Hazardous Material or Pollutant.

Economic Cost: All direct, incidental and consequential pecuniary harm incurred by the City of Kettering as a result of or in making a response to the violation of this section including but not limited to: all wages, salaries or other compensation lost as a result of the violation; the cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the violation; the overhead costs incurred for the time that is used to repair, replace and/or remediate the violation; the damage to tangible or intangible property; all costs incurred by the City as a result of or in making any response to the violation.

Hazardous Materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge: Any direct or indirect non-storm water discharge to the storm drainage system, except as exempted in subsection (k).

Illicit Connections: (1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drainage system including but not limited to any conveyances which allow any non-storm water discharge including, without limitation, sewage, process wastewater, and wash water, to enter the storm drainage system and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City; or (2) any drain or conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps, or equivalent records and approved by the City.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general

area-wide basis.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Storm Drainage System: Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a facility or Premises.

Section 2. Any title page or listing of section titles of the Codified Ordinances requiring modification to reflect the amendment of the Codified Ordinances as expressed in this ordinance shall be so modified.

Section 3. Each section and provision of this ordinance are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision(s) of this ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

Section 4. As provided in Section 4-8 of the City Charter, this Ordinance shall be effective two weeks after adoption.

Passed by Council this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
PEGGY LEHNER, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER III,  
Law Director

(Requested by: Engineering Department)