

April 14, 2023

TO: Mayor and City Council Members  
FROM: Brian K. Riblet, City Manager **BKR**  
SUBJECT: City Council Work Session of Wednesday, April 19, 2023

As a reminder, City Council is scheduled to meet in Work Session on Wednesday, April 19, 2023 at 6:00 p.m.

As a reminder, the 2023 Volunteer Walk of Fame Ceremony is scheduled at 5:30 p.m. in Montgomery Park. In case of inclement weather, the ceremony will be held in Council Chambers.

Work Session

1. Call to Order
2. Roll Call
3. Special Presentation
  - a. Christine Genovese will be presented with a Certificate of Appreciation for her service on the Arts Commission
  - b. Trish Smith will be presented with a Proclamation for National Animal Therapy Day
4. Guest and Residents
5. Legislation for Consideration this Evening
6. Establishing an Agenda for May 3, 2023 Business Session

Pending Legislation

- a. An Ordinance Amending Chapter 156.02 of The Land Usage Code, Subdivision Regulations: Requirements For Subdivision Approval - (Vice Mayor Bissmeyer 2<sup>nd</sup> Reading) Information has been previously supplied on this legislation that, if approved, would authorize a series of text amendments to Chapter 156.02 Subdivision Regulations: Requirements for Subdivision Approval, to become consistent with the Hamilton County Engineers Office.

*Add this Ordinance to the May 3, 2023 Business Session for second reading. The third reading of the Ordinance will be held at the June 7, 2023 Business Session with adoption of the Ordinance requested at that meeting.*

- b. An Ordinance Amending Chapter 157 of The Land Usage Code, Floodplain Management Regulations And Flood Damage Prevention, And Declaring An Emergency - (Vice Mayor Bissmeyer-2<sup>nd</sup> Reading) Please see the attached correspondence from Kevin Chesar, Community Development Director, requesting that City Council consider the approval of this Ordinance that would authorize a series of text amendments to Chapter 157 Flood Damage Protection.

The Federal Emergency Management Agency (FEMA) has issued a Letter of Final Determination that contains revised Flood Insurance Study and Flood Insurance Rate Maps that will become effective on June 7, 2023. Due to this requirement by FEMA, staff is asking the third reading to be suspended and the legislation to be passed as an emergency.

*Add this Ordinance to the May 3, 2023 Business Session second reading. It is requested that the third reading be suspended and adoption of the Ordinance as an emergency requested at that meeting.*

#### New Legislation

- a. A Resolution Recognizing The Month of May 2023 As National Historic Preservation Month in The City of Montgomery—Please see attached correspondence from Assistant City Manager Tracy Henao requesting that City Council consider this Resolution that, if approved, will recognize the month of May as National Historic Preservation Month in the City of Montgomery.

*Add this Resolution to the May 3, 2023 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.*

- b. An Ordinance Providing for The Issuance of Not to Exceed \$7,500,000 Of Notes by The City of Montgomery, Ohio, For the Purpose of Making Public Infrastructure Improvements Within the City and Declaring an Emergency—Please see attached correspondence from Finance Director Maura Gray requesting that City Council consider this Ordinance that, if approved, will refinance certain Bond Anticipation Notes related to funding construction and engineering services for the Montgomery Quarter Project. The Notes must either be paid in full or refinanced within the second quarter of this year. It is recommended that the City refinance the Notes for another year due to the fluctuating financial markets. In the future, once the Montgomery Quarter Project through at least Stage 1 has been completed, the City can make the decision to issue permanent Notes to be repaid with revenues generated from the completed project. With the current market fluctuations, the Ordinance is being passed as an emergency to give our financial advisors the maximum flexibility to price the Bonds and complete refinancing.

*Add this Ordinance to the May 3, 2023 Business Session for first reading held at the meeting. It is requested that the rules requiring three readings be suspended at that meeting and the Ordinance be considered for passage as an emergency.*

7. Administration Report
8. Law Director Report
9. City Council Member Reports
  - a. Mr. Cappel
  - b. Vice Mayor Bissmeyer
  - c. Mr. Dobrozsi
  - d. Mrs. Naiman
  - e. Mr. Suer
  - f. Mr. Messer
  - g. Mayor Margolis
10. Approval of Minutes- April 5, 2023 Business Session
11. Other Business
12. Executive Session
13. Adjournment

Should you have any questions or concerns regarding this information, please do not hesitate to contact me.

C: Connie Gaylor, Executive Assistant/Clerk of Council  
Department Heads  
Terry Donnellon, Law Director

April 19, 2023  
City Hall  
6:00 p.m.

1. Call to Order
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3. Special Presentation
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7. Administration Report

8. Law Director Report

9. City Council Member Reports

- a. Mr. Cappel
- b. Vice Mayor Bissmeyer
- c. Mr. Dobrozsi
- d. Mrs. Naiman
- e. Mr. Suer
- f. Mr. Messer
- g. Mayor Margolis

10. Approval of Minutes- April 5, 2023 Business Session

11. Other Business

12. Executive Session

13. Adjournment

Should you have any questions or concerns regarding this information, please do not hesitate to contact me.

C: Connie Gaylor, Executive Assistant/Clerk of Council  
Department Heads,  
Terry Donnellon, Law Director



## Certificate of Appreciation to Christine Genovese

**WHEREAS, Christine Genovese** generously shared her time and talents with the City of Montgomery by serving in all leadership roles on the Arts Commission over her ten year tenure, specifically fulfilling the role of Chair from 2016 to 2018 ; and,

**WHEREAS, Christine's** interest in her community was piqued when she participated in and was a graduate of the 2013 Montgomery Citizens Leadership Academy (MCLA) class and followed her passion of being an involved citizen rather than just a resident; and,

**WHEREAS, Christine** not only participated in the many Arts Commission events but was integral in developing marketing plans and provided public relations support by generating press releases and bulletin articles to feature the events and efforts of the Commission; and,


**WHEREAS, Christine's** collaborative spirit was not only recognized by her fellow commission members but was evident by the greater participation with the Sycamore High School Choir and Theatre departments; and,

**WHEREAS, Christine's** love for the BAMS0 4<sup>th</sup> of July concert led to her participation with the BAMS0 conductor and staff to create themes and provide ideas for song choices to be enjoyed by the entire community; and,


**WHEREAS, Christine** has selflessly worked to make the City of Montgomery a better community and is the exemplar of a dedicated volunteer.

**NOW THEREFORE, BE IT CERTIFIED** by the City Council of the City of Montgomery, Ohio, all members concurring:

**SECTION 1.** City Council wishes to thank **Christine Genovese** for her valued service as a member of the Montgomery Arts Commission and dedicated volunteerism throughout the years. The citizens of Montgomery shall benefit now and hereafter from her efforts.

  
\_\_\_\_\_  
Lee Ann Bissmeyer, Councilmember

  
\_\_\_\_\_  
Mike Cappel, Councilmember

  
\_\_\_\_\_  
Chris Dobrozsi, Councilmember

  
\_\_\_\_\_  
Craig Margolis, Councilmember

  
\_\_\_\_\_  
Ron Messer, Councilmember

  
\_\_\_\_\_  
Sasha Naiman, Councilmember

  
\_\_\_\_\_  
Ken Suer, Councilmember



CITY OF

# MONTGOMERY

## Proclamation

**WHEREAS**, There are thousands of Pet Partners therapy animal teams serving in communities across the United States; and,

**WHEREAS**, Pet Partners has designated April 30 as National Therapy Animal Day; and,

**WHEREAS**, Pet Partners therapy animal teams in the City of Montgomery play an essential role in improving human health and well-being through the human-animal bond; and,

**WHEREAS**, Pet Partners therapy animal teams make millions of visits per year in settings such as hospitals, nursing homes, schools and hospice; and,

**WHEREAS**, Pet Partners therapy animal teams make millions of visits per year in settings such as hospitals, nursing homes, schools and hospice; and,

**WHEREAS**, these exceptional therapy animals, who partner with their human companions, bring comfort and healing to those in need.

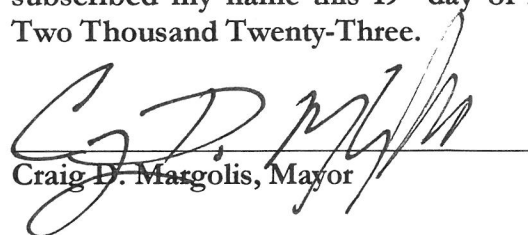
**NOW THEREFORE**, I, Craig Margolis, the 24<sup>th</sup> Mayor of the City of Montgomery, do hereby proclaim the week of **April 30, 2023** as

### National Therapy Animal Day

in the City of Montgomery and urge all our citizens to observe this month in ways relevant to its importance and significance.



IN WITNESS WHEREOF, I have hereunto subscribed my name this 19<sup>th</sup> day of April Two Thousand Twenty-Three.

  
Craig D. Margolis, Mayor

ORDINANCE NO. \_\_\_\_\_, 2023

**AN ORDINANCE AMENDING CHAPTER 156.02 OF THE LAND USAGE CODE,  
SUBDIVISION REGULATIONS: REQUIREMENTS FOR SUBDIVISION APPROVAL**

**WHEREAS**, the Community Development Department has completed a comprehensive review of Chapter 156.02 of the Code of Ordinances which establishes subdivision regulations for subdivision approval; and

**WHEREAS**, after such review, the Community Development Department has recommended that the attached Schedule A modifications to Chapter 156.02 be adopted which will modernize the regulations for subdivision approval consistent with the Office of the Engineer of Hamilton County, Ohio.

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of Montgomery, Hamilton County, Ohio, that:

**SECTION 1.** The attached update to Chapter 156.02, *Subdivision Regulations: Requirements for Subdivision Approval*, are hereby adopted in their entirety as if fully rewritten herein.

**SECTION 2.** All Ordinances or parts of Ordinances inconsistent with these modifications are hereby repealed.

**SECTION 3.** All sections, subsections, parts and provisions of this Ordinance are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any section, subsection, part or provision to be unconstitutional, void or ineffective for any reason shall not affect or render invalid any other section, subsection, part or provision of this Ordinance.



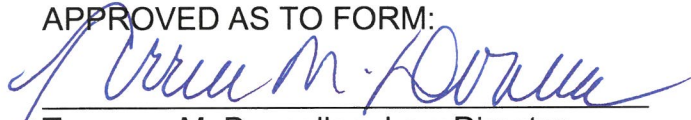
**SECTION 4.** This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Craig D. Margolis, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

ORDINANCE NO. \_\_\_\_\_, 2023

**AN ORDINANCE AMENDING CHAPTER 157 OF THE LAND USAGE CODE,  
FLOODPLAIN MANAGEMENT REGULATIONS AND FLOOD DAMAGE  
PREVENTION, AND DECLARING AN EMERGENCY**

**WHEREAS**, the Federal Emergency Management Agency (FEMA) has updated the area flood insurance rate maps and flood insurance study for Hamilton County, Ohio to be effective June 7, 2023; and

**WHEREAS**, as a part of such updated studies by FEMA, the Ohio Department of Natural Resources (ODNR) has reviewed the City's flood damage prevention regulations and requested an update to be consistent with various federal, state and local guidelines; and

**WHEREAS**, the Community Development Director, working with representatives of ODNR, has updated current Chapter 157 of the Code of Ordinances, *Flood Damage Prevention*, and the Community Development Director recommends that such updates as detailed in the attached Schedule A be adopted.

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of Montgomery, Ohio, that:

**SECTION 1.** Adoption of Regulations. The attached regulations outlined in Schedule A are hereby adopted in their entirety by reference as if fully rewritten herein.

**SECTION 2.** Basis For Establishing the Areas of Special Flood Hazard. For the purposes of these regulations, the following studies and/or maps are adopted:

A. Flood Insurance Rate Map Hamilton County, Ohio and Incorporated Areas dated June 7, 2023. Flood Insurance Study Hamilton County, Ohio and Incorporated Areas dated June 7, 2023.

B. Any hydrologic and/or hydraulic engineering analyses authored by a registered Professional Engineer in the State of Ohio which has been approved by the City of Montgomery and accepted per its regulations.

C. Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the Building and Community Development Office, City of Montgomery, 10101 Montgomery Road, Montgomery, Ohio 45242.

**SECTION 3. Abrogation and Greater Restrictions.** These regulations are not intended to repeal any other existing Ordinances including, Subdivision Regulations, Zoning or Building Codes. In the event of a conflict between these regulations and any other Ordinance, the more restrictive shall be followed. These regulations shall not impair any deed restriction covenant or easement but the land subject to such interests shall also be governed by these regulations.

**SECTION 4. Interpretation.** In the interpretation and application of these regulations, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body;

and

C. Deemed neither to limit nor repeal any other powers granted under state statutes. Where a provision of these regulations may be in conflict with a state or federal law, such state or federal law shall take precedence over these regulations.

**SECTION 5. Warning and Disclaimer of Liability.** The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Montgomery, any officer or employee thereof, or the Federal Emergency Management

Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

**SECTION 6.** Severability. Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

**SECTION 7.** All Ordinances or parts of Ordinances inconsistent with these modified regulations are hereby repealed.

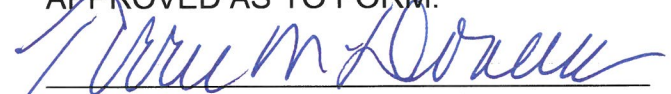
**SECTION 8.** In order to meet the program requirements of the National Flood Insurance Program, so as to have no gaps in coverage with the adoption of the new maps and studies effective June 7, 2023, this Ordinance is hereby declared to be an emergency measure necessary for the public health, safety and welfare, and as a result it shall be effective immediately upon passage.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Craig D. Margolis, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

## CHAPTER 157: FLOOD DAMAGE PREVENTION

### Section

#### General Provisions

- 157.01 Findings of fact
- 157.02 Statement of purpose
- 157.03 Methods of reducing flood loss
- 157.04 Lands to which these regulations apply
- 157.05 Basis for establishing the areas of special flood hazard
- 157.06 Abrogation and greater restrictions
- 157.07 Interpretation
- 157.08 Warning and disclaimer of liability
- 157.09 Definitions
- 157.10 Statutory Authorization

#### Use and Development Standards for Flood Hazard Reduction

- 157.20 Use regulations
- 157.21 Water and wastewater systems
- 157.22 Subdivisions and large developments
- 157.23 Residential structures
- 157.24 Nonresidential structures
- 157.25 Accessory structures
- 157.26 Recreational vehicles
- 157.27 Above ground gas or liquid storage tanks
- 157.28 Assurance of flood carrying capacity

#### Administration

- 157.40 Designation of Floodplain Administrator; duties and responsibilities
- 157.41 Floodplain development permits
- 157.42 Application required
- 157.43 Review and approval of a floodplain development permit application; inspections

- 157.44 Post-construction certifications required
- 157.45 Revoking a floodplain development permit
- 157.46 Exemption from filing a development permit
- 157.47 State and Federal Development
- 157.48 Map maintenance activities
- 157.49 Data use and flood map interpretation
- 157.50 Use of Preliminary Flood Insurance Rate Map and/or Flood Insurance Study Data
- 157.51 Substantial damage determinations

#### Appeals and Variances

- 157.65 Appeals Board established; powers and duties
- 157.66 Variances
- 157.67 Appeal to the court

#### Enforcement

- 157.80 Compliance required
- 157.81 Notice of violation
- 157.82 Violations and penalties

### GENERAL PROVISIONS

#### § 157.01 FINDINGS OF FACT.

The City of Montgomery has special flood hazard areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. Additionally, structures that are inadequately elevated, flood proofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.02 STATEMENT OF PURPOSE.

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- (A) Protect human life and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (F) Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and to minimize future flood blight areas;
- (G) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
- (H) Minimize the impact of development on adjacent properties within and near flood prone areas;
- (I) Ensure that the flood storage and conveyance functions of the floodplain are maintained;
- (J) Minimize the impact of development on the natural, beneficial values of the floodplain;
- (K) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- (L) Meet community participation requirements of the National Flood Insurance Program.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.03 METHODS OF REDUCING FLOOD LOSS.

In order to accomplish its purposes, these regulations include methods and provisions for:

- (A) Restricting or prohibiting uses which are dangerous to health, safety and property due to water hazards, or which result in damaging increases in flood heights or velocities;
- (B) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(C) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(D) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and

(E) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.04 LANDS TO WHICH THESE REGULATIONS APPLY.

These regulations shall apply to all areas of special flood hazard within the jurisdiction of the City of Montgomery as identified in § 157.05, including any additional areas of special flood hazard annexed by the City of Montgomery.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.05 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

For the purposes of these regulations, the following studies and/or maps are adopted:

(A) Flood Insurance Rate Map and Flood Insurance Study, Hamilton County, Ohio and Incorporated Areas dated June 7, 2023.

(B) Other studies and/or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard.

(C) Any hydrologic and hydraulic engineering analysis authored by a registered Professional Engineer in the State of Ohio which has been approved by the City of Montgomery as required by Section 157.22 Subdivisions and Other New Developments.

Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the Community and Development Department Office, City of Montgomery, 10101 Montgomery Road, Montgomery, Ohio 45242

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.06 ABROGATION AND GREATER RESTRICTIONS.

These regulations are not intended to repeal any existing ordinances, including subdivision regulations, zoning or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall be followed. These regulations are not



intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this ordinance and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.07 INTERPRETATION.

In the interpretation and application of these regulations, all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the governing body; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes. Where a provision of these regulations may be in conflict with a state or federal law, such state or federal law shall take precedence over these regulations.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.08 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Montgomery, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

(A) Severability - Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.09 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ACCESSORY STRUCTURE.** A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

**APPEAL.** A request for review of the Floodplain Administrator's interpretation of any provision of these regulations or a request for a variance.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year. The base flood may also be referred to as the 1% chance annual flood or 100-year flood.

**BASE (100-YEAR) FLOOD ELEVATION (BFE).** The water surface elevation of the base flood in relation to a specified datum, usually the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988, and usually expressed in Feet Mean Sea Level (MSL). In Zone AO areas, the base flood elevation is the lowest adjacent natural grade elevation plus the depth number (from 1 to 3 feet).

**BASEMENT.** Any area of the building having its floor subgrade (below ground level) on all sides.

**DEVELOPMENT.** Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**ENCLOSURE BELOW THE LOWEST FLOOR.** See "Lowest Floor."

**EXECUTIVE ORDER 11988 (FLOODPLAIN MANAGEMENT).** Issued by President Carter in 1977, this order requires that no federally assisted activities be conducted in or have the potential to affect identified special flood hazard areas, unless there is no practicable alternative.

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA).** The agency with the overall responsibility for administering the National Flood Insurance Program.

**FILL.** A deposit of earth material placed by artificial means.

**FLOOD OR FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD HAZARD BOUNDARY MAP (FHBM).** Usually the initial map, produced by the Federal Emergency Management Agency, or U.S. Department of Housing and Urban Development, for a community depicting approximate special flood hazard areas.

**FLOOD INSURANCE RATE MAP (FIRM).** An official map on which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has delineated the areas of special flood hazard.

FLOOD INSURANCE RISK ZONES. Zone designations on FHBMs and FIRMs that indicate the magnitude of the flood hazard in specific areas of a community. Following are the zone definitions:

- (1) **Zone A.** Special flood hazard areas inundated by the 100-year flood in any given year; base flood elevations are not determined.
- (2) **Zones A1-30 and Zone AE.** Special flood hazard areas inundated by the 100-year flood in any given year; base flood elevations are determined.
- (3) **Zone AO.** Special flood hazard areas inundated by the 100-year flood in any given year; with flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths are determined.
- (4) **Zone AH.** Special flood hazard areas inundated by the 100-year flood in any given year; flood depths of 1 to 3 feet (usually areas of ponding); base flood elevations are determined.
- (5) **Zone A99.** Special flood hazard areas inundated by the 100-year flood to be protected from the 100-year flood by a Federal flood protection system under construction; no base flood elevations are determined.
- (6) **Zone B and Zone X (shaded).** Areas of 500-year flood; areas subject to the 100-year flood with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected by levees from the base flood.
- (7) **Zone C and Zone X (unshaded).** Areas determined to be outside the 500-year floodplain.

FLOOD INSURANCE STUDY (FIS). The official report in which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has provided flood profiles, floodway boundaries (sometimes shown on Flood Boundary and Floodway Maps), and the water surface elevations of the base flood.

FLOOD PROTECTION ELEVATION The Flood Protection Elevation, or FPE, is the base flood elevation plus 2 feet of freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations, or base flood elevations determined and/or approved by the Floodplain Administrator.

FLOODPROOFING. Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY. A floodway is the channel of a river or other watercourse and the adjacent land areas that have been reserved in order to pass the base flood discharge. A floodway is typically determined through a hydraulic and hydrologic engineering analysis such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. In no case shall the designated height be more than one foot at any point within the community. The floodway is an extremely hazardous area, and is usually characterized by any of the following: Moderate to high velocity flood waters, high potential for debris and projectile impacts, and moderate to high erosion forces.

**FREEBOARD.** A factor of safety usually expressed in feet above a flood level for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.

**HISTORIC STRUCTURE.** Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

(3) Individually listed on the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office.

(4) Individually listed on the inventory of historic places maintained by the City of Montgomery whose historic preservation program has been certified by the Ohio Historic Preservation Office.

**HYDROLOGIC AND HYDRAULIC ENGINEERING ANALYSIS.** An analysis performed by a professional engineer, registered in the State of Ohio, in accordance with standard engineering practices as accepted by FEMA, used to determine flood elevations and/or floodway boundaries.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an "enclosure below the lowest floor" which is an unfinished or flood resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations for enclosures below the lowest floor.

**LETTER OF MAP CHANGE (LOMC).** A Letter of Map Change is an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMCs are broken down into the following categories:

(1) Letter of Map Amendment (LOMA). A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.

(2) Letter of Map Revision (LOMR). A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain, and floodway delineations, and planimetric features.

One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the base flood elevations and is, therefore, excluded from the special flood hazard area.

- (3) Conditional Letter of Map Revision (CLOMR). A comment by FEMA regarding a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the special flood hazard area. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle". For the purposes of these regulations, a manufactured home includes manufactured homes and mobile homes as defined in R.C. Chapter 4781.

**MANUFACTURED HOME PARK.** As specified in the Ohio Adm. Code 4781-12-01(K), a manufactured home park means any tract of land upon which three or more manufactured homes, used for habitation are parked, either free of charge or for revenue purposes, and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the facilities of the park. A tract of land that is subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of manufactured homes on the lots, is not a manufactured home park, even though three or more manufactured homes are parked thereon, if the roadways are dedicated to the local government authority. Manufactured home park does not include any tract of land used solely for the storage or display for sale of manufactured homes.

**MEAN SEA LEVEL.** For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**NATIONAL FLOOD INSURANCE PROGRAM (NFIP).** The NFIP is a Federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the Federal government that states if a community will adopt and enforce floodplain management regulations to reduce future flood risks to all development in special flood hazard areas, the Federal government will make flood insurance available within the community as a financial protection against flood loss.

**NEW CONSTRUCTION.** Structures for which the "start of construction" commenced on or after the effective date of a floodplain regulation adopted by the City of Montgomery and includes any subsequent improvements to such structures. For the purposes of determining flood insurance rates, structures for which the "start of construction"

commenced on or after the effective date of initial FIRM [June 25, 1976], and includes any subsequent improvements to such structures.

**PERSON.** Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies. An agency is further defined in the Ohio Rev. Code 111.15(A)(2) as any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the general assembly, the controlling board, the adjutant general's department, or any court.

**RECREATIONAL VEHICLE.** A vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**REGISTERED PROFESSIONAL ARCHITECT.** A person registered to engage in the practice of architecture pursuant to Ohio Rev. Code 4703.01 and 4703.19.

**REGISTERED PROFESSIONAL ENGINEER.** A person registered as a professional engineer pursuant to Ohio Rev. Code Chapter 4733.

**REGISTERED PROFESSIONAL SURVEYOR.** A person registered as a professional surveyor pursuant to Ohio Rev. Code Chapter 4733.

**SPECIAL FLOOD HAZARD AREA.** Also known as "Areas of Special Flood Hazard", it is the land in the floodplain subject to a 1% or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency on Flood Insurance Rate Maps, Flood Insurance Studies, Flood Boundary and Floodway Maps and Flood Hazard Boundary Maps as Zones A, AE, AH, AO, AI-30, and A99. Special flood hazard areas may also refer to areas that are flood prone and designated from other federal state or local sources of data including but not limited to historical flood information reflecting high water marks, previous flood inundation areas, and flood prone soils associated with a watercourse.

**START OF CONSTRUCTION.** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and

filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of a building.

**STRUCTURE.** A walled and roofed building, manufactured home, or gas or liquid storage tank that is principally above ground.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.** Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures, which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a “historic structure”, provided that the alteration would not preclude the structure’s continued designation as a “historic structure”

**.VIOLATION.** The failure of a structure or other development to be fully compliant with these regulations.

**VARIANCE.** A grant of relief from the standards of these regulations.

## § 157.10 STATUTORY AUTHORIZATION.

ARTICLE XVIII, Section 3, of the Ohio Constitution grants municipalities the legal authority to adopt land use and control measures for promoting the health, safety, and general welfare of its citizens. Therefore, the City Council of the City of Montgomery, State of Ohio, does ordain as follows:

## USE AND DEVELOPMENT STANDARDS FOR FLOOD HAZARD REDUCTION

## § 157.20 USE REGULATIONS.

The following use and development standards in this subchapter apply to development wholly within, partially within, or in contact with any special flood hazard area as established in § 157.05 or § 157.49(A).

(A) Permitted uses. All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by the City of Montgomery are allowed provided they meet the provisions of these regulations.

## § 157.21 WATER AND WASTEWATER SYSTEMS.

The following standards apply to all water supply, sanitary sewerage and waste disposal systems in the absence of any more restrictive standard provided under the Ohio Revised Code or applicable state rules:

(A) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;

(B) New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,

(C) On-site waste disposal systems shall be located to avoid impairment to or contamination from them during flooding.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

## § 157.22 SUBDIVISIONS AND OTHER NEW DEVELOPMENTS.

(A) All subdivision proposals and all other proposed new development shall be consistent with the need to minimize flood damage and are subject to all applicable standards in the regulations;

(B) All subdivision proposals and all other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;

(C) All subdivision proposals and all other proposed new development shall have adequate drainage provided to reduce exposure to flood damage; and

(D) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least 50 lots or 5 acres, whichever is less.



(E) The applicant shall meet the requirement to submit technical data to FEMA in § 157.48(A)(1)(d) when a hydrologic and hydraulic analysis is completed that generates base flood elevations as required by division (D) above of this section.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.23 RESIDENTIAL STRUCTURES.

The requirements of §157.23 apply to new construction of residential structures and to substantial improvements of residential structures in zones A, A1-30, AE, AO, and AH, when designated on the community's effective FIRM, and when designated on a preliminary or final FIRM issued by FEMA under the circumstances provided in §157.50.

(A) New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring (this division (A)) and construction materials resistant to flood damage (division (B) below of this section) are satisfied.

(B) New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.

(C) New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.

(D) New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the flood protection elevation. Where flood protection data are not available, the structure shall have the lowest floor, including basement, elevated at least 2 feet above the highest adjacent natural grade.

(E) New construction and substantial improvements, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings to allow the automatic equalization of hydrostatic pressure may have an enclosure below the lowest floor provided the enclosure meets the following standards:

- (1) Be used only for the parking of vehicles, building access, or storage; and
- (2) Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters; or
- (3) Have a minimum of 2 openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such

openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(F) Manufactured homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

(G) Repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure, shall be exempt from the development standards of this § 157.23.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.24 NONRESIDENTIAL STRUCTURES.

The requirements of Section 157.24 apply to new construction and to substantial improvements of nonresidential structures in Zones A, A1-30, AE, AO, and AH, when designated on the community's effective FIRM, and when designated on a preliminary or final FIRM issued by FEMA under circumstances provided in Section 157.50.

(A) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of § 157.23(A) - (C) and (E) - (G).

(B) New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to or above the level of the flood protection elevation; or, together with attendant utility and sanitary facilities, shall meet all of the following standards:

(1) Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;

(2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

(3) Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Floodproofing Certificate, that the design and methods of construction are in accordance with divisions (B)(1) and (2) above of this section.

(C) Where flood protection elevation data are not available, the structure shall have the lowest floor, including basement, elevated at least 2 feet above the highest adjacent natural grade.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.25 ACCESSORY STRUCTURES.

Structures that are 600 square feet or less which are used for parking and storage only are exempt from elevation or dry floodproofing standards within Zones A, A1-30, AE, AO, and AH designated on the community's FIRM. Such structures must meet the following standards:

- (A) They shall not be used for human habitation;
- (B) They shall be constructed of flood resistant materials;
- (C) They shall be constructed and placed on the lot to offer the minimum resistance to the flow of flood waters;
- (D) They shall be firmly anchored to prevent flotation;
- (E) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the level of the flood protection elevation; and
- (F) They shall meet the opening requirements of Section 157.23 (E)(3).

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.26 RECREATIONAL VEHICLES.

Recreational vehicles on sites within Zones A, A1-30, AE, AO, or AH must meet at least one of the following standards:

- (A) They shall not be located on sites in special flood hazard areas for more than 180 days; or
- (B) They must be fully licensed and ready for highway use; or
- (C) They must be placed on the site pursuant to a floodplain development permit issued under Sections 157.41 and 157.42, and meet all standards of Section 157.23.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.27 GAS OR LIQUID STORAGE TANKS.

Within Zone A, A1-30, AE, AO, or AH, new or substantially improved above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.28 ASSURANCE OF FLOOD CARRYING CAPACITY.

Pursuant to the purpose and methods of reducing flood damage stated in these regulations, the following additional standards are adopted to assure that the reduction of the flood carrying capacity of watercourses is minimized:

(A) Development in Floodways.

(1) In floodway areas, development shall cause no increase in flood levels during the occurrence of the base flood discharge. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed development would not result in any increase in the base flood elevation; or

(2) Development in floodway areas causing increases in the base flood elevation may be permitted provided all of the following are completed by the applicant:

(a) Meet the requirements to submit technical data in § 157.48(A);

(b) An evaluation of alternatives which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;

(c) Certification that no structures are located in areas which would be impacted by the increased base flood elevation;

(d) Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and

(e) Concurrence of the City Manager of City of Montgomery and the Chief Executive Officer of any other communities impacted by the proposed actions.

(B) Development in riverine areas with base flood elevations but no floodways.

(1) In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than 1.0 (one) foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or,

(2) Development in riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one foot increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:

(a) An evaluation of alternatives which would result in an increase of one foot or less of the base flood elevation and an explanation why these alternatives are not feasible;

(b) Division (A)(2), items (a) and (c)-(e) above of this section.

(C) Alterations of a watercourse. For the purpose of these regulations, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the "bankfull stage." The field determination of "bankfull stage" shall be based on methods presented in Chapter 7 of the USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique or other applicable publication available from a Federal, State, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:

(1) The bankfull flood carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and certification by a registered professional engineer that the bankfull flood carrying capacity of the watercourse will not be diminished.

(2) Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be submitted to the Federal Emergency Management Agency.

(3) The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with City of Montgomery specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.

(4) The applicant shall meet the requirements to submit technical data in § 157.48(A)(1)(c) when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

## ADMINISTRATION

### § 157.40 DESIGNATION OF FLOODPLAIN ADMINISTRATOR; DUTIES AND RESPONSIBILITIES.

(A) Designation of the Floodplain Administrator. The Zoning Administrator is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.

(B) Duties and responsibilities of the Floodplain Administrator. The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

(1) Evaluate applications for permits to develop in special flood hazard areas.

(2) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.

(3) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or refuse to issue the same in the event of noncompliance.

(4) Inspect buildings and lands to determine whether any violations of these regulations have been committed.

(5) Make and permanently keep all records for public inspection necessary for the administration of these regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits to develop in special flood hazard areas, determinations of whether development is in or out of special flood hazard areas for purpose of issuing floodplain development permits, elevation certificates, floodproofing certificates, variances, and records of enforcement actions taken for violations of these regulations.

(6) Enforce the provisions of these regulations.

(7) Provide information, testimony, or other evidence as needed during variance hearings.

(8) Coordinate map maintenance activities and FEMA follow-up.

(9) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.41 FLOODPLAIN DEVELOPMENT PERMITS.

It shall be unlawful for any person to begin construction or other development activity including but not limited to filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in §§ 157.05, until a floodplain development permit is obtained from the Floodplain Administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the Floodplain Administrator until the requirements of these regulations have been met.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.42 APPLICATION REQUIRED.

An application for a floodplain development permit shall be required for all development activities located wholly within, partially within, or in contact with an identified special

flood hazard area. Such application shall be made by the owner of the property or his or her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the Floodplain Administrator may require an application for a floodplain development permit to determine the development's location. Such applications shall include, but not be limited to:

(A) Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

(B) Elevation of the existing, natural ground where structures are proposed.

(C) Elevation of the lowest floor, including basement, of all proposed structures.

(D) Such other material and information as may be requested by the Floodplain Administrator to determine conformance with, and provide enforcement of these regulations.

(E) Technical analyses conducted by the appropriate design professional registered in the State of Ohio and submitted with an application for a floodplain development permit when applicable:

(1) Floodproofing certification for non-residential floodproofed structure as required in § 157.24.

(2) Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of § 157.23(E) are designed to automatically equalize hydrostatic flood forces.

(3) Description of any watercourse alteration or relocation that the flood carrying capacity of the watercourse will not be diminished, and maintenance assurances as required in § 157.28(C).

(4) A hydrologic and hydraulic analysis demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but no floodway as required by § 157.28(B).

(5) A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway as required by § 157.28(A).

(6) Generation of base flood elevation(s) for subdivision and other new developments as required by § 157.22.

(F) A floodplain development permit application fee.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.43 REVIEW AND APPROVAL OF A FLOODPLAIN DEVELOPMENT PERMIT APPLICATION; INSPECTIONS.

(A) Review.

(1) After receipt of a complete application, the Floodplain Administrator shall review the application to ensure that the standards of these regulations have been met. No floodplain development permit application shall be reviewed until all information required in § 157.42 has been received by the Floodplain Administrator.

(2) The Floodplain Administrator shall review all floodplain development permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required including permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Ohio Environmental Protection Agency under Section 401 of the Clean Water Act.

(B) Approval. Within thirty (30) days after receipt of a complete application, the Floodplain Administrator shall either approve or disapprove the application. If the Floodplain Administrator is satisfied that the development proposed in the floodplain development application conforms to the requirements of this ordinance, the Floodplain Administrator shall issue the permit. All floodplain development permits shall be conditional upon the commencement of work within 180 days. A floodplain development permit shall expire 180 days after issuance unless the permitted activity has been substantially begun and is thereafter pursued to completion.

(C) Inspections. The Floodplain Administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.44 POST-CONSTRUCTION CERTIFICATIONS REQUIRED.

The following as-built certifications are required after a floodplain development permit has been issued:

(A) For new or substantially improved residential structures, or nonresidential structures that have been elevated, the applicant shall have a *Federal Emergency Management Agency Elevation Certificate* completed by a registered professional surveyor to record as-built elevation data. For elevated structures in Zone A and Zone AO areas without a base flood elevation, the elevation certificate may be completed by the property owner or owner's representative.



(B) For all development activities subject to the standards of § 157.48(A), a Letter of Map Revision.

(C) For new or substantially improved nonresidential structures that have been floodproofed in lieu of elevation, where allowed, the applicant shall supply a completed *Floodproofing Certificate for Non-Residential Structures* completed by a registered professional engineer or architect together with associated documentation.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.45 REVOKING A FLOODPLAIN DEVELOPMENT PERMIT.

A floodplain development permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, an appeal may be taken to the Board of Zoning Appeals in accordance with §§ 157.65 through 157.67 of these regulations.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.46 EXEMPTION FROM FILING A DEVELOPMENT PERMIT.

(A) An application for a floodplain development permit shall not be required for maintenance work such as roofing, painting, and basement sealing, or for small nonstructural development activities (except for filling and grading) valued at less than \$2500.:

#### § 157.47 STATE AND FEDERAL DEVELOPMENT

(A) Development that is funded, financed, undertaken, or preempted by state agencies shall comply with minimum NFIP criteria.

(B) Before awarding funding or financing or granting a license, permit, or other authorization for a development that is or is to be located within a 100-year floodplain, a state agency shall require the applicant to demonstrate to the satisfaction of the agency that the development will comply with minimum NFIP criteria and any applicable local floodplain management resolution or ordinance as required by Ohio Revised Code Section 1521.13. This includes, but is not limited to:

(1) Development activities in an existing or proposed manufactured home park that are under the authority of the Ohio Department of Commerce and subject to the flood damage reduction provisions of the Ohio Administrative Code Section 4781-12.

(2) Major utility facilities permitted by the Ohio Power Siting Board under Section 4906 of the Ohio Revised Code.

(3) Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under Section 3734 of the Ohio Revised Code.

(C) Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988 – Floodplain Management.

(1) Each federal agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget request reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of EO 11988.

#### § 157.48 MAP MAINTENANCE ACTIVITIES.

To meet National Flood Insurance Program minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Montgomery flood maps, studies and other data identified in § 157.05 accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

(A) Requirement to submit new technical data.

(1) For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:

(a) Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;

(b) Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;

(c) Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and

(d) Subdivision or other new development proposals requiring the establishment of base flood elevations in accordance with § 157.22.

(2) It is the responsibility of the applicant to have technical data, required in accordance with this division (A), prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.

(3) The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:

(a) Proposed floodway encroachments that increase the base flood elevation; and

(b) Proposed development which increases the base flood elevation by more than one foot in riverine areas where FEMA has provided base flood elevations but no floodway.

(4) Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to division (A)(1) above of this section.

(B) Right to submit new technical data. The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the City Manager of the City of Montgomery, and may be submitted at any time.

(C) Annexation/Detachment. Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Montgomery have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the City of Montgomery's Flood Insurance Rate Map accurately represent the City of Montgomery boundaries, include within such notification a copy of a map of the City of Montgomery suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Montgomery has assumed or relinquished floodplain management regulatory authority.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.49 DATA USE AND FLOOD MAP INTERPRETATION.

The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:

(A) In areas where FEMA has not identified special flood hazard areas, or in FEMA identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.

(B) Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the Floodplain Administrator.

(C) The Floodplain Administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Sections 157.65-157.67, Appeals and Variances.

(D) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this ordinance applicable to the most restrictive flood zone and the highest base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.50 USE OF PRELIMINARY FLOOD INSURANCE RATE MAP AND/OR FLOOD INSURANCE STUDY DATA

(A) Zone A:

(1) Within Zone A areas designated on an effective FIRM, data from the preliminary FIRM and/or FIS shall be reasonably utilized as best available data.

(2) When all appeals have been resolved and a notice of final flood elevation determination has been provided in a Letter of Final Determination (LFD), BFE and floodway data from the preliminary FIRM and/or FIS shall be used for regulating development.

(B) Zones AE, A1-30, AH, and AO:

(1) BFE and floodway data from a preliminary FIS or FIRM restudy are not required to be used in lieu of BFE and floodway data contained in an existing effective FIS and FIRM. However,

(a) Where BFEs increase in a restudied area, communities have the responsibility to ensure that new or substantially improved structures are protected. Communities are encouraged to reasonably utilize preliminary FIS or FIRM data in instances where BFEs increase and floodways are revised to ensure that the health, safety, and property of their citizens are protected.

(b) Where BFEs decrease, preliminary FIS or FIRM data should not be used to regulate floodplain development until the LFD has been issued or until all appeals have been resolved.

(2) If a preliminary FIRM or FIS has designated floodways where none had previously existed, communities should reasonably utilize this data in lieu of applying the encroachment performance standard of § 157.28(B) since the data in the draft or preliminary FIS represents the best data available.

(C) Zones B, C, and X:

(1) Use of BFE and floodway data from a preliminary FIRM or FIS are not required for areas designated as Zone B, C, or X on the effective FIRM which are being revised to Zone AE, A1-30, AH, or AO. Communities are encouraged to reasonably utilize preliminary FIS or FIRM data to ensure that the health, safety, and property of their citizens are protected.

#### § 157.51 SUBSTANTIAL DAMAGE DETERMINATIONS.

(A) Damages to structures may result from a variety of causes including flood, tornado, wind, heavy snow, fire, etc. After such a damage event, the Floodplain Administrator shall:

- (1) Determine whether damaged structures are located in special flood hazard areas;
- (2) Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and
- (3) Require owners of substantially damaged structures to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.

(B) Additionally, the Floodplain Administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assist owners of substantially damaged structures with Increased Cost of Compliance insurance claims.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### APPEALS AND VARIANCES

#### § 157.65 APPEALS BOARD ESTABLISHED; POWERS AND DUTIES.

(A) Appeals Board established. The Board of Zoning Appeals as established per § 150.1006(A) and (C) of the Montgomery Codified Ordinances shall serve as the Appeals Board for the administration of this Chapter. Records of the Appeals Board shall be kept and filed at the Community and Development Department Office, City of Montgomery, 10101 Montgomery Road, Montgomery, Ohio 45242.

(B) Powers and duties.

(1) The Appeals Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.

(2) Authorize variances in accordance with § 157.66 of these regulations.

(C) Appeals. Appeals will be heard pursuant to the procedures established in Chapter 150.20, §§ 150.2001 through 150.2009.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.66 VARIANCES.

Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The Appeals Board shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

##### (A) Application for a Variance

(1) Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Appeals Board.

(2) Such application at a minimum shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request

##### (B) Notice for Public Hearing

The Appeals Board shall schedule and hold a public hearing within thirty (30) days after the receipt of an application for a variance from the Floodplain Administrator. Prior to the hearing, a notice of such hearing shall be given in one (1) or more newspapers of general circulation in the community at least ten (10) days before the date of the hearing.

##### (C) Criteria for determination of variances.

(1) The applicant shall present such statements and evidence as the Appeals Board requires. In considering such variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:

- (a) The danger that materials may be swept onto other lands to the injury of others.
- (b) The danger to life and property due to flooding or erosion damage.

(c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(d) The importance of the services provided by the proposed facility to the community.

(e) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.

(f) The necessity to the facility of a waterfront location, where applicable.

(g) The compatibility of the proposed use with existing and anticipated development.

(h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.

(i) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.

(k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(2) Variances shall only be issued upon:

(a) A showing of good and sufficient cause.

(b) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.

(c) A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.

(d) A determination that the structure or other development is protected by methods to minimize flood damages.

(e) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(3) Upon consideration of the above factors and the purposes of these regulations, the Appeals Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of these regulations.

(D) Other conditions for variances.

(1) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(2) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in § 157.66(A)(1)(a) through (k) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

#### (E) Procedure at Hearings

(1) All testimony shall be given under oath.

(2) A complete record of the proceedings shall be kept, except confidential deliberations of the Board, but including all documents presented and a verbatim record of the testimony of all witnesses.

(3) The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.

(4) The administrator may present evidence or testimony in opposition to the appeal or variance.

(5) All witnesses shall be subject to cross-examination by the adverse party or their counsel.

(6) Evidence that is not admitted may be proffered and shall become part of the record for appeal.

(7) The Board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.

(8) The Board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.67 APPEAL TO THE COURT.



Those aggrieved by the decision of the Appeals Board may appeal such decision to the Hamilton County Court of Common Pleas, pursuant to Ohio Rev. Code Chapter 2506.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

## ENFORCEMENT

### § 157.80 COMPLIANCE REQUIRED.

(A) No structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless specifically exempted from filing for a development permit as stated in § 157.46.

(B) Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with § 157.82.

(C) Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with § 157.82.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

### § 157.81 NOTICE OF VIOLATION.

Whenever the Floodplain Administrator determines that there has been a violation of any provision of these regulations, he shall give notice of such violation to the person responsible therefore and order compliance with these regulations as hereinafter provided. Such notice and order shall:

(A) Be put in writing on an appropriate form;

(B) Include a list of violations, referring to the section or sections of these regulations that have been violated, and order remedial action which, if taken, will effect compliance with the provisions of these regulations;

(C) Specify a reasonable time for performance;

(D) Advise the owner, operator, or occupant of the right to appeal;

(E) Be served on the owner, occupant, or agent in person. However, this notice and order shall be deemed to be properly served upon the owner, occupant, or agent if a copy thereof is sent by registered or certified mail to the person's last known mailing address, residence,

or place of business, and/or a copy is posted in a conspicuous place in or on the dwelling affected.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

#### § 157.82 VIOLATIONS AND PENALTIES.

Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall constitute a misdemeanor of the first degree. Any person who violates these regulations or fails to comply with any of its requirements shall upon conviction thereof be fined or imprisoned as provided by the laws of the City of Montgomery. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Montgomery from taking such other lawful action as is necessary to prevent or remedy any violation. The City of Montgomery shall prosecute any violation of these regulations in accordance with the penalties stated herein.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

April 14, 2023

**TO:** Brian K. Riblet, City Manager  
**FROM:** Tracy Henao, Assistant City Manager  
**SUBJECT:** National Historic Preservation Month

**Request**

Staff is requesting that City Council adopt a resolution recognizing the month of May 2023 as National Historic Preservation Month.

**Background**

Once again, the month of May is designated as National Historic Preservation month. It is a time when communities and organizations recognize the value and importance of their heritage. Traditionally Montgomery has passed a resolution endorsing historic preservation and the heritage of Montgomery. Based on the positive response the City receives on the downtown walking tour as well as the fantastic turnout for Lanterns and Landmarks, it is clear that the more people become familiar with the City's history and the Landmark buildings, the more appreciative they become of the community and the more committed they are to preserving the past. Additionally, the City's downtown Heritage District is appreciated throughout the region and its unique character draws visitors to the City's restaurants and stores, which helps add vitality to the community.

**Recommendation**

Staff recommends that City Council support the enthusiasm of National Historic Preservation Month by passing a resolution recognizing the importance of historic preservation in the community.

RESOLUTION NO. , 2023

**A RESOLUTION RECOGNIZING THE MONTH OF  
MAY 2023 AS NATIONAL HISTORIC PRESERVATION MONTH  
IN THE CITY OF MONTGOMERY**

**WHEREAS**, the City of Montgomery has a rich heritage which is manifested in numerous buildings throughout the City, including eight buildings listed in the National Historic Register; and

**WHEREAS**, this heritage enriches the lives of our residents, and it is in the public interest to preserve this legacy so that future generations may benefit from the cultural, aesthetic, educational, economic and inspirational benefits of their heritage; and

**WHEREAS**, the retention of the City of Montgomery's heritage is best accomplished only through the combined efforts of concerned individuals and organizations in the community.

**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Montgomery, Hamilton County, Ohio, that:

**SECTION 1.** The City of Montgomery does hereby designate the month of May 2023 as ***National Historic Preservation Month*** in the City of Montgomery. We call special attention to the Montgomery Landmarks that have been carefully researched and recognized by the Landmarks Commission and the collection of our community history assembled by the Montgomery Historical Preservation Association at the Wilder Swaim House.

**SECTION 2.** The City of Montgomery is proud to be home to many authentic architectural representations of the City's historic cultural heritage.

**SECTION 3.** We hereby call upon all citizens to recognize our City's historical past, and to protect these precious resources for the enjoyment of future generations.

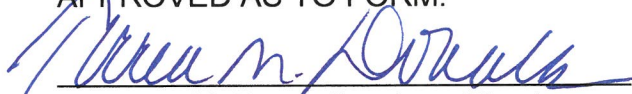
**SECTION 4.** This Resolution shall be in full force and effect from and after its passage.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Craig D. Margolis, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

April 13, 2023

TO: Brian K. Riblet, City Manager

FROM: Maura Gray, Finance Director *MG*

SUBJECT: Montgomery Quarter Public Infrastructure Improvements Limited Tax General Obligation Bond Anticipation Notes, Series 2020, 2023 Renewal

### Request

It is necessary for City Council to consider an Ordinance authorizing the City Manager to renew the \$7,500,000 Series 2020 Bond Anticipation Notes issued for public infrastructure improvements.

### Background

On June 23, 2020, the City issued \$7,500,000 Series 2020 Public Infrastructure Improvements General Obligation Bond Anticipation Notes. The City renewed the BANs on June 16, 2022 with a final maturity on June 14, 2023. The interest due on June 14, 2023, totals \$205,677.08. The short term borrow was used to fund the construction of public improvements in the Montgomery Quarter development. These Notes can either be converted to General Obligation Bonds in the coming years or continue to be rolled each year as Bond Anticipation Notes. The current plan is to renew the BAN for one more year to mature in June 2024.

### Financial Impact

These notes are general obligations of the City. No separate tax is levied and collected to pay such notes as the required debt service payments have been appropriated in the City's annual budget. The Series 2023 BAN Renewal is projected to have a total interest cost of approximately 4%.

### Recommendation

Staff recommends City Council approve the action to authorize issuance of not to exceed \$7,500,000 Public Infrastructure Improvements Limited Tax General Obligation Bond Anticipation Notes, Series 2020, 2023 Renewal. It is also recommended this request be added to the May 3<sup>rd</sup> agenda for the first reading with Council consideration in suspending the second and third readings and passing as an emergency to allow us to meet the anticipated June closing date.

ORDINANCE NO. , 2023

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$7,500,000 OF NOTES BY THE CITY OF MONTGOMERY, OHIO, FOR THE PURPOSE OF MAKING PUBLIC INFRASTRUCTURE IMPROVEMENTS WITHIN THE CITY AND DECLARING AN EMERGENCY.

WHEREAS, this Council has previously issued bond anticipation notes in the amount of \$7,500,000, which notes are about to mature and should be refinanced in a like or reduced principal amount; and

WHEREAS, the Finance Director, the fiscal officer of the City of Montgomery has heretofore estimated that the life of the project hereinafter described is at least five (5) years, and certified that the maximum maturity of the bonds issued therefor is twenty-five (25) years, and of the notes to be issued in anticipation thereof is seventeen (17) years; and

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Montgomery, (hereinafter called the "City"), County of Hamilton, Ohio, that:

SECTION 1. It is necessary to issue bonds of the City in the principal amount of not to exceed \$7,500,000, to refinance outstanding notes originally issued for the purposes of making public infrastructure improvements, including road improvements consisting of constructing new roads, curbs and sidewalks; installing water mains, sewers and storm sewers; and all related improvements, including site development and engineering in the City of Montgomery. Said bonds shall be dated approximately March 1, 2024, shall bear interest at the estimated rate of five per centum (5%) per annum and shall mature in substantially equal annual or semiannual installments over a period not exceeding twenty-five (25) years after their issuance.

SECTION 2. It is hereby determined that notes (hereinafter called the "Notes") in the principal amount of not to exceed \$7,500,000 shall be issued in anticipation of the issuance of said bonds.

SECTION 3. The Notes shall be dated the date of their issuance, shall bear interest at a rate not to exceed five and one half per centum (5.50%) per annum, payable at maturity, shall mature not more than one year from the date of their issuance, and shall be of such number and denomination as may be requested by the purchaser, however the Notes shall be issued only in authorized denominations of \$100,000 or integral multiples of \$5,000 in excess of \$100,000. This Council hereby covenants that it will not exchange or reissue the Notes in less than authorized denominations other than through a "primary offering", as that term is defined in SEC Rule 15c2-12. Interest on the Notes shall be calculated on an actual days elapsed, 360-day year basis.

Final terms of the Notes, which shall be consistent with this ordinance, shall be set forth in the certificate of award ("Certificate of Award") which is hereby authorized and which shall be executed by the Finance Director without further action of this Council.

SECTION 4. The Notes shall be executed by the City Manager and Finance Director and shall bear the seal of the corporation. The Notes shall be designated "Public Infrastructure Improvements

Limited Tax General Obligation Bond Anticipation Notes, Series 2020, 2023 Renewal” or as otherwise designated in the Certificate of Award, and shall be payable in Federal Reserve funds by the paying agent and registrar for the Notes as determined by the Finance Director, and shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this ordinance.

SECTION 5. Said Notes shall be sold by the Finance Director at public or private sale, at the discretion of such officer and awarded by such officer without further action by this Council, at not less than the par value of such Notes together with interest thereon, if any, as specified in Section 3 of this Ordinance. The proceeds from such sale, except any premium or accrued interest thereon, shall be paid into the proper fund and used for the purpose aforesaid and for no other reason, and for which purpose said money is hereby appropriated. Accrued interest and premium, if any, received on the sale of said Notes, shall be transferred to the bond retirement fund to be applied to the payment of principal and interest of said Notes in the manner provided by law.

Notwithstanding the above, the Finance Director is hereby directed to withhold delivery of the Notes, and to refuse to accept payment therefor, unless and until the original purchaser delivers to the City a certificate acknowledging that the original purchaser will sell the notes to no more than 35 persons, each of whom the original purchaser reasonably believes (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment and (ii) is not purchasing for more than one account or with a view to distributing the Notes.

SECTION 6. The Notes shall be the full general obligations of the City, and the full faith, credit and revenue of the City are hereby pledged for the prompt payment of the same. The par value received from the sale of bonds anticipated by the Notes, and any excess fund resulting from the issue of the Notes, shall to the extent necessary be used only for the retirement of the Notes at maturity, together with interest thereon and is hereby pledged for such purpose.

SECTION 7. During the period while the Notes run there shall be levied upon all of the taxable property in the City within applicable limitations, in addition to all other taxes, a direct tax annually, not less than that which would have been levied if bonds had been issued without the prior issue of the Notes; said tax shall be and is hereby 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 said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof.

The funds derived from said tax levy hereby required shall be placed in a separate and distinct fund and, together with interest collected on the same, shall be irrevocably pledged for the payment of the principal and interest of the Notes, or the bonds in anticipation of which they are issued, when and as the same fall due; provided, however, to the extent that debt service on said obligations is appropriated and paid from other municipal sources said tax shall not be collected for the purposes thereof.

SECTION 8. This Council, for and on behalf of the City, hereby covenants that it will restrict the use of the proceeds of the Notes hereby authorized in such manner and to such extent, if any, and take such other action as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or “arbitrage bonds” under Section 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations prescribed thereunder. The Finance



Director or any other officer having responsibility with respect to the issuance of the Notes is authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of the Notes for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of Sections 103(b)(2) and 148 of the regulations thereunder.

These Notes are hereby designated “qualified tax-exempt obligations” for the purposes set forth in Section 265(b)(3) of the Code. The City did not anticipate issuing more than \$10,000,000 of “qualified tax-exempt obligations” during the year of original designation.

SECTION 9. The Clerk of Council is hereby directed to forward a certified copy of this Ordinance to the County Auditor.

SECTION 10. The firm of Dinsmore & Shohl LLP, is hereby engaged as the City’s “Bond Counsel” pursuant to the engagement letter on file with the City.

SECTION 11. All appropriate officers of the City are further authorized to make, execute, acknowledge and deliver such financing statements, closing certificates and other instruments or agreements as are, in the opinion of Bond Counsel, necessary to carry out the purposes of this Ordinance.

SECTION 12. This City Council hereby authorizes and directs the Finance Director to take any and all actions which may be necessary to issue the Notes in book-entry-only form without further action by this Council including execution of all documents necessary therefor.

SECTION 13. The Finance Director is hereby authorized to apply, if she deems it appropriate, for a rating on the Notes from either Standard & Poor’s Corporation or Moody’s Investors Service, and to pay the fee or premium for said rating to the extent authorized by law and approved by Bond Counsel.

SECTION 14. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

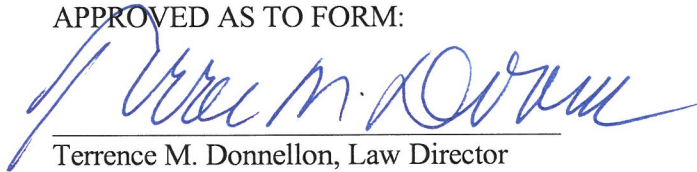
SECTION 15. That this ordinance is hereby declared to be an emergency measure for the reason that the public peace, health, safety and welfare of the inhabitants of the City of Montgomery require the immediate issuance of said notes to provide funds for the orderly refinancing of the improvements, to which they relate, including obtaining a favorable interest rate, and this ordinance shall take effect immediately upon its adoption.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Craig Margolis, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

CERTIFICATE

The undersigned hereby certifies that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_\_, passed by the Council of the City of Montgomery, Ohio in session on the \_\_\_\_\_ day of May, 2023, and approved by the Mayor in conformity with the Charter of the City of Montgomery, Ohio.

I certify that I filed a copy of said Ordinance with the Auditor of Hamilton County, Ohio on \_\_\_\_\_, 2023.

In Witness Whereof, I have hereunto set my hand and affixed the Official Seal of the City of Montgomery, Ohio this \_\_\_\_\_ day of May, 2023.

\_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

RECEIPT

Received this \_\_\_\_\_ day of May, 2023, a certified copy of the foregoing Ordinance of the City of Montgomery, Ohio.

\_\_\_\_\_  
Auditor, Hamilton County, Ohio

By \_\_\_\_\_  
Deputy County Auditor

CERTIFICATE

The undersigned, Clerk of Council of said City, hereby certifies that the foregoing is a true and correct extract from the minutes of a meeting of the Council of said City, held on the \_\_\_\_ day of May, 2023, to the extent pertinent to consideration and adoption of the above-entitled legislation.

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Connie M. Gaylor  
Clerk of Council

CERTIFICATE OF MEMBERSHIP

The undersigned, Clerk of the Council of the City of Montgomery, County of Hamilton, Ohio, hereby certifies that the following were the officers of the City and the members of Council during the time period when proceedings were taken authorizing the issuance of not to exceed \$7,500,000 – Public Infrastructure Improvements Limited Tax General Obligation Bond Anticipation Notes, Series 2020, 2023 Renewal, dated the date of their issuance:

Mayor	<u>Craig Margolis</u>
City Manager	<u>Brian K. Riblet</u>
Finance Director	<u>Maura Gray</u>
Member of Council	<u>Lee Ann Bissmeyer</u>
Member of Council	<u>Michael Cappel</u>
Member of Council	<u>Ronald Messer</u>
Member of Council	<u>Sasha Naiman</u>
Member of Council	<u>Chris Dobrozsi</u>
Member of Council	<u>Ken Suer</u>
Clerk of Council	<u>Connie M. Gaylor</u>
Director of Law	<u>Terrence M. Donnellon</u>

Connie M. Gaylor, Clerk of Council

TRANSCRIPT CERTIFICATE

The undersigned, Clerk of Council of the City of Montgomery, County of Hamilton, Ohio, hereby certifies that the following is a true and complete transcript of all proceedings relating to the authorization and issuance of the above identified notes, and that all such proceedings were held in compliance with the law.

Connie M. Gaylor, Clerk of Council

CERTIFICATE AS TO MAXIMUM MATURITY OF BONDS  
AND BOND ANTICIPATION NOTES

Based upon information provided by and in response to the request of the Council of the City of Montgomery, Ohio, the Finance Director of the City of Montgomery, Ohio, being the fiscal officer of the City of Montgomery, Ohio, within the meaning of Section 133.20 of the Uniform Public Securities Law of the Ohio Revised Code, hereby certifies to the City Council that the estimated life of the improvements to be acquired with the proceeds of the sale of not to exceed \$7,500,000 of bonds for the purpose of refinancing outstanding notes originally issued for the purposes of making public infrastructure improvements in the City, including road improvements consisting of constructing new roads, curbs and sidewalks; installing water mains, sewers, and storm sewers; and all related improvements, including site development and engineering, is at least five (5) years and that the maximum maturity of said bonds is twenty-five (25) years and of notes issued in anticipation thereof, seventeen (17) years.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of May, 2023.

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Maura Gray, Finance Director

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City of Montgomery  
City Council Business Session Minutes  
April 5, 2023

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Present

Brian Riblet, City Manager  
Terry Donnellon, Law Director  
Kevin Chesar, Community Dev. Director  
John Crowell, Police Chief  
Maura Gray, Finance Director  
Gary Heitkamp, Public Works Director  
Paul Wright, Fire Chief  
Matthew Vanderhorst, Community and Information Services Dir.  
Amy Frederick, Community Engagement Coordinator  
Connie Gaylor, Clerk of Council

City Council Members Present

Craig Margolis, Mayor  
Lee Ann Bissmeyer, Vice Mayor  
Mike Cappel  
Chris Dobrozsi  
Ron Messer  
Sasha Naiman  
Ken Suer

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City Council Convened its Business Session for April 5, 2023 at 6:00 p.m. at City Hall with Mayor Margolis presiding.

**ROLL CALL**

Mayor Margolis asked for a motion to dispense roll call as all members are present.

Mr. Cappel made a motion to dispense of roll call as all members are present. Vice Mayor Bissmeyer seconded. City Council unanimously agreed.

**SPECIAL PRESENTATIONS**

Vice Mayor Bissmeyer presented the family of Sofia LaTorre with a Proclamation to proclaim April 16 as 4p-/Wolf-Hirschhorn Syndrome (WHS) Awareness Day. City Council thanked the LaTorre family for attending the council meeting and bringing awareness to the rare genetic disorder and for meeting their beautiful family.

Mr. Riblet conducted a ceremonial swearing in of Kenney Bertz as the City’s newest sergeant. City Council congratulated Sgt. Bertz on his promotion and wished him well in his new role with the police department.

**GUESTS AND RESIDENTS**

Mike Frazee, 5325 Cooper Road- Mr. Frazee explained to City Council that he lived behind Sycamore Junior High and was concerned about the demolition of the old building now that the new building was constructed. He stated that he wanted to be assured that there was analysis performed prior to demolition of the old building so there would not be hazardous material released into the air at the time of demolition.

Mr. Chesar explained that as part of the demolition permit the contractor is required to obtain asbestos and hazardous material surveys. He stated that if there was anything found in those reports that remediation would be required.

Mr. Frazee stated that he felt the Schools would not want to disclose that information and wants the City to provide oversight.

Mr. Chesar asked for Mr. Frazee to provide him with his contact information, and he would follow up with him on the process.

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54 **PENDING LEGISLATION**

55  
56 There is no pending legislation.

57  
58 Mayor Margolis explained that since the following legislation has been made available to the public before this  
59 evening's meeting, he asked for a motion to accept the legislative Agenda and read all legislation by title only.

60  
61 Mr. Cappel made a motion to accept the legislative Agenda and read all legislation by title only. Vice Mayor  
62 Bissmeyer seconded. City Council unanimously agreed.

63  
64 **NEW LEGISLATION**

65  
66 **A Resolution Advocating For The Restoration of The Local Government Fund To Pre-Recession Levels**

67  
68 Mr. Suer read the title and moved for passage of the Resolution. Mr. Cappel seconded.

69  
70 Mr. Suer explained that the information has been previously supplied on this Resolution that, if approved, will  
71 formally endorse Council's support to maintain the Local Government Fund as a part of the State Budget. The  
72 Local Government Fund provides valuable resources to many communities throughout the State of Ohio, and it has  
73 been cut in half over the last 10+ years causing a considerable budget strain for many small communities. This  
74 legislation openly endorses our support for the Fund.

75  
76 The roll was called and showed the following vote:

77  
78 AYE: Cappel, Bissmeyer, Dobrozsi, Margolis, Naiman, Suer, Messer (7)

79 NAY: (0)

80  
81 **A Resolution Authorizing The City Manager To Accept The Opioid Settlement And Enter Into The**  
82 **Participation Agreement With Opioid Manufacturers Teva And Allergan And Pharmacies/Distributors**  
83 **CVS, Walgreens And Walmart**

84  
85 Mr. Messer read the title and moved for passage of the Resolution. Mr. Cappel seconded.

86  
87 Mr. Messer explained that information has been previously supplied on this Resolution that, if approved, would  
88 endorse the City's support to settle litigation with various opioid manufacturers and pharmacies who have been  
89 sued across the United States. The City participates through One Ohio Negotiating Committee headed by the Ohio  
90 Attorney General. This legislation authorizes us to accept the Participation Agreement and execute an appropriate  
91 Settlement and Release to secure these funds for the benefit of the State and many of its local subdivisions.

92  
93 Mr. Messer asked if there were any updates.

94  
95 Mr. Donnellon replied there were none.

96  
97 The roll was called and showed the following vote:

98  
99 AYE: Bissmeyer, Dobrozsi, Margolis, Naiman, Suer, Messer, Cappel (7)

100 NAY: (0)

101

102



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103 **An Ordinance Amending Chapter 156.02 of The Land Usage Code, Subdivision Regulations: Requirements**  
104 **For Subdivision Approval**

105  
106 Vice Mayor Bissmeyer read the title and moved for passage of the first reading of the Ordinance. Mr. Cappel  
107 seconded.

108  
109 Vice Mayor Bissmeyer explained that information has been previously supplied on this Ordinance that, if  
110 approved, would authorize a series of text amendments to Chapter 156.02 Subdivision Regulations: Requirements  
111 for Subdivision Approval, to become consistent with the Hamilton County Engineers Office.

112  
113 Vice Mayor Bissmeyer asked if there were updates.

114  
115 Mr. Chesar replied there were none.

116  
117 The roll was called and showed the following vote:

118  
119 AYE: Dobrozsi, Margolis, Naiman, Suer, Messer, Cappel, Bissmeyer (7)  
120 NAY: (0)

121  
122 **An Ordinance Amending Chapter 157 of The Land Usage Code, Floodplain Management Regulations And**  
123 **Flood Damage Prevention, And Declaring An Emergency**

124  
125 Vice Mayor Bissmeyer read the title and moved for passage of the first reading of the Ordinance. Mr. Cappel  
126 seconded.

127  
128 Vice Mayor Bissmeyer explained that information has been previously supplied on this Ordinance that, if  
129 approved, would authorize a series of text amendments to Chapter 157 Flood Damage Protection. She explained  
130 that the Federal Emergency Management Agency (FEMA) has issued a Letter of Final Determination that contains  
131 revised Flood Insurance Study and Flood Insurance Rate Maps that will become effective on June 7, 2023. Due to  
132 this requirement by FEMA, staff are asking the third reading to be suspended and the legislation to be passed as an  
133 emergency.

134  
135 Vice Mayor Bissmeyer asked if there were updates.

136  
137 Mr. Chesar replied there were none.

138  
139 The roll was called and showed the following vote:

140  
141 AYE: Margolis, Naiman, Suer, Messer, Cappel, Bissmeyer, Dobrozsi (7)  
142 NAY: (0)

143  
144 **ADMINISTRATION REPORT**

145  
146 Mr. Riblet reported the following items:

- 147  
148
  - City Council Work Session is scheduled for Wednesday, April 19 at 6:00 p.m.

149  
150 As a reminder, the 2023 Volunteer Walk of Fame ceremony will be held at 5:30 prior to the Work  
151 Session. The ceremony will be held in Montgomery Park, weather permitting, and will be held in  
152 Council Chambers if needed.

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- 153 • Mr. Riblet reported that there were agenda items for the Government Affairs Committee and  
154 confirmed that the Committee would meet at 4:30 p.m. on April 10. He added that the Parks and  
155 Recreation and Public Works Committees do not have agenda items and requested to cancel those  
156 meetings.
- 157
- 158 • Staff were notified by Hamilton County that the City has been awarded \$15,000 for the Mini-Grant  
159 that will pay for the majority of the conversion of the ambulance.
- 160
- 161 • 250 photos were entered in the 35<sup>th</sup> Annual Montgomery Photo Contest which is 76 more photos as  
162 compared to 2022. Also, 80 students entered from 11 area schools, which is 25 more students as  
163 compared to last year. Winning photos will be on display at Pella Windows and Doors from April 5  
164 through May 3. The contest is sponsored by Pella and is presented by the Montgomery Arts  
165 Commission.
- 166
- 167 • Ms. Henao and Mr. Riblet will both be attending the OCMA conference in Columbus on Thursday,  
168 April 6 and Friday, April 7. They will sit on a panel regarding the City's Diversity and Inclusion  
169 efforts on Thursday afternoon and will also give a presentation on Montgomery Quarter on Friday  
170 morning.
- 171
- 172 • Barrett Paving has been making great progress on the Pfeiffer Road at Deerfield Road roundabout  
173 project. They are almost complete with Phase 2 of the work; thus, they are tentatively scheduled to  
174 switch the traffic pattern to Phase 3 on Monday April 10. Traffic on the north leg of Deerfield will  
175 transition onto the newly placed asphalt.
- 176

177 Events

178

179 Mr. Riblet reminded Council that the Mental Health Fair will be held on Saturday, April 15 at Twin Lakes from  
180 9:00-noon. This event will feature nine speakers, including our own Police Department and feature approximately  
181 22 vendor booths. State Representative Jessica Miranda and Hamilton County Commissioner Denise Driehaus  
182 will be in attendance to support the City's mental health initiative.

183

184 **APPROVAL OF MINUTES**

185

186 Mayor Margolis asked for a motion to approve the March 22, 2023 Work Session minutes.

187

188 Mr. Cappel moved to approve the minutes as written. Vice Mayor Bissmeyer seconded. City Council unanimously  
189 agreed.

190

191 **MAYOR'S COURT REPORT**

192

193 Mayor Margolis asked for a motion to disburse with the Mayors Court collection for the month of March in the  
194 amount of \$9,600.

195

196 Mr. Cappel made a motion to disburse with the Mayors Court collection for the month of March in the amount of  
197 \$9,600. Vice Mayor Bissmeyer seconded. City Council unanimously agreed,

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199  
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201

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202 **OTHER BUSINESS**

203  
204 Mayor Margolis reported that as two members of City Council would not be able to attend the previously  
205 scheduled April 20 Braver Angels workshop that he has asked Mr. Riblet to work with Braver Angels to  
206 reschedule the workshop to the fall so all members would be attending.

207  
208 **ADJOURNMENT**

209  
210 Mayor Margolis asked if there was any other business to discuss in Public Session. There being none, Mr. Cappel  
211 made a motion to adjourn the meeting. Vice Mayor Bissmeyer seconded.

212  
213 City Council adjourned at 6:46 p.m.

214  
215  
216  
217

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Connie Gaylor, Clerk of Council