

CITY MANAGER'S NEWSLETTER
FEBRUARY 19, 2021

IMPORTANT COUNCIL DATES:

February 22, Monday, 5 p.m. – Work Session (30 Park)
March 1, Monday, 6:30 p.m. – Regular Session (30 Park)
March 15, Monday, 5 p.m. – Work Session (30 Park)
April 5, Monday, 6:30 p.m. – Regular Session (30 Park)
April 19, Monday, 5 p.m. – Work Session (30 Park)
May 3, Monday, 6:30 p.m. – Regular Session (30 Park)
May 17, Monday, 5 p.m. – Work Session (30 Park)

BUSINESS UPDATE:

- February 22 Meeting: Enclosed is our agenda for next Monday. We will conduct the meeting in the 2nd floor Safety Department training room. Face coverings must be worn when entering and departing the room. Once seated, face coverings may be lowered or removed as needed when speaking or consistent with provisions of the ODH guidelines/orders. Doug Spitler will join us at the beginning of the meeting for a discussion on the proposed relocation of our recycling drop-off facility. We will conclude the meeting with an Executive Session for Personnel Matters.

- Council Resources Webpage: We created a “password-protected” resource webpage that allows council to access information directly from our website. The webpage is www.oakwoodohio.gov/departments/council. The page is a work in progress, but the following information is currently available:
 - Admin Policies and Procedures
 - Friday Newsletters
 - City Ordinances
 - Emergency Operations Plan
 - Oakwood Public Safety Department Policy Manual

The webpage requires entering the password “council” the first time you access it, but will keep you logged in until you clear your cache. While the information is technically on the City website, the information will not come up when performing a general search of our website, so you will need to bookmark the webpage link.

- In-car and Body Cameras: We received notice from our vendor that the onsite visit to install software, configure the equipment and perform training is now scheduled for early June. There are hundreds of other departments ahead of us in the queue for this same work. Enclosed is a *DDN* article reporting that Moraine City Council approved the purchase of in-car and body cameras for their police department.

- Vice Mayor Byington: Enclosed is a nice *DDN* article about Steve’s work at Wright Patt that Bill mentioned earlier this week. Also enclosed is a *Register* article about Dayton’s vintage Clodbuster Base Ball Club... also featuring Steve (far left), albeit with his “game face” on. 😊

- COVID-19: Enclosed is a *DDN* article about Ohio’s curfew order expiring on February 11.

- Smith Gardens: Enclosed is a *Register* article about Smith Gardens being recognized by OCMA.

- Judge Epley: Enclosed is a *Register* photo of Chris (and his wife Eileen) being sworn in.
- Elected Officials Training: Enclosed is a flyer about the annual training program offered through the Center for Local Government (CLG). CLG is a Cincinnati based organization that works to improve public service delivery by the cities, townships, and villages primarily in the Greater Cincinnati metropolitan area through improved information exchange, cost reductions, shared resources, inter-jurisdictional collaboration, and new approaches to capital equipment and skills acquisition.
- Local Income Tax Lawsuit: Enclosed is an article from the WKRC website addressing a lawsuit filed against the city of Cincinnati for not refunding municipal taxes to a person living in Blue Ash and working from home. Also enclosed is the complaint... in case you want to read the argument. I don't see how the complainant loses... but I'm just a city manager. 😊 My newsletter last Friday included a *DDN* article on this topic focusing on how many cities, particularly large ones, will lose significant revenue because people are now doing so much work from home. Our state legislature and governor have some work on their hands.
- Wright Library Project: Enclosed is an email from Library Director Kristi Hale informing us that the library is eliminating the outside children's learning area from the current project.
- Electric Vehicle Charging Stations (EVCS): We were informed this week that Hills Properties is installing two EVCSs behind the Element Oakwood condo buildings. These are privately funded and will not be open to the general public.
- Private Fire Hydrants: Enclosed is the draft of a letter that we plan to send next week to the owners of private fire hydrants. Also enclosed are a list of all the private hydrants in Oakwood and the respective owners, along with a map showing each location and hydrant type. I will speak about this briefly in work session next Monday.
- Committee Needs: Enclosed is an updated list of committee needs. We will discuss this on Monday.
- Teen Court: Our Teen Court Advisor, Shawn Roberts, informed us that he is ready to transition away from that role at the end of the current school year. He will be greatly missed, as he has been in that volunteer position for well over a decade, maybe two. The Oakwood Teen Court is an approved satellite program of the Montgomery County Juvenile Court, governed by procedures set forth in an Entry and Order issued by Juvenile Court Judge Nick Kuntz on May 1, 2014. According to the terms of that document, the Teen Court Advisor is appointed by the City Manager based upon the recommendation of the Public Safety Director and Law Director. Alan Hill and Rob Jacques are working on that recommendation and we anticipate appointing a replacement before the end of the school year. Shawn has agreed to assist in transitioning to a new advisor, who will begin in the fall of 2021.
- Academic Decathlon: Our Oakwood students won the Regional Championship title... 10th consecutive year in a row. Enclosed is a *DDN* article.
- Snow Operations: Needless to say, we have devoted a significant amount of time and energy over the past two weeks responding to the snowy weather... to include working a significant amount of overtime. We have ___ employees scheduled to work tomorrow as we continue to clear streets, alleys and sidewalks.

- Council Photos: Our photo shoot is now scheduled for 4:15 – 4:30 p.m. on Monday, March 15.
- CIC Audit: Enclosed are the following:
 - Draft letter from the Auditor of State regarding the CIC.
 - Email exchange between Rob Jacques and a staffer at the AOS's office.

HAVE A GREAT WEEKEND!

ENCLOSURE LIST

Work Session Agenda
DDN Article re: In-car and Body Cameras
DDN & Register Articles re: VM Byington
DDN Article re: COVID-19
Register Article re: Smith Gardens
Register Article re: Judge Epley
Elected Officials Training Flyer
Local Income Tax Lawsuit & Complaint
Wright Library Project Email
Private Fire Hydrants Letter
Private Fire Hydrants List
Committee Needs
Academic Decathlon
CIC Draft Letter
CIC Email

COUNCIL WORK SESSION AGENDA
FEBRUARY 22, 2021

- COUNCIL COMMITTEES
 - Court Liaison, Mrs. Hilton
 - Finance, Vice Mayor Byington
 - 2020 Audit Questionnaire
 - CIC Audit
 - Law & Minutes, Mrs. Hilton
 - Teen Court
 - Planning & Zoning, Vice Mayor Byington
 - Public Properties, Mrs. Turben
 - Public Utilities/Waterworks/Sewer, Mrs. Turben
 - Recycling Center Improvements
 - Private Fire Hydrants
 - Safety & Traffic, Mr. Stephens
 - Civil Preparedness Plan/Emergency Operations Plan (EOP)
 - Snow Operations
 - Streets & Alleys, Mr. Stephens
 - Community Relations/Promotion/Appointments, Mayor Duncan

- REGIONAL AGENCIES
 - MVCC, Mr. Stephens
 - MVRPC, Vice Mayor Byington
 - Mayors & Managers, Mayor Duncan
 - First Suburbs, Vice Mayor Byington
 - Oakwood Inclusion Coalition, Mr. Klopsch

- BOARDS & COMMISSIONS
 - Planning Commission, Vice Mayor Byington
 - Beautification Committee, Mr. Stephens
 - Sister City Association, Mrs. Hilton
 - Historical Society, Mrs. Hilton

- MISCELLANEOUS
 - 2021 Committee Needs
 - CLG Training for Elected Officials
 - Website Information
 - March 1 Council Meeting Format

EXECUTIVE SESSION FOR PERSONNEL MATTERS

Moraine police to get first body, in-car cameras

City Council votes unanimously to buy new systems for \$131K.

By Eric Schwartzberg
Staff Writer

Moraine Police Department will soon get its first body-worn cameras and in-car systems.

Moraine City Council voted unanimously Thursday to authorize purchase of 28 body-worn cameras, plus 12 in-car cameras featuring front-facing and rear-seat cameras, plus the associated software, hardware, and licensing on state bid for use by police department at a cost not to exceed \$131,000.

That means enough devices for all vehicles and for all of the city's officers with some spare ones in case any detectives or administrative staff need to grab one and go to the scene of a crime or an investigation, according to Police Chief Craig Richardson

This is the first time the department will have devices of either kind, Richardson said.

"It's a great evidence gathering too," he said. "It does act as community transparency, it does act as a third, independent witness there at the scene."

DID YOU KNOW?

Ohio law exempts from disclosure body camera footage that captures:

- An act of severe violence against a person, unless the violence was done by a peace officer or the injured person's consent is obtained;
- Personal information about someone who is not arrested, ticketed, charged or issued a warning by police;
- The interior of a residence or private business, unless it is the site of an adversarial encounter with, or a use of force by, a police officer.

The devices will be ordered soon and delivery likely will take at least 12 weeks, Richardson said.

"WatchGuard is one of the only companies that has an integrated car system and body camera system that all kind of work seamlessly together," he said.

Moraine police did not add cameras years ago because of citizen privacy concerns, he previously told this news outlet in 2019. But,

Cameras continued on B4

Cameras

continued from B1

Richardson said when the Ohio legislature voted to approve a bill that year limiting when body camera footage could be released to the public, he began to explore

adding the technology.

Moraine is one of numerous area departments adding body-worn cameras. The devices were approved for purchase in recent months by Montgomery County Sheriff's Office, plus Dayton, Kettering and Clayton police departments.

Law enforcement agencies using the devices include, but are not limited to, Beavercreek, Englewood, Huber Heights, Greene County Sheriff's Office, Tipp City, Trotwood, Xenia and Vandalia, records show.

Gov. Mike DeWine said earlier this month that he

wants to create a \$10 million grant program to help law enforcement agencies equip police officers with body cameras, as well as manage video storage and public records requests for the footage.

DDW

2/15/2021

Wright-Patt's cultural resources manager combines his love of history, architecture

Steve Byington says job is a 'perfect marriage' of his interests

By Amy Rollins
Skywrighter Staff

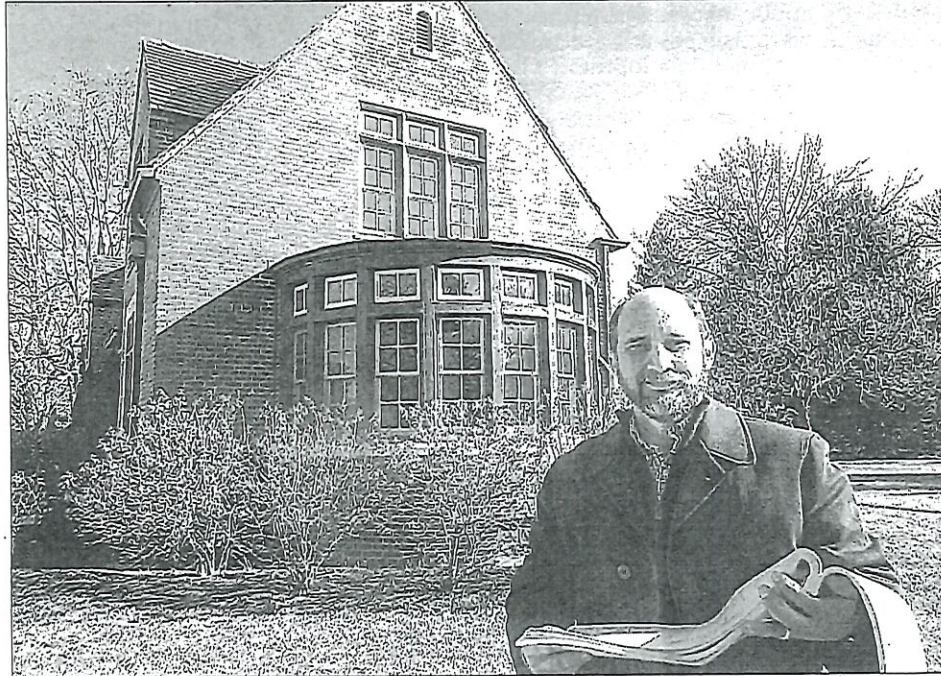
The Air Force has a long, colorful and storied history - and Steve Byington has the good fortune to help carry it safely into the future.

He gets to do that as the 88th Civil Engineer Group's cultural resources manager, a job he's held since August at Wright-Patterson Air Force Base.

He has an important mission, and it's one he deeply enjoys. He does the work "so we understand where we came from and how it influences and can shape the environment we work in today," the 88 CEG's former construction design manager said.

An architect by trade, Byington holds a bachelor's degree in architecture with a specialization in historical preservation and architectural history. That makes the job a "perfect marriage" of his interests, he says.

"There are lots of good things to say about the job Steve is doing for our mission and vision in the Environmental Branch," said Michael Brady, section chief, adding the branch's main role is to enhance mission sustainability through environmental excellence.



Steve Byington, the 88th Civil Engineer Group's cultural resources manager, reviews architectural plans at the Brick Quarters on Wright-Patterson Air Force Base. Before becoming a civilian employee, Byington spent 25 years with three architectural firms. CONTRIBUTED

"The Environmental Branch is the designated environmental spokesperson for WPAFB, ensuring installation functions remain in compliance with federal, state, local, Department of Defense, and Air Force environmental regulations and policies by establishing environmental-compliance plans, administering environmental programs and coordinating environmental-protection requirements."

The cultural resources manager works as a liaison to ensure the Air Force maximizes the reuse of its

historic buildings and structures, while meeting all preservation laws and regulations.

"This job was an opportunity to use something I've always had as a love of mine but hadn't been able to use that much in my professional career as a commercial architect," he said. "This seemed like the perfect marriage of what I love to do in terms of design and construction but also with the research and the historical-preservation aspects of making sure that we're not losing resources that are important to the history of the base and to the

tion projects, comparing them against a database of properties eligible for the National Register of Historic Places and providing technical assistance where warranted.

"If there's any sort of historical context to the building, then I'll review the drawings and specs to make sure no harm will come to any cultural resource," he said. "Or if the project would potentially damage an asset, then mitigation efforts - moving, reworking or encapsulating the significant features are explored. Not everything can be saved, but demolition is always a last resort. We're always trying to protect the resources we have while supporting the Air Force's mission of providing the advanced services we need to continue to fly, fight and win."

Protecting more than buildings

Cultural resources other than buildings on base under Byington's purview include Huffman Prairie - where the Wright brothers perfected

Before becoming a civilian employee, Byington spent 25 years with three local architectural firms, where he worked on everything from homes to university research buildings.

"Ultimately, I have always been drawn to re-use and rehabilitation projects and the opportunities they provide," he said.

Now, a big part of his job is getting early notifications of proposed base-construction

sustained, controlled, powered flight - and its interpretive center at the Wright Brothers Memorial by Area B.

Byington works closely with the National Park Service on these assets. He also works to preserve and protect artworks, including a colorful mural painted by German prisoners of war during World War II in an Area A building.

Along with the park service and other groups, he's also responsible for safeguarding five prehistoric Native American/indigenous mounds at the Wright Brothers Memorial, plus one in a protected area in the middle of Area A.

At the end of 2020, the mounds were surveyed with ground-penetrating radar as well as other imaging equipment to potentially identify any remains or cultural artifacts. The survey's final report is pending.

"We do communicate on a regular basis with five different tribes that have shown interest, and we let them know of any poten-

tial projects or events that might affect these sites," Byington said.

What he enjoys

His favorite part of the job is continually learning more about the base's history through his research, whether architectural or aviation-related.

"I don't think a lot of people realize, just when you're driving around, that some of the plainest, most-non-descript buildings on base have some of the most interesting histories," Byington said. "With Wright-Patterson being one of the earliest air bases in the U.S. and the world, it's interesting to see buildings that date back to 1927 when Wright Field was first founded, and knowing that Orville Wright was still in Dayton working in his laboratory.

"Also, virtually every aircraft the Air Force has flown has either been tested or had a portion of its design researched and developed right here in Dayton."

A big project ahead

The largest project on Byington's plate now is renovation of the Brick Quarters, listed on the National Register of Historic Places. A construction project will renovate 30 of those residences, built between 1934 and 1937.

"They are a bit dated inside, so we are doing everything we need to for a modern renovation while keeping a sensitivity toward historical preservation, too," he noted.

Currently, he is looking at samples of roofing materials - even visiting the Ohio company's factory that manufactured the original clay-roof tiles.

Once the project is complete, the homes will look as they always have but be easier to maintain, with new wiring and mechanical systems featuring a longer lifespan.

"It's a really big project in Phase 1 now, with another 20 homes to be done in three

or four years," Byington said. "It's involved the Air Force 88 CEG, Base Housing, the State Historic Preservation Office, the Army Corps of Engineers and a local architectural and engineering construction group.

"When you do a project like this in a historic district, it's sort of a give-and-take with all parties involved to arrive at the right levels of modernization, preservation and mitigation. One of the things we're taking a look at in terms of mitigation is a renovation of the Gen. Hap Arnold House."

He said there is also talk of doing a documentary on the base's history and how WPAFB developed.

"It would involve putting together a script and working with a film crew. That also would be a mitigation effort that would help us do what we need to do construction-wise," he said.

What people should know

People may look at Wright-Patt as a typical Air Force base, but it has a diversity of high-tech, brand-new, cutting-edge construction, combined with very-utilitarian-but-still-functional buildings that have been around since the 1920s, Byington said.

"It's a beautiful melding of the old and the new. ... There may be a BIB bomber flying overhead, but we're also very cognizant that we started off with the old Curtiss Jenny biplane trainers. Wright-Patterson has been a part of that since the very beginning," he said.

Byington occasionally brings his wife on base to visit Huffman Prairie, ride bikes and take advantage of the beautiful natural areas like Bass Lake.

"It's also interesting to just drive around and look at the buildings," he said. "I'm always seeing something new. I still like to do that."

Fortunately, his wife has an interest in Dayton history, too.

DDN
2/15/2021

Dayton's vintage base ball club seeking new players, interpreters for upcoming 2021 'old school' season

Dayton's vintage Clodbuster Base Ball Club is hosting an open house to recruit adult volunteers as players, scorekeepers, umpires, and interpreters for the 2021 season.

Can you run, catch, hit, and throw a baseball? Do you enjoy baseball and American history?

The club is inviting interested adults to an open house at 1 p.m. Sunday, March 7, in the Bier Hall at Carillon Brewing Company at Carillon Park, 1000 Carillon Blvd., in Dayton.

Attendees will get an introduction to the club and the early game of base ball, which was two words until the

1880s. Dress in active wear for the opportunity to practice throwing and hitting using vintage-style bats and balls, weather permitting. The open house is a lead-in to a mandatory tryout period in mid-March, followed by practices and a first match in late April.

The Clodbuster Base Ball Club was formed in 1989 to demonstrate and enjoy the early years of the great American game of base ball (yes, it was originally two words). The vintage-style games use 1860s rules and the Clodbusters wear a uniform common for a farm community club in Ohio at that time. During the regular

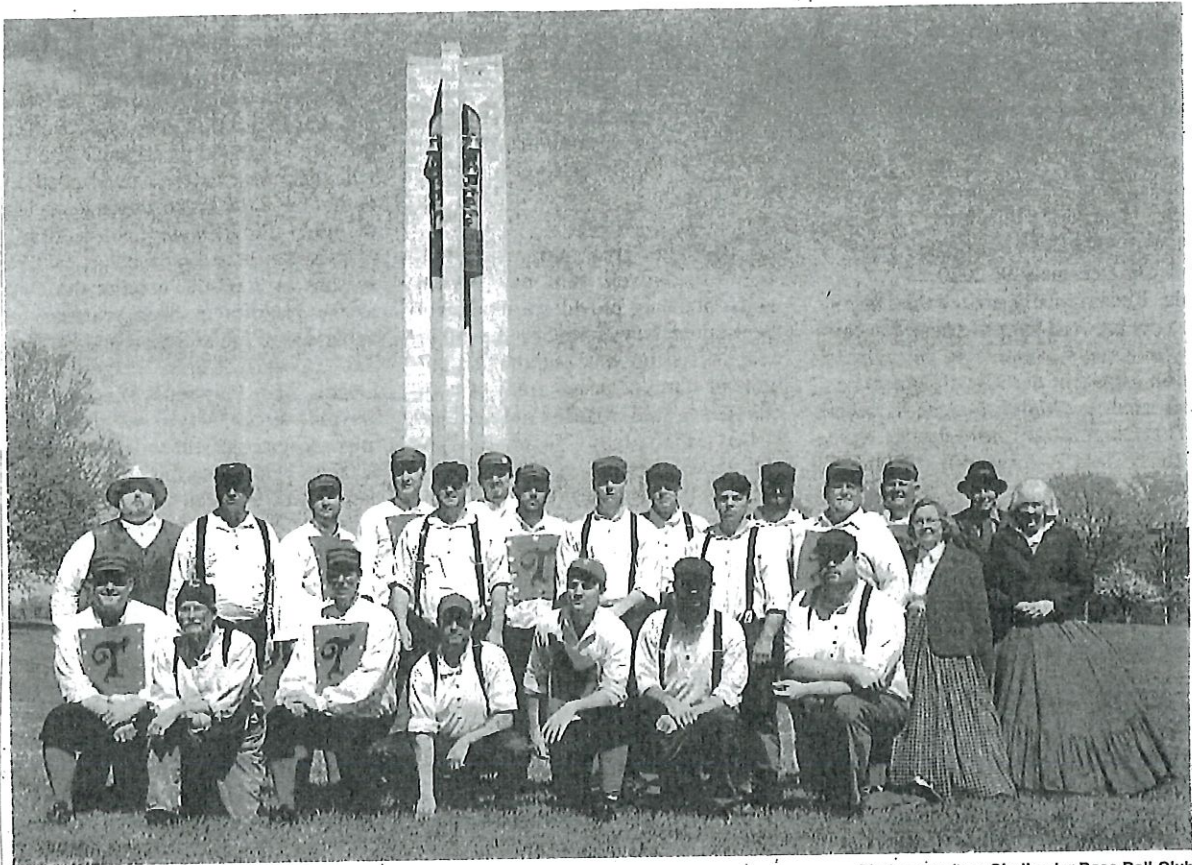
season - which runs from late April to early October - games are usually played on Sunday afternoons against other vintage clubs from the tri-state region.

The club is open to adult players of all ages, with active players ranging in age from their early 20s to late 50s. The team also has some scorers, umpires, and historical interpreters, which are important roles in the vintage base ball experience that can be performed by active senior citizens.

To learn more about the club, visit the Clodbusters on Facebook at www.facebook.com/clodbusterbbc or email clodbusterbbc@gmail.com.



Clodbuster Base Ball Club players

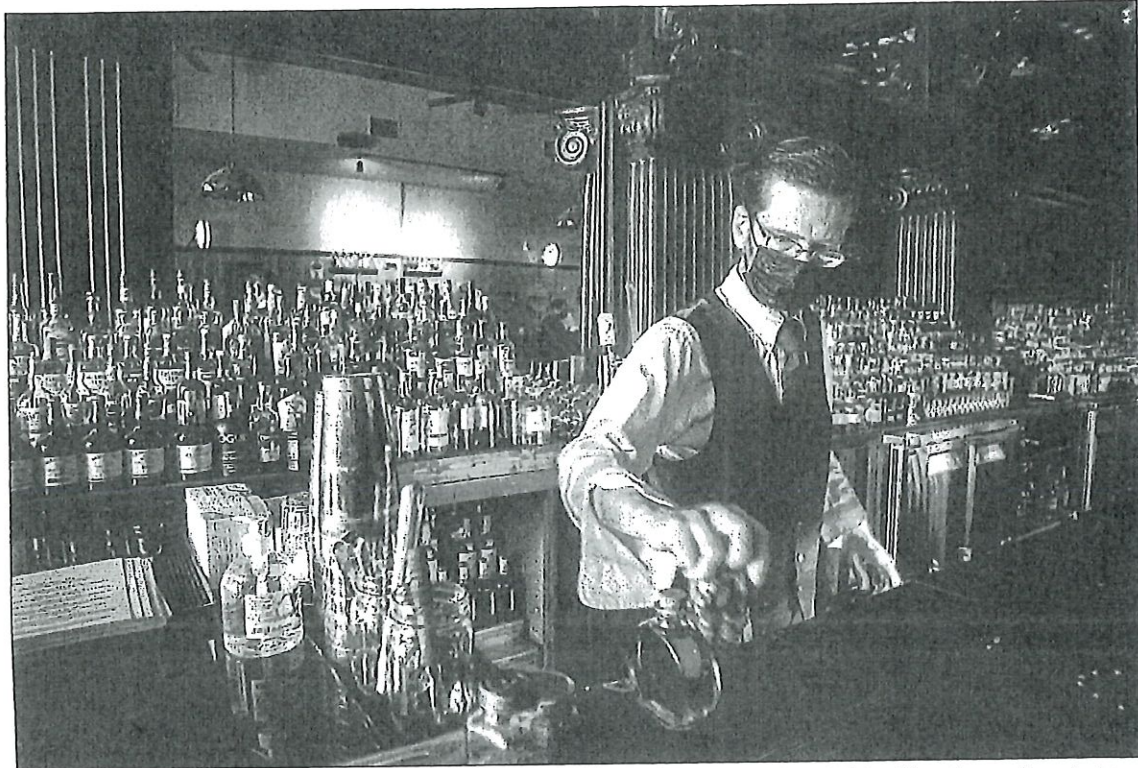


Photos courtesy Clodbuster Base Ball Club

The Clodbuster Base Ball Club after a vintage base ball match on the Clodbuster's home field in front of the Deeds Carillon at Carillon Historical Park in Dayton.

OR 2/17/2021

Curfew's end a relief for restaurants, bars



Century Bar barkeep Mark Pittman gets the place ready for the first Friday night without a curfew. Late Fridays and Saturdays "are prime, prime hours for us," says co-owner Joseph Head. JIM NOELKER / STAFF

Weekend hours after 10 p.m. are lucrative for many.

By **Cornelius Frolik**
Staff Writer

Ohio's curfew has been lifted and some local bars and restaurants said they will immediately resume more normal operating hours because later-night sales are important to their bottom lines.

For the last three months, businesses had to close by 10 p.m. or — more recently — 11 p.m., which was a major blow to establishments that rely on food and drink sales that come long after dark.

Local operators and owners say the curfew cancellation means they are regaining some of their

most profitable operating hours, and they insist longer hours, and later-night sales, won't make the establishments any less safe.

"There is no doubt our guests should feel safe," said Dan Apolito, co-owner of Archer's Taverns in Centerville and Kettering and Stone House Tavern in Waynesville. "All of our team members wear masks, constantly wash and sanitize their hands and understand the importance of providing a safe environment for our guests."

But public health officials and some community members say they hope getting rid of the curfew will not be misinterpreted as

meaning COVID-19 is no longer a serious threat and people can throw caution to the wind while out dining or drinking.

"We still have very high incidence of COVID in the community," said John Steele, public information specialist with Public Health-Dayton & Montgomery County. "Though it's been trending down, it doesn't take much to reverse that trend and have it go up again."

On Thursday, Ohio leaders rescinded a statewide curfew after hospitalization counts fell

Curfew lifted continued on A4

Curfew lifted

continued from A1

below 2,500 for a seventh straight day.

Curfew restrictions imposed in mid-November required Ohioans to stay home between 10 p.m. and 5 a.m. every day.

The curfew was supposed to last three weeks, but it was extended multiple times as COVID-19 cases skyrocketed.

But after case levels subsided, curfew hours were reduced by one hour in late January, to start at 11 p.m. instead of 10. Curfew restrictions were removed completely late this week.

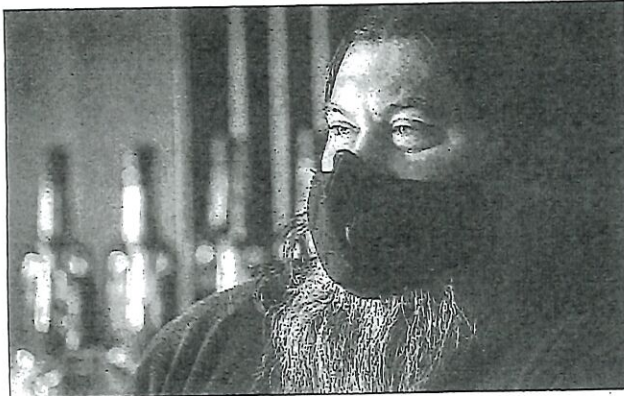
Friday and Saturday nights are some of the most lucrative and popular times for the Century Bar, said Joseph Head, co-owner of the renowned bourbon bar in downtown Dayton.

“Those are prime, prime hours for us on the weekends,” he said.

Since the curfew has ended, Century Bar probably will close by 1 a.m. during the week, but will be staffed until 2:30 a.m. on the weekends, Head said.

Head said later hours will be just as safe as earlier times, because staff and patrons will have follow all the same safety measures, and seating still remains at a fraction of its normal capacity, providing plenty of space between tables and customers.

Head also said later and



Friday and Saturday nights are some of the most lucrative and popular times for the Century Bar, said Joseph Head, co-owner of the renowned bourbon bar in downtown Dayton. JIM NOELKER / STAFF

longer hours also gives people additional time windows to visit the bar, which means they aren't all competing for the same slots and aren't rushing in for last call.

Most people who like to eat and drink later, past 10 or 11 p.m., tend to be younger professionals and people in their 20s and 30s, which made the curfew feel almost like a “young person's law,” he said.

Head said he thinks the 2020s soon will be like the roaring 1920s, and businesses will see foot traffic and sales snap back just as soon as enough people are vaccinated and COVID-19 is better under control.

“I think every weekend it's going to be a little bit better,” he said.

Oregon Express, on East Fifth Street in the Oregon District, will now remain open on

Fridays and Saturdays until midnight – which were its pre-pandemic hours.

Friday and Saturdays are the establishment's busiest days, and being forced to close early, especially at 10 p.m., meant missing out on sales and revenue, said Susan Bavaro, co-owner of Oregon Express.

The additional hour definitely will help, but it still might take time for customers to feel comfortable to come out and get back into their pre-curfew routines, she said.

Losing the curfew was a big step forward, and hopefully conditions will continue to improve so one day soon seating capacity and social distancing restrictions also can be eased, she said, noting her business is operating at about 50% capacity.

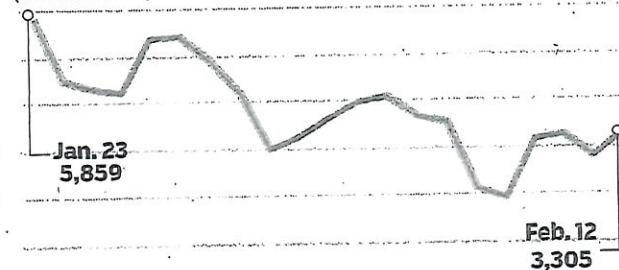
Bavaro said she thinks

Coronavirus cases in Ohio

Ohio had 934,742 total reported cases and 15,136 deaths* as of 2 p.m. Feb. 12.

New cases reported each day

(Difference from previously reported)



Cases by county

Area	Cases per 100,000 pop.	Total cases
Darke	9,686	4,951
Warren	9,164	21,499
Miami	9,140	9,779
Butler	8,883	34,032
Clark	8,828	11,881
Montgomery	8,670	46,097
Preble	8,414	3,440
Greene	7,792	13,163
Champaign	7,044	2,739

Source: Ohio Department of Health

Highest county rates

County	Cases per 100,000 pop.	Total cases
Pickaway	13,372	7,817
Marion	12,009	7,817
Putnam	11,589	3,924
Mercer	10,978	4,520

Lowest county rate

Ashtabula	5,452	5,302
-----------	-------	-------

*Note: ODH said that it “is currently reconciling COVID-19 deaths, including about 2,500 in today's count.... Newly reported deaths will be higher during the next few days...”

growing vaccinations and declining COVID-19 cases hopefully mean the end of the crisis is on the way and people will feel more comfortable going out.

Bavaro said right now she's not worried about overcrowding at bars in the Oregon District, and she believes the district will be in really good shape when it warms up and people can drink outside on

the street.

Apolito said he's optimistic that COVID-19 cases will continue to decline as more people receive the vaccine and the weather improves and people have opportunities to get out into the fresh air.

“We are working diligently to get back to as normal as possible,” he said. “We have seen tremendous support from our guests and their

confidence and willingness to dine out should only improve moving forward.”

Even businesses that aren't offering late-night hours are relieved the curfew is over, like TJ Chumps, which plans to keep its current operating hours, even though closing time is earlier than it was pre-pandemic.

The sports bar and restaurant – which has four local locations – right now closes at 11 p.m. Fridays and Saturdays, and 10 p.m. all other days.

But the curfew's cancellation means staff don't have to try to police guests to make sure they get out in time, said Blake Wright, corporate managing partner of TJ Chumps.

“We are in the hospitality business, so when our guests are here and having a good time, telling them they have to leave now, pull drinks at a specific time is a stress,” he said. “Also, any steps we can take to get back to ‘normal’ are more than welcome, even if they don't impact our day to day business.”

Steele, with public health, said it's possible people may let their guard down while drinking late into the night, increasing their exposure risk.

But he said the biggest concern about late night hours simply is that they give people more time to be around each other, increasing opportunities to spread infection.

“When you are out and about, try to limit your time and exposure to other people,” he said.

DDN

2/13/2021

Smith Gardens recognized by OCMA publication

The city of Oakwood's community treasure, Smith Gardens, was recently chosen for recognition in the Spring Edition of the Ohio City/County Management Association (OCMA) newsletter, and is featured on the OCMA website.

The Ohio City/County Management Association is the professional and educational association for appointed administrators serving cities, villages, townships and counties within Ohio. Its mission is to promote excellence in local government management and encourage personal and professional growth of local government administrators. OCMA solicited photographs of community facilities or events from jurisdictions across Ohio for inclusion



on the organization's website homepage. There were 55 entries submitted and four winners were selected. The website address is www.ocmaohio.org. "We are very pleased and honored to have our Smith Gardens recognized statewide by OCMA," said city Leisure Services Director Carol Collins.

Smith Gardens was given to the

city of Oakwood in 1974 by industrialist and Oakwood resident Carlton W. Smith. This living legacy is enjoyed by Oakwood residents and by citizens from across the region and beyond. Located at the northwest corner of Oakwood Avenue and Walnut Lane, Smith Gardens has been recognized statewide and nationally as one of

See **OCMA** on page 2 ►

► **OCMA** from page 1

Ohio's finest public gardens. Just shy of an acre, the gardens are beautifully landscaped and are open daily from sunrise to sunset.

Carlton Smith's characterized the gardens as "an intimate setting

and strolling place of rest... an open, green, colorful, quiet retreat on a busy street... a breathing space of green shade, and color for busy people."

Smith Gardens is a true treasure for the Oakwood community and the Dayton region.

OR 2/17/2021

Epley on District Appeals Court



On Monday, Feb. 8, former Oakwood City Councilman Christopher Epley was sworn in as a judge of the Second District Court of Appeals in Dayton. Holding the Bible for Epley during the ceremony was his wife, Eileen, as Judge Michael T. Hall recited the oath. Judge Epley, OHS 1987, is the second Oakwood graduate to serve on the Court of Appeals after Judge Frederick Young, OHS 1950.

OR 2/17/2021



When: March 16-19

Where: Zoom (Link Provided with RSVP)

Time: 11:00am - 1:00pm each day

Cost: \$15 per person

YOU'RE INVITED:

Annual Elected Officials Training

The Center for Local Government invites you to attend our 2021 Elected Officials Training. This event is broken down into 4 convenient "lunch and learn" topics. All sessions are from 11am until 1pm. Come to one, some, or all of the following:

Tuesday March 16th– Ohio Ethics, Records and Sunshine laws

- Presented by Attorney Laura Abrams
- This session will cover how to best ensure open government and ethical conduct, including open records, open meetings, and Ohio ethics law.

Wednesday March 17th– Local Government Finance

- Presented by Liberty Township Finance Director Michelle Gries and Miami Township (Clermont Co.) Finance Director Kelly Flanigan
- This session will cover what you need to know as an elected official about local government budgeting, fund accounting, debt, financial planning and a host of other topics.

Thursday March 18th– Elected Official / Staff Relations

- Presented by Sharonville Safety/Service Director Jim Lukas and Colerain Township Administrator Geoff Milz
- This session will cover how to have the best relationship between elected officials and your Administrator.

Friday March 19th– Looking forward to 2021 in Ohio– Local Government Issues

- Presented by Kent Skerritt of the Ohio Municipal League, Heidi Fought of the Ohio Township Association– other guests TBD
- This session will provide a look at the challenges and opportunities facing local government in 2021 as identified by statewide local government organizations.

TO SIGN UP: RSVP to the Center for Local Government no later than 10am on Tuesday March 16th by e-mailing LStuckey@C4LG.org.

Please provide an e-mail address for the training Zoom link and let us know which sessions you wish to attend.

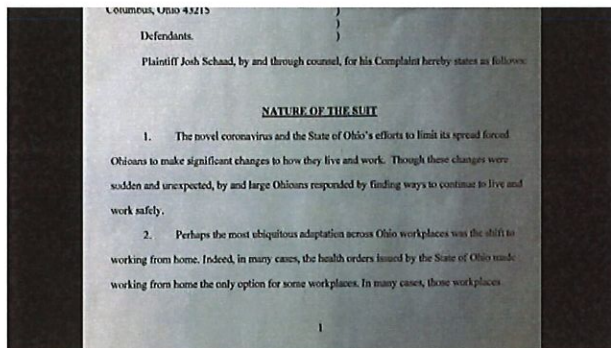
Lawsuit: Cincinnati shouldn't charge remote workers income tax

by James Pilcher, WKRC

Thursday, February 11th 2021



Volume 90%



Working remotely via video calls have become routine during the pandemic, including for the thousands of workers who used to pack office buildings downtown. But can cities like Cincinnati continue to charge income tax even if workers are working outside the city limits? That's the issue at the heart of a lawsuit filed this week against Cincinnati city leaders. (WKRC)

CINCINNATI (WKRC) – Working remotely via video calls have become routine during the pandemic, including for the thousands of workers who used to pack office buildings downtown.

But can cities like Cincinnati continue to charge income tax even if workers are working outside the city limits? That's the issue at the heart of a lawsuit filed this week against Cincinnati city leaders.

The answer could cost the city and others statewide tens of millions in revenue, even if it saves many on their tax bills.

Financial worker Josh Schaad of Blue Ash claims he telecommuted from home well before the pandemic, but still had his refund denied. The Buckeye Institute, a conservative think tank based in Columbus, filed on his behalf.

"The city of Cincinnati is unfairly and unlawfully taxing Mr. Schaad and others like him and using the pandemic, quite frankly, as an excuse," said Buckeye President and CEO Robert Alt. "I was actually really somewhat astounded that the city of Cincinnati denied Mr. Schaad his refund."

Last spring, the Ohio General Assembly allowed cities to tax remote workers in an emergency law passed at the onset of the pandemic. If the law is rescinded, Cincinnati could be out \$20 million dollars or more, according to some estimates.

City Councilman Steve Goodin, who was recently installed, says the number could be even higher. He worries it might force cuts to basic services like water, trash, police and fire. Goodin took over for fellow Republican Jeff Pastor, who stepped down temporarily after being charged with federal bribery charges late last year.

"We are exposed up to 60%. More than half of our revenue comes from folks who don't live in the city, who work in the city, who are taxed here," said

Goodin. "I also see it as something that is perhaps more imminent than some of my colleagues."

Cincinnati isn't the only city facing the issue. More than 600 municipalities in Ohio charge an income tax, according to the Ohio Municipal League and many of those workers in those cities have gone remote too.

The Buckeye Institute has filed two similar lawsuits against the city of Columbus, while a separate case in federal court is asking whether cities can charge income tax on remote workers in other states, much like Cincinnati does to workers in Kentucky and Indiana.

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOSH SCHAAD
4430 Boardwalk Ct.
Blue Ash, Ohio 45242

Plaintiffs,

vs.

KAREN ALDER, in her official
capacity as Finance Director
of the City of Cincinnati
801 Plum Street
Cincinnati, Ohio 45202

and

DAVE YOST, in his official capacity as
Ohio Attorney General
30 East Broad St.
Columbus, Ohio 43215

Defendants.

)
)
) CASE NO
)

) JUDGE:
)
)

) COMPLAINT FOR
) DECLARATORY AND
) INJUNCTIVE RELIEF
)
)
)

Plaintiff Josh Schaad, by and through counsel, for his Complaint hereby states as follows:

NATURE OF THE SUIT

1. The novel coronavirus and the State of Ohio's efforts to limit its spread forced Ohioans to make significant changes to how they live and work. Though these changes were sudden and unexpected, by and large Ohioans responded by finding ways to continue to live and work safely.

2. Perhaps the most ubiquitous adaptation across Ohio workplaces was the shift to working from home. Indeed, in many cases, the health orders issued by the State of Ohio made working from home the only option for some workplaces. In many cases, those workplaces

discovered that—subject to some minor inconveniences—employees could still successfully perform their jobs remotely, without physically setting foot in their offices.

3. It is well-established, however, that where an employee performs his or her work has tax consequences. Specifically, courts have allowed municipalities to impose income taxes on nonresidents only to the extent that the income was earned for work performed within the municipality's limits. Indeed, in 2015, the Ohio Supreme Court has held that “[l]ocal taxation of a nonresidents’ compensation for services must be based on the location of the taxpayer when the services were performed.” *Hillenmeyer v. Cleveland Bd. of Rev.* (2015), 144 Ohio St. 3d 165, 2015-Ohio-1623, ¶ 43.

4. The constitutional basis for taxing nonresidents based on work performed in the municipality was that the employee enjoyed the benefits of the city’s infrastructure and public safety services while performing work within the city. There was thus a direct fiscal relation between the work performed within the city’s limits and the city’s public expenditures, which contributed to the employee’s ability to work within the city.

5. But when employees are required to work outside of the city, that fiscal link is severed. In an attempt to ease the collection of municipal income taxes during the health crisis, the Ohio General Assembly enacted a provision in uncodified law requiring that work performed by an employee at his or her home as a result of the health crisis would be deemed to have been performed, for municipal tax purposes, at the employee’s regular place of business.

6. Although the General Assembly’s stated motive in enacting this provision was to clarify and simplify municipal income tax collection during the health crisis, allowing a municipality to tax employees without some fiscal relation between the municipality and the work performed violates the due process rights of those employees under the Fifth and

Fourteenth Amendments to the U.S. Constitution. Further, the Ohio Constitution is specific in the powers it grants to the General Assembly and municipal corporations. The Ohio Constitution does not authorize the General Assembly to expand the taxing power of municipalities.

7. Mr. Schaad brings this suit to challenge the constitutionality of the “deemed to have been performed” provision of H.B. 197 and the imposition of municipal income tax under that provision by the City of Cincinnati (“the City”).

8. Mr. Schaad was advised by the State of Ohio, and later by his employer, to stay out of his office in the City and instead to work from his home in Blue Ash, Ohio. The State then in H.B. 197 “deemed” the work to have been performed in the City of Cincinnati for tax purposes, thereby subjecting him to higher municipal income taxes, while at the same time depriving Blue Ash—the municipality in which Mr. Schaad was actually working—of potential tax revenue for the city services provided to him while he was working from home. The Orwellian operation of these two State requirements—the first advising Mr. Schaad to not work in his City of Cincinnati office, and the other deeming the fiction for the purpose of taxation that the Mr. Schaad did in fact work in the City of Cincinnati—offends the basic principles of equity, and the Due Process requirements of the United States and Ohio Constitutions.

PARTIES

9. Josh Schaad is a resident of the City of Blue Ash, Ohio. He is employed in the financial services industry. His employer’s usual place of business is located within the City of Cincinnati.

10. Before the COVID-19 pandemic, Mr. Schaad frequently would work from his home in Blue Ash in addition to other locations outside of Cincinnati. Mr. Schaad’s employer withheld Cincinnati municipal income tax from his pay, pursuant to R.C. 718.03. And each year,

Mr. Schaad tracked his days worked inside and outside of Cincinnati and applied for a tax refund pursuant to the City's codified ordinances and tax forms, which he always received.

11. Beginning in June of 2020, however, Mr. Schaad worked entirely from home in Blue Ash until returning to the Cincinnati office part time in December of 2020. On January 11, 2020, he applied for a refund, as he had in past years, and was denied.

Defendants and Related Parties

12. Defendant Karen Alder is the Finance Director of the City of Cincinnati, and in her official capacity is responsible for implementation of the City's tax ordinances and collection of municipal income tax. Pursuant to R.C. 2723.03, she is the proper statutory defendant in an action to enjoin illegal taxes or to recover taxes.

13. The City of Cincinnati Ohio is a chartered municipal corporation pursuant to Art. XVIII, Sec. 7 of the Ohio Constitution.

14. Defendant Dave Yost is the Attorney General of the State of Ohio, and in his official capacity is a necessary nominal party to this action pursuant to R.C. § 2721.12 (A).

Historical and Legal Background of Municipal Income Tax in Ohio

15. The Ohio Constitution does not explicitly grant municipalities the power to tax. Rather, Sec. 3, Article XVIII of the Ohio Constitution broadly authorizes municipalities "to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

16. During the early decades of the twentieth century, the Ohio Supreme Court held that Sec. 3, Article XVIII gave municipalities the power to levy certain types of taxes, but in dicta, expressed doubt whether that power extended to a municipal income tax. *See State ex rel. Zielonka v. Carrel* (1918), 99 Ohio St. 220, 228 ("It may be said in this connection that it is

clearly to be implied from the Constitution that municipalities are without power to levy an income or inheritance tax.”)

17. Subsequent courts, however, took a more expansive view of Sec. 3, Article XVIII, holding that “unless and until the State of Ohio enacts laws providing for an income tax, a municipality may do so¹.” *Stockwell v. City of Columbus*, 55 Ohio Law Abs. 168, 86 N.E.2d 822, 825 (Ohio Com.Pl.1949).

18. In 1950, the Ohio Supreme Court spoke authoritatively on the issue of both the constitutionality of municipal income taxes, and their application to nonresidents who worked within the municipality. In *Angell v. City of Toledo* (1950), 153 Ohio St. 179, the Court held that Section 3 of Article XVIII, along with Section 7 of XVIII (allowing a municipality to adopt a charter and exercise “all powers of local self-government”) invested municipalities with the authority to levy an income tax and that such a tax does not violate the due process clause when such tax is levied on a nonresident for work performed within the municipalities’ borders.

19. Section 13 of Article XVIII of the Ohio Constitution specifically grants the Ohio General Assembly the power to “limit the power of municipalities to levy taxes and incur debts for local purposes.” But the power to limit is not the power to *expand*, and the Ohio Constitution is notably silent regarding the General Assembly’s ability to *expand* municipal tax authority. Applying the well-established principle of legal interpretation that *expressio unius est exclusio alterius* to Section 13 of Article XVIII, the General Assembly would exceed its constitutional limitations were it to attempt to expand a municipality’s taxing power. Further, the Ohio Supreme Court has long held that the General Assembly may exercise only those powers

¹ The State of Ohio did, in fact, enact a statewide income tax in 1971, but did not preempt municipal income taxes.

delegated to it by the Ohio Constitution. *State ex rel. A Bentley and Sons v. Pierce*, 117 N.E. 6 (Ohio 1917); *State ex rel. Robertson Realty Co. v. Guilbert*, 78 N.E. 931 (Ohio 1906).

20. A decade later, in *McDonnell v. City of Columbus* (1961), 172 Ohio St. 95, the Ohio Supreme Court again relied upon the fiscal connection between the City's constitutional authority to tax income and the physical location where the employee earned that income. In *McDonnell*, the Court upheld the City's income tax on an employee of The Ohio State University reasoning that even though the employee worked for an arm of the State and on property owned by the State, he nevertheless performed his work and thus earned his income within the City of Columbus.

21. More recently, in *Hillenmeyer v. Cleveland Bd. of Revision*, a case involving municipal taxation levied on a professional athlete who played one game a year in Cleveland, the Ohio Supreme Court unanimously recognized the jurisdiction limits on municipal taxation, holding that “[b]eyond in personam taxing jurisdiction over residents, local authorities may tax nonresidents only if theirs is the jurisdiction ‘within which the income actually arises and whose authority over it operates *in rem*.’” *Hillenmeyer v. Cleveland Bd. of Rev.* (2015), 144 Ohio St.3d 165, 2015-Ohio-1623, 41 N.E.3d 1164, ¶ 42, citing *Shafer v. Carter*, 252 U.S. 37, 55, 40 S. Ct. 221, 64 L. Ed. 445 (1920).

22. Simply put, the Due Process Clause, as interpreted by the Ohio and U.S. Supreme Courts, allows municipalities to tax two—and only two—types of income: (1) income earned by residents who live in the municipality, and; (2) income earned by non-residents for work done within the municipality. *Hillenmeyer v. Cleveland Bd. of Rev.*, 144 Ohio St.3d 165 (2015), 2015-Ohio-1623, 41 N.E.3d 1164, ¶ 42, citing *Shaffer v. Carter*, 252 U.S. 37, 55, 40 S. Ct. 221, 64 L. Ed. 445 (1920).

23. The City's income tax ordinance as written respects this limitation, noting in its first section that: "The tax is an annual tax levied on the municipal taxable income of every person residing in or earning or receiving income in the City of Cincinnati." Cincinnati Ohio, Municipal Code, § 311-1 (b).

24. The City of Cincinnati's income tax rate through September of 2020 was 2.1%. The City currently imposes a 1.8% income tax.

The State's Response to COVID-19 and H.B. 197

25. On March 14, 2020, in response to the public health threat posed to Ohio residents by the COVID-19 virus, Ohio Governor Mike DeWine issued Executive Order 2020-01D ("the Emergency Declaration"), which declared a state of emergency, authorized the Ohio Department of Health to issue "guidelines for private businesses regarding appropriate work and travel restrictions, if necessary" and urged "[a]ll citizens . . . to heed the advice of the Department of Health and other emergency officials regarding this public health emergency in order to protect their health and safety." (See Emergency Declaration, ¶¶s 1,4,7).

26. On March 22, the State Director of Health issued an Order that required, subject to certain exceptions, "all individuals currently living within the State of Ohio . . . to stay at home or at their place of residence" ("the Stay-at-Home Order"). The Stay-at-Home Order further required that "[a]ll businesses and operations in the State," except "Essential Business and Operations" as defined in the Order, "cease all activity within the State . . ." (See Stay-at Home Order, ¶¶s 1-2).

27. The Stay-at-Home Order, however, allowed nonessential businesses to continue operating to the extent that the continued operation consisted "exclusively of employees or

contractors performing activities at their own residences (i.e., working from home.)” (Stay-at-Home Order, ¶2).

28. In light of the Governor’s Emergency Declaration and the advice provided by public health officials, and to protect employee health and slow the spread of COVID-19, Mr. Schaad’s employer advised him and its other employees to work from home beginning in March of 2020.

29. Mr. Schaad continued to work under essential employee status, going into the Cincinnati office occasionally as he had before. However, when the return-to-work policy from his employer became more stringent in June, 2020, Mr. Schaad began working from home full time in compliance with his employer’s wishes.

30. To heed his employer’s request, and to comply with the Stay-at-Home Order, Mr. Schaad began working from his home five days per week (instead of his typical two or three days per week) starting on June 1, 2020. He did not return to his Cincinnati office until December, 2020, and then only did so on a part time basis.

31. While working from home, Mr. Schaad has performed all of his duties from Blue Ash, Ohio.

32. On March 28, 2020, the Governor signed into law H.B. 197, a measure designed to address various aspects of the health crisis. In that legislation, the General Assembly provided that employees working from home would be retroactively deemed to be working, for municipal income taxation purposes, at their typical work location.

33. Specifically, H.B. 197 provided that:

“[D]uring the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and for thirty days after the conclusion of that period, ***any day on which an employee performs personal services at a location, including the employee's home***, which the employee is required to report for

employment duties because of the declaration *shall be deemed to be a day performing personal services at the employee's principal place of work.*"

(H.B. 197 Sec. 29, as enrolled (*emphasis added*)).

34. Mr. Schaad's employer has withheld Cincinnati income tax on all of his income in 2020.

35. On January 11, 2020, Mr. Schaad applied for a refund of tax withholdings for days when he worked outside of the City, specifically, January 1 through December, 2020.

36. The City of Cincinnati, through its Tax Department denied any refund to Mr. Schaad, citing H.B. 197.

37. The City of Cincinnati has made clear its policy that, pursuant to H.B. 197, it will not provide any refunds of withheld taxes on the basis that the taxpayer was working from home and the income was earned outside of the City. Specifically, the City's Finance and Budget Department's website states:

Refunds for days worked at home during the COVID-19 Emergency

Under Ohio House Bill 197, during the COVID-19 Health Emergency employers were expected to withhold Cincinnati tax for employees working from home rather than their normal work location within Cincinnati, regardless of the location of their home. This would be for the duration of the health emergency plus 30 days. Therefore, there is no refund opportunity when filing a tax return for 2020 if you are working at home due to COVID-19.

<https://www.cincinnati-oh.gov/finance/income-taxes/>, accessed 1/26/21.

COUNT ONE: ACTION FOR DECLARATORY JUDGMENT
BASED ON UNCONSTITUTIONALITY OF H.B. 197

38. Mr. Schaad restates the allegations of Paragraphs 1 through 37 and incorporates them as if fully rewritten here.

39. Ohio R.C. §2721.03 provides that "any person whose rights, status, or other legal relations are affected by a constitutional provision, statute . . . may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule,

ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.”

40. Here, the Plaintiff seeks a declaration that Sec. 29 of H.B. 197, which for municipal income tax purposes deems income earned by persons working from home due to the health crisis to have been earned at the employee's principal place of work, is an unconstitutional violation of his Due Process rights as secured by the Fifth and Fourteenth Amendments to the U.S. Constitution, as well as Art. I, Sec. 1 of the Ohio Constitution.

41. Specifically, Sec. 29 of H.B. 197 purports to remove the well-established requirement that a government entity must have either in personem jurisdiction over the person to be taxed or in rem jurisdiction over the property to be taxed. Or, as the *Angell* Court put it, there must be some “fiscal relation” between the municipality, the taxpayer, and the income being taxed. In this case, the City of Cincinnati, pursuant to authority purportedly arising under Sec. 29 seeks to tax income of nonresidents that was earned outside the City limits, where there is neither nexus nor fiscal relation between the City and the income being taxed.

42. Mr. Schaad has had money withheld from his wages for work that was done outside of the City and over which the City has no taxing jurisdiction. Mr. Schaad has requested a refund of those withheld taxes and City has refused, based on H.B. 197.

43. Mr. Schaad therefore seeks a declaration that the City of Cincinnati’s taxing of nonresidents on income earned outside of the City is unconstitutional.

44. The municipal income taxes in Blue Ash, where Mr. Schaad lives and has worked since June 1, 2020 is lower than the 2.1% income tax rate imposed by the City through October 1, of 2020 and lower than the 1.8% rate imposed now. Simply put, Mr. Schaad was advised by the State of Ohio, and later his employer, to perform his professional duties from his home

outside of the City of Cincinnati, and then was deemed to have worked in the City for tax purposes, thereby financially penalizing him with higher taxes charged by a municipality in which he did not work and does not reside.

45. Accordingly, Plaintiff respectfully requests that this Court declare Sec. 29 of H.B. 197, and all actions taken by the City of Cincinnati in reliance upon it to be unconstitutional and therefore void.

COUNT TWO: ACTION FOR DECLARATORY JUDGMENT BASED ON
INAPPLICABILITY OF H.B. 197 TO PLAINTIFF

46. Mr. Schaad restates the allegations of Paragraphs 1 through 45 and incorporates them as if fully rewritten here.

47. Section 29 of H.B. 197, by its own terms limits its applicability to persons working from home because of the health emergency. Specifically, H.B. 197 states that “any day on which an employee performs personal services at a location, including the employee's home, to which the employee is required to report for employment duties *because of the [Emergency Declaration]* shall be deemed to be a day performing personal services at the employee's principal place of work.”

48. Before the pandemic, Mr. Schaad, by prior arrangement with his employer was typically working from home or travelling two to three days per week out of a five-day work week.

49. This pre-existing arrangement between Mr. Schaad and his employer would have continued regardless of the pandemic or the Emergency Declaration.

50. Simply put, Mr. Schaad was already working from home most of the time before the health emergency. The Emergency Declaration has thus resulted in Mr. Schaad working

from home approximately two additional days per week compared to his pre-pandemic employment arrangement.

51. In the past, Mr. Schaad routinely applied for and received a tax refund for those days that he worked outside of the City—which in his case is the majority of the work week.

52. In 2020, however, the City has taken the position that all of his income is now subject to Cincinnati's municipal income tax, even though a small percentage of his remote work is attributable to the Emergency Order.

53. Accordingly, assuming that the Court does not find Section 29 unconstitutional on its face, Mr. Schaad is entitled to a declaration that under H.B. 197, he is subject to Cincinnati municipal income tax only on the additional days that he worked from home "because of" the Emergency Order and not days on which he worked from home pursuant to his pre-existing agreement with his employer.

COUNT THREE: ACTION UNDER R.C. 2723.01
TO ENJOIN AND RECOVER ILLEGAL TAX

54. Mr. Schaad restates the allegations of Paragraphs 1 through 53 and incorporates them as if fully rewritten here.

55. Pursuant to Ohio R.C. 2723.01, et seq., "Courts of common pleas may enjoin the illegal levy or collection of taxes and assessments and entertain actions to recover them when collected, without regard to the amount thereof, but no recovery shall be had unless the action is brought within one year after the taxes or assessments are collected."

56. As set forth above, The City of Cincinnati's levy of an income tax on income earned by nonresidents outside City limits and with no fiscal relation to the City, as defined by governing Ohio Supreme Court authority, is unconstitutional and thus illegal.

57. Mr. Schaad properly sought a refund from the City of Cincinnati Finance Department by filing his municipal tax return and completing the appropriate sections to request a refund.

58. The City of Cincinnati, however, has refused to provide the claimed refund. Mr. Schaad has thus not paid municipal income tax voluntarily for the period in which he has been working exclusively from his home outside of the City.

59. Mr. Schaad has suffered and continues to suffer irreparable harm in the form of a continuing violation of his due process rights. Accordingly, Mr. Schaad is entitled to a preliminary and permanent injunction enjoining the City of Cincinnati from collecting or requiring his employer to withhold wages for the payment of municipal income tax on income earned outside the City of Cincinnati based on H.B. 197, and requiring the City of Cincinnati to remit or otherwise refund any withholding of municipal income taxes for income earned while he was working from home or otherwise outside of the City of Cincinnati.

WHEREFORE, Plaintiff prays for the following relief:

- (1) As to Count One, a declaration stating and Order holding that Sec. 29 of H.B. 197 of the 133rd Ohio General Assembly is unconstitutional and void;
- (2) As to Count Two, in the alternative, to the extent that the Court finds that Section 29 of H.B. 197 is valid, a declaration that his Cincinnati municipal tax liability is limited to days (if any) that he worked from home because of the Emergency Declaration and not to days that he worked outside of the City pursuant to the pre-existing arrangement with his employer under which he performed his work from home or elsewhere outside the City.

- (3) As to Count Three, a preliminary and permanent injunction enjoining the collection of municipal income taxes from nonresidents on income earned outside of the City of Cincinnati and a refund of all withholding or payments already collected on such income; or, in the alternative, a preliminary and permanent injunction enjoining the collection of municipal income taxes from nonresidents on income earned outside the City of Columbus on work that was performed outside the City due to a pre-existing agreement or similar arrangement of assignment with the nonresident's employer rather than the Emergency Declaration and a refund of all withholding or payments already collected on such income; and
- (4) All costs and fees, including attorneys' fees, and any additional relief the Court deems equitable; and
- (5) Because this Complaint seeks declaratory judgment on a purely legal issue of pressing public importance, the Plaintiff respectfully requests that the Court set an expedited briefing and hearing schedule.

Respectfully submitted,

/s/ Jay R. Carson
Jay R. Carson (0068526)
Robert Alt (0091753)
The Buckeye Institute
88 East Broad Street, Suite 1300
Columbus, Ohio 43215
(614) 224-4422
Email: robert@buckeyeinstitute.org

Attorneys for Plaintiff
Josh Schaad

Klopsch, Norbert S.

From: Kristi Hale <hale@wrightlibrary.org>
Sent: Thursday, February 18, 2021 1:27 PM
To: Collins, Carol D.; Klopsch, Norbert S.
Subject: Project update

Hi Norb and Carol,

I wanted to touch base with you both briefly to let you know that the Library project is not going to include a children's learning area in Kathryn Wright Park. Two major factors caused us to eliminate this scope from the project:

- The cost for construction was going to be more than \$60K, and we needed to trim costs
- It was going to add a lot of impervious surface on the site, requiring a large drainage pipe that would have threatened the tree roots of the park.

Just wanted to keep you in the loop as we finalize all the elements of the project. Let me know if you have any questions,

Kristi



Kristi J. Hale *Director*
Wright Memorial Public Library

1776 Far Hills Avenue,
Oakwood, OH 45419-2531
Office phone: 937 250-6824 F 937 294-8578
hale@wrightlibrary.org | wrightlibrary.org

February ____, 2021

(RECIPIENT NAME)
(ADDRESS)
(CITY, STATE ZIP)

Re: Requirements for private fire hydrants

Dear (RECIPIENT):

This letter is in reference to your privately-owned fire hydrant.

The Oakwood Public Safety Department relies on fire hydrants located strategically throughout the city to deliver water wherever needed for fire suppression. The network includes about 350 city-owned hydrants and 15 privately-owned hydrants. The purpose of this letter is to inform you about new requirements that apply to privately-owned hydrants such as yours.

Background

Many owners of private hydrants probably do not think about them often, if ever. They pay a monthly hydrant fee (\$12.50 in Oakwood, \$25.00 outside of Oakwood), inform their homeowner's insurance carrier, and assume that the hydrant is ready for the next emergency. What they often overlook is the fact that the monthly fee is only a connection fee for unmetered emergency water. It does not include testing or maintenance of the hydrant.

All city-owned hydrants are tested and maintained on an annual basis to ensure they are operating within specifications established by the American Water Works Association (AWWA) and the National Fire Protection Association (NFPA).¹ This ensures reliable function and readiness in case of emergency.

Given that they are not city property, the city does not test or maintain privately-owned hydrants, many of which are decades old. We have no way to know whether a particular private hydrant is functional, whether the valves work as intended, or whether it has become broken or at risk of breaking due to age, wear, corrosion, and exposure

¹ See AWWA M17 (*Fire Hydrants: Installation, Field Testing and Maintenance*) and NFPA 291 (*Recommended Practice for Fire Flow Testing and Marking of Hydrants*).

to the elements over time. Some private hydrants are installed without watch valves (adjacent shut-off valves), which means they cannot be individually shut off in the event of a break or malfunction. Also, some of the private hydrants in Oakwood are the older "Bourbon"-type, rather than the newer "Eddy"-type, which means they are not compatible with modern fire connections. (See enclosed photo for illustrations of the two hydrant types.)

New Requirements

For the above-stated reasons – lack of testing, age/wear, and compatibility issues – the Safety Department is unable to rely on private hydrants as a potential source of water in a fire emergency. In fact, in the interest of safety we must currently disregard private hydrants entirely. In an emergency every second matters, and we cannot risk taking the time to hook up to a hydrant that may not be functional.

As a result, the city is instituting the following requirements for private hydrants, effective this year (2021), to ensure that they are maintained for reliability and ready for use to protect property when needed:

1. **Compatibility requirement.** Effective August 31, 2021, all private hydrants connected to the city water system must be of the newer "Eddy" type, installed per city specification 22-6, to ensure compatibility with current fire-fighting equipment. The owner of any "Bourbon" type hydrant must replace it with an "Eddy" type hydrant. Alternatively, you may elect to disconnect your "Bourbon" type hydrant from the city water system, cap the connection, and remove the hydrant.

Whether you choose to replace or remove your hydrant, please note that the work must be done by a properly-licensed contractor, with the appropriate permit, and must be completed on or before August 31, 2021.

If in doubt as to which kind of hydrant you have, please contact the Public Works Department for guidance.

2. **Testing/certification requirement.** Effective August 31, 2021, all private hydrants connected to the city water system must meet the same standards as city-owned hydrants. This means your private hydrant must be annually tested by a properly-licensed contractor for compliance with the standards identified on page 1 of this letter.

We are in the process of developing a form that your contractor will use to certify that your hydrant functions within proper specifications. The form will be available on the city website, www.oakwoodohio.gov, or at the Foell Public Works Center beginning on March 1, 2021. Please note that annual testing must be performed,

and the form must be submitted to the Public Works Department, no later than August 31 of each year, beginning in 2021.

We understand that you may have questions about these new requirements. If so, please contact Captain Kevin Pruszynski at 937-298-2122 or pruszynski@oakwood.oh.us.

Sincerely,

Alan J. Hill, C.L.E.E.,
Public Safety Director

AJH/jr

c: K. Douglas Spittler, P.E., Director of Public Works & Engineering

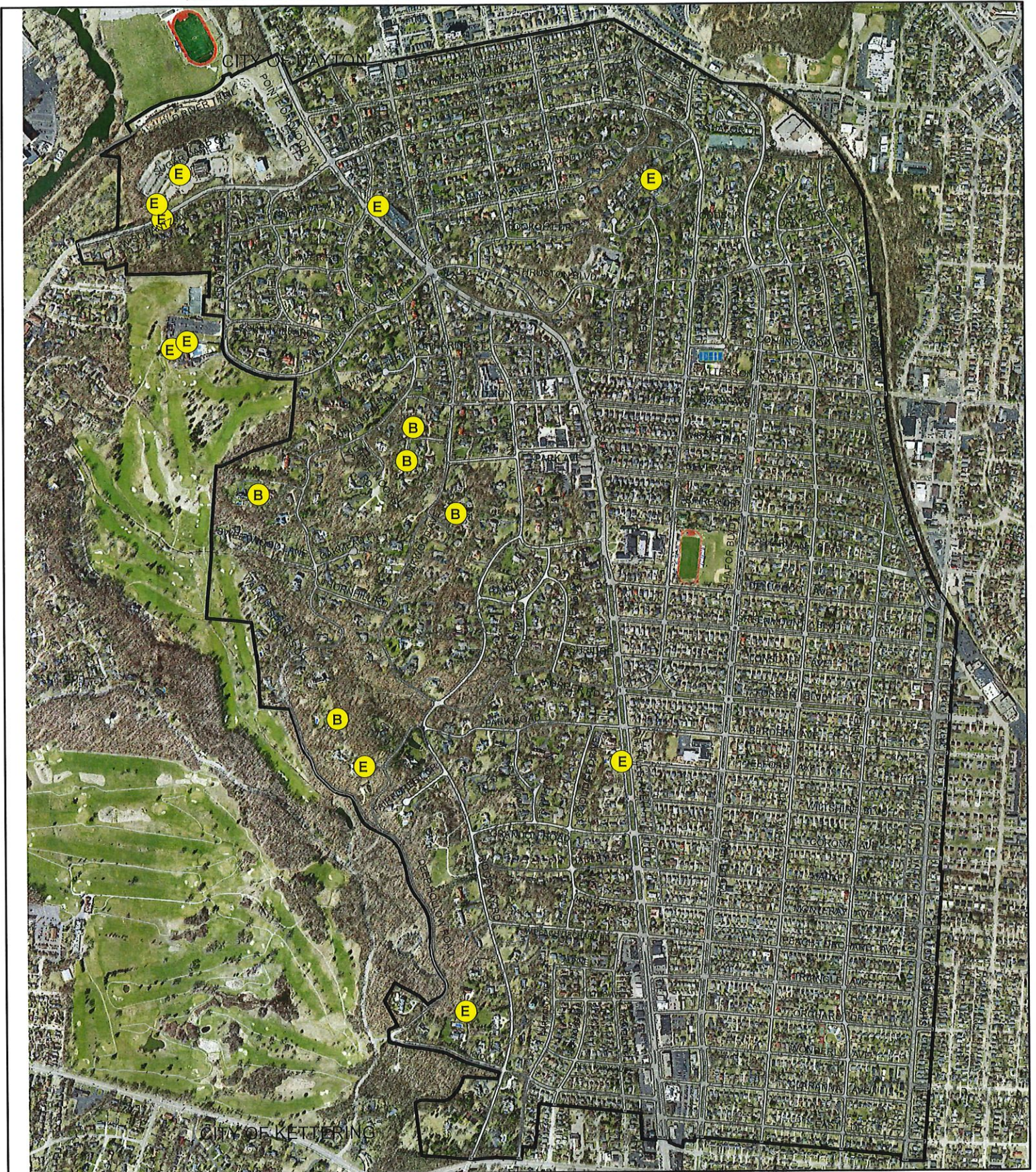


OLDER "BOURBON" TYPE HYDRANT



NEWER "EDDY" TYPE HYDRANT

CITY OF OAKWOOD PRIVATE HYDRANTS



Legend

E MAKE: EDDY

B MAKE: BOURBON

PRIVATE FIRE HYDRANTS

TOTAL COUNT: 15



Total Bourbon: 5

Total Eddy: 10

LOCATION	OWNER(S)	HYDRANT #	MAKE	CONNECTION	BILLING RATE
555 Kramer Rd	Dayton Country Club	42-12H	Eddy	6"	25.00
555 Kramer Rd	Dayton Country Club	42-16H	Eddy	6"	25.00
1701 Far Hills Ave	Brookdale Oakwood	13-24H	Eddy	8"	12.50
Deep Hollow Ln	Kristin E. Carpenter (2200 Deep Hollow Ln), Donald L. Phlipot (2520 Deep Hollow Ln)	22-29H	Eddy	4"	12.50
245 Park Rd	Kevin Nels	33-6H	Eddy	4"	12.50
255 Park Rd	Steven and Dayan Harlamert	33-8H	Bourbon	4"	12.50
Lookout Ridge	Christopher Becker (432 Lookout Ridge); Diane and Randolph Sawyer (446 Lookout Ridge); William and Melanie Boyce (456 Lookout Ridge); Ellen C. Walters (474 Lookout Ridge); Thomas Routsong (494 Lookout Ridge)	28-8H	Eddy	6"	12.50
Briar Hill Rd	Walter Maimon (19 Briar Hill Rd); Patricia Duning (36 Briar Hill Rd); Paige J. Benedict (43 Briar Hill Rd); Marilyn and John Reed (46 Briar Hill Rd); Karen Gagel (56 Briar Hill Rd)	26-21H	Bourbon	4"	12.50
Walnut Ln	City of Oakwood (11 Walnut Ln); Timothy Hawk (20 Walnut Ln); Deborah Brady (21 Walnut Ln); William and Jennifer Almoney (30 Walnut Ln); Jon Sebaly (31 Walnut Ln); Palaniappan Muthappan (50 Walnut Ln); Kili and Erhardt Preitauer (55 Walnut Ln)	35-11H	Bourbon	4"	12.50
Walnut Ln	City of Oakwood (11 Walnut Ln); Timothy Hawk (20 Walnut Ln); Deborah Brady (21 Walnut Ln); William and Jennifer Almoney (30 Walnut Ln); Jon Sebaly (31 Walnut Ln); Palaniappan Muthappan (50 Walnut Ln); Kili and Erhardt Preitauer (55 Walnut Ln)	35-13H	Bourbon	4"	12.50
1215 Runnymede Ln	Tim and Lena White	41-3H	Bourbon	6"	12.50
105 Sugar Camp Cir	Oakwood Investment Group	43-3H	Eddy	8"	14.00*
105 Sugar Camp Cir	Oakwood Investment Group	43-4H	Eddy	8"	14.00*
105 Sugar Camp Cir	Oakwood Investment Group	43-5H	Eddy	8"	14.00*
333 Oakwood Ave	Le Continental Assoc.	37-29H	Eddy	6"	12.50

*There are 3 private hydrants at Sugar Camp, but they function as hydrants and as fire suppression lines. They are billed as 2 fire suppression lines (total monthly cost: \$42.00) rather than 3 hydrants (total monthly cost: \$37.50).

2021 YEAR END COMMITTEE NEEDS

 February 1 Appointment
 March 1 Appointment

<u>Committee</u>	<u>Term</u>	<u>Name</u>	<u>Phone</u>	<u>Appt</u>	<u>New Term</u>	
					<u>Yes</u>	<u>No</u>
Planning Commission	4	Andy Aidt, Chair	(937) 286-7478	6/2005	X	
Board of Zoning Appeals	5	Kevin Hill, Vice Chair	(401) 662-9732	6/2011	X	
Board of Health	5	Dr. Elizabeth Maimon	(937) 260-0673	12/2015	X	
Budget Review	4	(A) John Jervis	(937) 470-1623 (h) (937) 225-6744 (o)	1/2013	X	
		(B) Bill Frapwell, Vice Chair	(937) 298-7787 (h) (937) 223-8378 (o)	2/1993	X	
		(C) Nick Endsley	(952) 210-7253 (h) (937) 222-2500 (o)	2/2017		X
		(D) Yusaku Kawai	(937) 369-7272	2/2017	X	
		(E) Ella Himes	(937) 298-2943	12/2004	X	
		(E) Ellen Fodge	(937) 299-3816	12/2004	X	
		(E) Doug Kinsey	(937) 367-1060 (h) (855) 752-6644 (o)	1/2013	X	
		(F) Chas Kidwell	(937) 672-0212 (h) (937) 449-6739 (o)	1/2017	X	
Beautification Committee	3	(G) Pete Luther	(937) 298-2607 (h) (937) 847-4004 (o)	1/2013	X	
		Katy Dalrymple, Chair	(937) 298-1785	2/2005		
		Nancy Drozd	(937) 294-6266	6/2011		
		Geoffrey Owens	(937) 344-5125	7/2014		X
		Stanley Herr	(937) 298-3729	6/2008		
		Gregg Smith	(937) 689-1721	6/2011		
		Ted Kircher	(937) 285-2229	6/2018		
Property Maintenance	5	Heidi Susta	(937) 532-7375	6/2018		X
		(B) Kip Bohachek, Chair	(937) 293-0364	1/1992		
		(E) Larry Lamb	(937) 298-5651	9/2016		
Tax/Water & Sewer/Assembly	3	(E) Susan Herman	(937) 294-2942	2/2001		
		Arik Sherk	(937) 293-0580 (h) (937) 443-6757 (o)	1/1994	X	
ADA Compliance Committee	3	William Stephens	(937) 298-6161 (h) (937) 293-6760 (o)	1/1992	X	

Budget Review Committee

- Need three new members in Precinct C to replace Leigh Turben, Nick Endsley and AJ Lewis.

Beautification Committee

- Need new members to replace Dr. Apt, Jane Lieberth, Geoffrey Owens and Heidi Susta.

Property Maintenance Board

- Need new member from District D to replace Jane Lieberth.

BZA

- Need new member to replace Dan Deitz.



Oakwood High School won the national Academic Decathlon title in 2019. The event was canceled in 2020 due to the pandemic.

Academic Decathlon team wins 10th straight regional title

Contributed Report

The Oakwood High School Academic Decathlon team is headed to state competition after winning a 10th consecutive Regional Championship title. The competition, which was held virtually, lasted from Jan. 22 through Feb. 6.

"The fact the technology exists to allow the competitions to continue virtually is a rewarding experience for our students. The students have adapted to the changes

and risen to the challenges they have experienced," Academic Decathlon Coach Lori Morris said.

Natalie Connelly, Luke Smallwood and Isaiah Rudy earned the top overall individual scores in their respective GPA divisions. Smallwood's score was the top individual score of the entire competition.

While Connelly says she and her team members have missed some of the collaborative elements of competing in-person, she's impressed

with what United States Academic Decathlon has been able to accomplish.

"USAD did a commendable job organizing everything and making it feel similar to how it has been in past years. I really appreciate still being able to do speech and interview and having our same competition season despite the circumstances. They've made sure I can still have a great last year in the program."

The state competition is scheduled for March.

DDN 2/19/2021

**OAKWOOD COMMUNITY IMPROVEMENT CORPORATION
MONTGOMERY COUNTY**

BASIC AUDIT

FOR THE YEARS ENDED DECEMBER 31, 2020 - 2019

**OHIO AUDITOR OF STATE
KEITH FABER**



OHIO AUDITOR OF STATE KEITH FABER



One First National Plaza
130 West Second Street, Suite 2040
Dayton, Ohio 45402-1502
(937) 285-6677 or (800) 443-9274
WestRegion@ohioauditor.gov

Oakwood Community Improvement Corporation
Montgomery County
30 Park Avenue
Oakwood, Ohio 45419

We have completed certain procedures in accordance with Ohio Rev. Code Section 117.01(G) to the accounting records and related documents of the Oakwood Community Improvement Corporation, Montgomery County, (the Corporation) for the years ended December 31, 2020 and 2019.

Our procedures were designed solely to satisfy the audit requirements of Ohio Rev. Code Section 117.11(A). Because our procedures were not designed to opine on the Corporation's financial statements, we did not follow *generally accepted auditing standards*. We do not provide any assurance on the Corporation's financial statements, transactions or balances for the years ended December 31, 2020 and 2019.

The Corporation's management is responsible for preparing and maintaining its accounting records and related documents. Our responsibility under Ohio Rev. Code Section 117.11(A) is to examine, analyze and inspect these records and documents.

We obtained written representation from the governing Board that the Corporation had no cash, assets, liabilities, revenues or expenses during the years ended December 31, 2020 and 2019.

Based on the results of our procedures, we found the following significant compliance or accounting issues to report.

Current Year Observations

1. **Ohio Rev. Code § 149.43 (E)(2)** states, in part, all public offices, "shall adopt a public records policy for responding to public records requests."

Ohio Rev. Code § 149.43 (B)(2) states, in part, "a public office shall have available a copy of its current records retention schedule at a location readily available to the public."

The Corporation did not have a formally adopted public records policy or records retention schedule.

Failure to formally adopt a public records policy and records retention schedule could result in the Corporation not responding to public records requests and maintaining records in accordance with the Ohio Revised Code.

Blank Signature

Signature name
Signature Title
Columbus, Ohio

February 18, 2021

Klopsch, Norbert S.

From: Amanda M. Stidham <AMStidham@ohioauditor.gov>
Sent: Friday, February 19, 2021 11:11 AM
To: Jacques, Robert
Cc: Duncan, William; Klopsch, Norbert S.; Stafford, Cindy
Subject: RE: [External]RE: Oakwood CIC Basic Audit Report

Good Morning,

Thank you for providing the information below, I forwarded it to our legal team for their review. I will let you know their conclusions when they provide them to me.

Thank You,
Amanda



From: Jacques, Robert <Jacques@oakwood.oh.us>
Sent: Friday, February 19, 2021 11:02 AM
To: Amanda M. Stidham <AMStidham@ohioauditor.gov>
Cc: Duncan, William <duncan@oakwood.oh.us>; Klopsch, Norbert S. <Klopsch@oakwood.oh.us>; Stafford, Cindy <stafford@oakwood.oh.us>
Subject: [External]RE: Oakwood CIC Basic Audit Report

*** Auditor of State Security Notice *** This e-mail is from an external source. Think before you click links or open attachments.

Ms. Stidham,

Finance Director Cindy Stafford shared with me your draft audit report for Oakwood Community Improvement Corporation ("Oakwood CIC"), which is attached. The draft report notes that the Oakwood CIC has not formally adopted its own public records policy or records retention schedule, and refers to this as a "significant compliance or accounting issue." We respectfully disagree with your office's determination for the following reasons:

1. Since its incorporation in 1976, the Oakwood CIC has been administered by a board of six trustees comprised of all five members of Oakwood City Council and the Oakwood City Manager. In other words, the City and the Oakwood CIC operate via shared leadership structures.
2. The City of Oakwood has had a comprehensive public records policy in place since at least May 14, 2008 (Oakwood Administrative Policy No. 7).

3. All City employees, officials, and agents are required to follow the City's administrative policies, including Oakwood Administrative Policy No. 7.
4. The City of Oakwood has had RC-2 records retention schedules in place for many years at the city level and at the department level.
5. All City employees, officials, and agents are required to follow the City's approved RC-2 records retention schedules.
6. Ordinance No. 3089, adopted by Oakwood City Council on May 7, 1976, formally designated Oakwood CIC as an agency of the City.
7. Agency is "a relationship between two persons, by agreement or otherwise, where one (the agent) may act on behalf of the other (the principal) and bind the principal by word and actions." (Agency, Black's Law Dictionary (6th ed. 1991).) It has also been described as "the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." (Restatement 2d, Agency §1.) In other words, the Oakwood CIC acts on the City's behalf, with the City's consent, and subject to the City's control.
8. Even if the Oakwood CIC were not an agent of the City, the Oakwood CIC does not maintain any public records independently from the City. All Oakwood CIC public records are City public records.
9. Since the Oakwood CIC has always been inactive and has never had any accounting transactions since its incorporation in 1976, it is impossible for this matter to be a "significant compliance or accounting issue."

Based on the foregoing, it is our position that the Oakwood CIC is an agent of the City and is not required to adopt its own, separate, public records policy or retention schedule. As an agent of the City, the Oakwood CIC is subject to all City policies. This includes the City's public records policy and records retention schedules. Since the City maintains a public records policy and retention schedules in full compliance with Sections 149.43(B)(2) and (E)(2) of the Ohio Revised Code, the Oakwood CIC is likewise in full compliance.

Regards //Rob Jacques

Robert F. Jacques, Esq. | Law Director
 City of Oakwood | 30 Park Avenue | Oakwood, Ohio 45419
 T: (937) 298-0600
 F: (937) 297-2940
Jacques@oakwood.oh.us | www.oakwoodohio.gov



----- Forwarded message -----
 From: "Amanda M. Stidham" <AMStidham@ohioauditor.gov>
 Date: Feb 18, 2021 7:22 AM
 Subject: Oakwood CIC Basic Audit Report
 To: "Stafford, Cindy" <stafford@oakwood.oh.us>
 Cc:

Good Morning Cindy,

I hope you're doing well! I've attached the draft report for the Oakwood CIC for your review. As Kevin mentioned to you during fieldwork, this is the first year we've been required to test public records and open meetings requirements as a part of basic audits which resulted in an exception in the report. I wanted to send this to you for review prior to sending

to the entire Board in case you have any questions about the required testing or reported exception. I'll forward the report to the remaining recipients once I hear back from you.

We sincerely appreciate all of your help with getting this engagement completed so quickly!

Thanks,
Amanda



Amanda Stidham, CPA, CFE
Senior Audit Manager
Auditor of State Keith Faber

(937) 285-6677 Direct
(800) 443-9274 Toll free
(866) 281-0020 Direct Fax

AMStidham@ohioauditor.gov
www.ohioauditor.gov

Facebook Twitter OhioAuditor.gov

Facebook Twitter OhioAuditor.gov