

**MINUTES OF THE REGULAR MEETING  
MASSILLON CITY COUNCIL  
HELD MONDAY, NOVEMBER 7, 2022**

**COUNCIL PRESIDENT ISTNICK** – Welcome to the Massillon City Council Meeting for Monday, November 7, 2022. We have in attendance the following City officials: Mayor, Kathy Catazaro-Perry, Safety Service Director, Barb Sylvester, Chief Deputy Auditor, Stefanie Myers, Law Director, Justin Richard, Asst. Law Director, Edmond Mack, Chief Counsel, Tim Piero, Economic Development Director, David Maley, Parks and Rec. Director, Steve Pedro, Income Tax/Budget Director, Lori Kotagides-Boron and Parks and Rec. Board Member, Ted Schirtiger. Under #5 on the agenda is where the public can speak on any topic that appears on tonight’s agenda and under #17 is where the public can speak on any topic that does NOT appear on tonight’s agenda. I’d like to remind everyone keep your mics off until you’re ready to speak and please, mute your cell phones or set them to vibrate.

**COUNCIL PRESIDENT ISTNICK** – Roll call.

**1. ROLL CALL**

Roll call for the evening found the following Council Members present: Jill Creamer, Mike Gregg, Julie Harwig Smith, Ted Herncane, Ed Lewis, Mark Lombardi, Jamie Slutz, Mike Snee and Aaron Violand.

Roll call of 9 present

**2. INVOCATION**

**COUNCILWOMAN JULIE HARWIG SMITH**

**3. PLEDGE OF ALLEGIANCE**

**LED BY COUNCILWOMAN HARWIG SMITH**

**4. READING OF THE JOURNAL**

**COUNCIL PRESIDENT ISTNICK** – Thank you, Councilwoman Harwig Smith. Madam Clerk are the minutes of the previous meeting transcribed and open for public viewing?

**COUNCIL CLERK ROLLAND** – No, I’m still working on them.

**COUNCIL PRESIDENT ISTNICK** – Thank you.

**5. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS ON THE AGENDA**

**GAYLE DANZY** – I live at 2014 Tennyson Ave. N.E., Massillon, OH. I have a question and I can’t remember if this is where you answer questions, but it’s on the agenda about the EEO Officer in Civil Service. That’s on tonight’s agenda and I just had a question; when was the last time we even had an EEO Officer?

**COUNCIL PRESIDENT ISTNICK** – This is not a question/answer session. I’m sorry.

**GAYLE DANZY** – This is not, okay. Well, that’s my question and I really would like to find out when the last time we had an EEO Officer and what the purpose of an EEO Officer is?

**COUNCIL PRESIDENT ISTNICK** – Maybe at the end of the meeting someone from Administration could help you.

**GAYLE DANZY** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Anyone else?

6. **NEW AND MISCELLANEOUS BUSINESS**

7. **INTRODUCTION OF ORDINANCES AND RESOLUTIONS**

**COUNCIL PRESIDENT ISTNICK** – Ord. No. 153 – 2022.

**ORDINANCE NO. 153 – 2022**

**BY: PARKS AND RECREATION COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for and receive sealed bids and to enter into a contract with the lowest and best bidder, upon the approval of the Board of Control, for the purchase of a synthetic Skating Rink and accessories necessary for operation, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Harwig Smith.

**COUNCILWOMAN HARWIG SMITH** – Thank you, Madam President. This just passed Parks and Rec. last week. FreshMark is donating the total cost for a skate rink to the City of Massillon. The rink is a synthetic rink. It’s going to be 78’ x 56’. It actually can be moved. You can take it up and move. It can be used in any weather. That includes the light poles, the shed, storage rack for the skates and maybe the Mayor or somebody can come up and describe this project more. A large portion of it, once she’s done, is to go and receive the bids for the project.

**MAYOR CATAZARO-PERRY** – Good evening, Madam President, Members of Council. Steve and I are tag teaming it tonight as we do some of these items that we received large donations. This is a large donation. We have the check and it has been deposited, has been approved by all five (5) Board members; the Park and Rec. who one is in attendance tonight. We’d like to place it a Wampler Park this year. This is the rink that can be, once its stored, can be moved around the City to another site, but FreshMark decided that they wanted to sponsor the entire rink, so there will be a sign that says “Massillon City Ice Skating Rink sponsored by FreshMark”. If you look through the slide, this is the slide that we presented to the gentleman at FreshMark and he was very, very excited about being a sponsor for this and within two weeks, wrote a check and we took it to the Park and Rec. Board for approval and now we’re bringing it to City Council. Any questions?

**COUNCILWOMAN HARWIG SMITH** – Anybody have any questions?

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I'll just ask to the question that everybody's going to want to know; maintenance and upkeep, moving forward. Do we have a projection of cost and how we will manage that?

**MAYOR CATAZARO-PERRY** – So the skate rink can last anywhere from seven to ten years, depending on how you maintain it, which we are going to have special shovels for this to take off the snow and sweepers. And then one thing that I think is really important for our community to know is that we are not charging for skate rental, but there will be a staff member on-site that's going to pass out the skates and collect the skates at the end of the night. Steve.

**STEVE PEDRO** – We haven't put that all together yet, depending on the hours, but we will have to man it, I would say we'd probably have two people there, actually, when its open and I will also say that I think we're going to have an opportunity to get sponsors each year for signage for the skate rink, wherever it's at. Wherever we decide to put it and that will defray the cost, I believe. So we haven't put them all together yet, but is should be minimal. We have to set it up, obviously. We'll probably all hands be on deck for that with the training and how to set it up and then when we tear it down again, we'll have pallets and we have room for storage down at our maintenance facility.

**COUNCIL PRESIDENT ISTNICK** – Councilman Herncane.

**COUNCILMAN HERNCANE** – Thank you, Madam President. Mr. Pedro, will there be a need for additional Park and Rec. Dept. staff for this? Are we able to cover these hours with our additional staff power or will we need more?

**STEVE PEDRO** – I will hire one more person. We will advertise to hire one more person, I should say. But as you know, everybody's having trouble keeping, retaining staff these days. I have people on staff now that I've already talked to and give them a few extra hours a week. That would probably be the way we get started, but I would like to hire one additional part-time staff member to be there at all times and maybe interchange some other people.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Thank you, Madam President. I have a couple of questions. In our package we have a picture of the Jackson Twp. Skate rink. Are our dimensions similar to the Jackson Twp. Skate rink? Is it larger? Is it smaller? How does this rink compare to theirs?

**MAYOR CATAZARO-PERRY** – The Jackson Twp. Skate rink is larger than ours. I think theirs was about \$158,000.00 just to think and bringing that number forward from memory from about a year ago. But ours is going to be very nice in size. You can fit about 75 skaters on this rink at one time. So, you can't just have the whole community of Massillon come and get skates and skate. We do get, if you'll see, a hundred pair of skates with this. So, that is another thing. We also have a sharpener to keep the skates very sharp. It's different than regular frozen ice skating rink. You have to keep these skates sharp. So, go ahead, Jill.

**COUNCILWOMAN CREAMER** – So, is this going to be open just during daylight times? Is there lighting? I can't remember if Wampler has lighting in the park lots so that this can be operable at night.

**STEVE PEDRO** – We're adding to this. There's lighting in the parking lot now, but we are going to buy lights specific for this skate rink. It's more likely going to be in the evenings on say Thursday or Friday and then Saturday will be daylight and evenings and Sunday as well.

**COUNCILWOMAN CREAMER** – So you're thinking three to four days/nights a week?

**STEVE PEDRO** –Yes.

**COUNCILWOMAN CREAMER** – Not seven days a week.

**STEVE PEDRO** – No, not seven days a week.

**COUNCILWOMAN CREAMER** – Okay.

**STEVE PEDRO** – I'll say that now. If we get people showing up all day, every day, we might have to look at it and change some things, but, I think we're going to be okay to start out with three or four days a week to see how things go with those hours.

**COUNCILWOMAN CREAMER** – Okay. Thank you.

**MAYOR CATAZARO-PERRY** – One of the greatest things that Jackson Twp. shared with me was that having a skate rink got their children off of social media; got them off of gaming and got them outside and playing. So, that's a huge positive for the children in our community.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilman Snee.

**COUNCILMAN SNEE** – This seems like a great project for our citizens and I'm definitely behind it. My thoughts just always go to safety and maintenance safety. Can you touch a little bit on how this is going to be insured?

**MAYOR CATAZARO-PERRY** – All of our parks are insured; it will go underneath that as well.

**COUNCILMAN SNEE** – Okay.

**MAYOR CATAZARO-PERRY** – We'll add it to it once you approve it, yes.

**COUNCILMAN SNEE** – Okay. That's all I had. I appreciate it.

**STEVE PEDRO** – Let me add to that. Everybody will have to sign, obviously, a hold harmless agreement to get on the ice. Hoping that nobody gets hurt, but we will, that's another way we'll be covered as well. It'll be lit up and you'll be able to see it.

**COUNCIL PRESIDENT ISTNICK** – I have a question. Wasn't Duncan Plaza supposed to be our skating rink?

**MAYOR CATAZARO-PERRY** – This skating rink is too large for Duncan Plaza.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilman Snee.

**COUNCILMAN SNEE** – Are there still plans going forward for Duncan Plaza to have an ice skating rink?

**MAYOR CATAZARO-PERRY** – There's not. We like this idea better where we can travel around to different parts of the City and so, yes, that was a great idea, but, a better idea came forward.

**COUNCILMAN SNEE** – Okay. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Councilman Violand.

**COUNCILMAN VIOLAND** – Yes, thank you, Madam President. Are you familiar with the skating rink in Canton next to the courthouse?

**MAYOR CATAZARO-PERRY** – Yes.

**COUNCILMAN VIOLAND** – What is this size comparison to that?

**MAYOR CATAZARO-PERRY** – I would say it's probably about that size.

**COUNCILMAN VIOLAND** – Similar? Okay. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Are we looking for this, not this year?

**MAYOR CATAZARO-PERRY** – If Council can approve this this evening, we're able to go out to bid. We have the paperwork ready to go and depending on the bids, we'd like to put it up, if everything works out, the week of Christmas. So, we'd like to get that done. It will be up in January and February.

**COUNCIL PRESIDENT ISTNICK** – Wow. Okay. Anyone else? Thank you.

**MAYOR CATAZARO-PERRY** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Harwig Smith.

**COUNCILWOMAN HARWIG SMITH** – Thank you. With that being said, I'd like to make a motion to waive the three required readings and bring Ord. No. 153 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Creamer. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 153 – 2022 has passed. Ord. No. 154 – 2022.

**ORDINANCE NO. 154 – 2022**

**BY: POLICE AND FIRE COMMITTEE**

AN ORDINANCE to approve and adopt the extension of an alternative method for apportioning the Stark County Undivided Local Government Fund for 2023 through 2027 and authorizing the Mayor of the City of Massillon, Ohio, to execute said Agreement, and declaring the same to be an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lombardi

**COUNCILMAN LOMBARDI** – Thank you, President Istnick. This is what we discussed in the Work Session. Mrs. Sylvester came up and discussed our portion of this. Does anybody have any questions? Seeing none, I would like to make a motion to suspend the rules requiring three readings and bring Ord. No. 154 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Slutz. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No.154 – 2022 has passed. Ord. No. 155 – 2022.

**ORDINANCE NO. 155 – 2022**

**BY: RULES, COURTS AND CIVIL SERVICE COMMITTEE**

AN ORDINANCE amending Section (2)D OCCUPATION LIST OF CLASS TITLES of Ordinance 127 – 1997 by separating the positions of Civil Service Administrator and Equal Employment Opportunity Officer as merged by the enactment of Ordinance No. 93 – 2018, reclassifying and enacting an increase to the Class Grade Pay Schedule for the position of Civil Service Administrator under 150 “CIVIL SERVICE COMMISSION”, re-establishing and creating the 175 “HUMAN RESOURCES DEPARTMENT”, re-establishing the Class Grade pay schedule for said position within the 175 ‘HUMAN RESOURCES DEPARTMENT”, repealing Ordinance No. 93 – 2018 in its entirety, in the City of Massillon, Ohio, and declaring the same to be an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Gregg

**COUNCILMAN GREGG** – Thank you, Madam President. We had some discussion on this at our last Work Session and I believe more discussion needs to be had, so, we’ll give this first reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 155 – 2022 has received first reading. Ord. No. 156 – 2022.

**ORDINANCE NO. 156 – 2022**

**BY: STREETS, HIGHWAYS, TRAFFIC AND SAFETY COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for and receive sealed bids and to enter into contract with the lowest and best bidder, upon the approval of the Board of Control, for the Diamond Court Improvement Project, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Snee.

**COUNCILMAN SNEE** – Thank you, President Istnick. So this is just to accept and advertise for sealed bids totaling \$160,000.00. Are there any questions for the Diamond Court Improvement Project? I intend to bring this forward to a vote tonight. Now would be the time if there are any. I'd like to make a motion that we waive the rules requiring three readings and bring Ord. No. 156 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Creamer. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 156 – 2022 has passed. Ord. No. 157 – 2022.

**ORDINANCE NO. 157 – 2022**

**BY: STREETS, HIGHWAYS, TRAFFIC AND SAFETY COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for and receive sealed bids and to enter into a contract with the lowest and best bidder, upon the approval of the Board of Control, for the Springhill Settlement Improvement Project, Phase IV, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Snee.

**COUNCILMAN SNEE** – Thank you, President Istnick. I'd like to open it up now to any Council member if they have any questions about the Springhill Settlement Improvement Project, Phase IV. Seeing none, I'd like to make a motion that we waive the rules requiring three readings and bring Ord. No. 157 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Creamer. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 157 – 2022 has passed. Ord. No. 158 – 2022.

**ORDINANCE NO. 158 – 2022**

**BY: STREETS, HIGHWAYS, TRAFFIC AND SAFETY COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into a Project Agreement for Carmont Ave./17<sup>th</sup> St. S.W. with Stark County Commissioners, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Snee.

**COUNCILMAN SNEE** – Thank you, President Istnick. I'll open it up for any questions at this time. Seeing none, I'd like to make a motion that we waive the rules requiring three readings and bring Ord. No. 158 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Creamer. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 158 – 2022 has passed. Ord. No. 159 – 2022.

**ORDINANCE NO. 159 – 2022**

**BY: FINANCE COMMITTEE**

AN ORDINANCE making certain appropriations from the unappropriated balance of the 1100 General Fund, for the year ending December 31, 2022.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – Yes. This appropriation is for \$150.00 and it is the Sponsorship Program. We are acting as a pass-through. Any questions or discussion this evening? Seeing none, I make a motion that we suspend the rules requiring three readings, bringing Ord. No. 159 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Lombardi. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage



**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 159 – 2022 has passed. Ord. No. 160 – 2022.

**ORDINANCE NO. 160 – 2022**

**BY: FINANCE COMMITTEE**

AN ORDINANCE amending Ordinance No. 143 – 1976 to enact a new Section 13 – “ALLOCATION OF FUNDS – INCOME TAX” by repealing Section 13 – “ALLOCATION OF FUNDS – INCOME TAX” and enacting a new Section 13 – “ALLOCATION OF FUNDS – INCOME TAX” and repealing Ordinance No. 151 – 2019, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – First reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 160 – 2022 has received first reading. Ord. No. 161 – 2022.

**ORDINANCE NO. 161 – 2022**

**BY: FINANCE COMMITTEE**

AN ORDINANCE to adopt appropriations for the operating and capital expenditures of the City of Massillon, Ohio, for the fiscal year 2023, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – First reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 161 – 2022 has received first reading. Ord. No. 162 – 2022.

**ORDINANCE NO. 162 – 2022**

**BY: FINANCE COMMITTEE**

AN ORDINANCE amending the salary and wage schedules for SUPERVISORY (CLASSIFIED OR UNCLASSIFIED) EMPLOYEES, CLASSIFIED EMPLOYEES, and UNCLASSIFIED EMPLOYEES in the City of Massillon, Ohio, also amending the MISCELLANEOUS SCHEDULE for part-time employees in the City of Massillon, Ohio, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – Yes, Madam President. May I have someone from the Administration that can come forward and speak to this?

**COUNCIL PRESIDENT ISTNICK** – Yes. Thank you, Lori.

**LORI BORON** – Good evening, Council.

**COUNCILMAN LEWIS** – Thank you. Could you please just give us a summary of this ordinance.

**LORI BORON** – Ord. No. 162 – 2022 is the 2% cost of living raise for employees. The 3% cost of living raise that, it's not always 3%; sometimes it's a different amount, but we give each to all of our employees.

**COUNCILMAN LEWIS** – And to verify the proposed budget that has been brought forth is including this?

**LORI BORON** – Yes it is.

**COUNCILMAN LEWIS** – Okay. Does anyone else have any questions? And there's no need to necessarily pass this; we can let it go hand and hand with the budget, is that correct?

**LORI BORON** – That's what I anticipated. So, yes.

**COUNCILMAN LEWIS** – Thank you. That's all I have.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Councilman Lewis.

**COUNCILMAN LEWIS** – First reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 162 – 2022 has received first reading. Ord. No. 163 – 2022.

**ORDINANCE NO. 163 – 2022**

**BY: FINANCE COMMITTEE**

AN ORDINANCE authorizing the Massillon Recreation Board to accept a donation from FreshMark, on behalf of the Massillon Parks and Recreation Department, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – Yes. This is the accepting of the gift from FreshMark associated with Ord. No. 153 – 2022 that we discussed earlier this evening. Are there any further questions or discussion this evening? Seeing none, I make a motion that we suspend the rules requiring three readings, bringing Ord. No. 163 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Gregg. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 163 – 2022 has passed. Res. No. 14 – 2022.

A RESOLUTION reversing the decision of the Massillon Board of Zoning Appeals in the Variance Case No. 2022-16.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Thank you, Madam President. As stated, this resolution is a request to reverse the decision of the Massillon Board of Zoning Appeals which was made on October 13, 2022. The appeal of the decision was filed with the Clerk of Council on October 14, 2022. The dimensions of the structure are 26' x 40' which is a detached garage in the rear yard of Parcel #619373. The Massillon Board of Zoning Appeals also allowed for a variance of the structure with the height of 17' 16", whereas the legal limit is 14'. This structure is located in Ward 1 at 843 Sheffield Ave. N.E., Massillon, OH. I'd like to ask Asst. Law Director, Edmond Mack to come forward and give us a background on this.

**COUNCIL PRESIDENT ISTNICK** – Thank you, Mr. Mack.

**EDMOND MACK** – Thank you, Madam President. Thank you, Chairwoman. Yes. Members of this body, as you're sitting in consideration of the ordinance that's in front of you, you are sitting in kind of a unique capacity. Normally, you're sitting in a legislative capacity. You are making a ruling on this in a quasi-judicial capacity. So, when you determine whether the Board of Zoning Appeals decision should be overturn, which is certainly within your prerogative to do, the law requires you to focus on certain factors when making your determination and with the Chairwoman's permission I'd just like to kind of explain what those factors are and certainly how this Council applies those factors in ruling on the ordinance in front of you; that's your prerogative, but our job as the Law Dept. is simply to help you to make sure whatever you decide is ultimately affirmed should there be anybody that looks at it later. So, the ordinance appeals authorized what's a variance from the zoning requirements. They held that this building can exist without strict compliance with the certain area requirements that are in the zoning regulation and so this is what's called an area variance. And for an area variance the ordinances in the City of Massillon and case law from the Ohio Supreme Court require the applicant, the person who applied for the variance, to establish that they have "practical difficulties" in complying with the zoning regulations as written. And so determining whether sufficient practical difficulties exist to authorize the variance or in this case in sitting as an appellate tribunal for the Board of Zoning Appeals, there's certain factors that the courts encourage this Council and the BZA to apply and these are called the Duncan Factors and I'll just kind of list those off then if there's any questions, I'd be happy to answer and I'd ask that you apply these factors when making the determination on the BZA's decision. So, the Duncan Factors, it's a nonexclusive lists of factors to consider when determining whether a property owner has encountered practical use of their properties.

Factor # 1- Whether a property in question would yield a reasonable return, whether there can be a beneficial use of the property without the variance.

Factor #2- Whether the variance is substantial.

Factor #3- Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance.

Factor #4- Whether the variance would adversely affect the delivery of governmental services, such as water, sewer or garbage.

Factor #5- Whether the property owner purchased the property with knowledge of the zoning restrictions.

Factor #6- Whether the property owner's predicament feasibly can be obviated through some other method than a variance.

Factor #7- Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

And so, that was the standard that was applied by the BZA and sitting as they first round of appeals, I'm going to ask you to apply those factors when determining this ordinance and if there are any questions?

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Harwig Smith.

**COUNCILWOMAN HARWIG SMITH** – So, if we were to agree with the Board, well, let me back up a minute. So, these variances as your putting them forth for the area variance, it was kind of in hind sight. Because he didn't pursue or get permits for anything. If we reverse the decision, what happens then? Does he have to tear it down? I feel like this puts us in a huge dilemma. I really wish they could have just said...I feel like he did everything wrong but then, it's like, to tear down too; it's a dilemma for him and I don't know if we need to have a public hearing to hear how all the neighbors feel, but, our decision; what happens if we do not agree with this and we reverse the decision?

**EDMOND MACK** – If the decision is reversed and I believe that it would be  $\frac{3}{4}$ 's and I'll check that when I get back to my seat there, if  $\frac{3}{4}$ 's of this Council agree to reverse the BZA, then the variance is not issued, then the structure is in violation of the zoning ordinances. There can be then a demolition order that would be issued by the zoning inspector because of the violation of the zoning code.

**COUNCILWOMAN HARWIG SMITH** – As far as the applicant's which would be Charlene Willey who brought this forward who are the neighbors to the back of the property who have to look at this structure every day, is there any...we're not a court; so, is there any way for them to seek like loss of damages or anything?

**EDMOND MACK** – That would be a private claim between the two owners. Whether they could obtain economic damages or some kind of economic relief as a result of the violation of the zoning, I would be surprised, but I'd be hesitant to advise them one way or another as to what their rights would be as private litigants.

**COUNCILWOMAN HARWIG SMITH** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Councilman Violand.

**COUNCILMAN VIOLAND** – Thank you, Madam President. Mr. Mack, did the Board of Zoning Appeals come to any conclusions of law with the Duncan Factors? What was weighed more heavily or given the explanations as to how they applied that to this situation?

**EDMOND MACK** – The certainly applied the Duncan Factors and that's in the minutes that are in our materials in reaching their decision. I can't speak for each individual member as to what their specific rationale was, but I know that certain factors were laid more heavily than others as their permitted to do on the Duncan case law and I think this is a unique case where perhaps that was appropriate. But, to answer your question; yes, inclusions were reached. The factors were certainly applied and whether this Council approves it today on applying the same factors and the same evidence or the evidence that appears, that would be its prerogative.

**COUNCILMAN VIOLAND** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – At this time, I would like to bring up Mrs. Charlene Willey to the microphone to address Council. Mrs. Willey you did speak last Monday at the Work Session, but, at this time, I'd like you to address Council and we'd like to swear you in prior to you addressing Council.

**EDMOND MACK** – You swear that the information that you are about to provide is the truth, whole truth and nothing but the truth?

**CHARLENE WILLEY** – Yes.

**EDMOND MACK** – Thank you.

**CHARLENE MACK** – Now I feel like I should have brought an attorney. Well, I've told you all before, the building is obnoxious and it's too big, it's too tall. It takes up almost his whole back yard. He got not permit; nothing and Mr. Smith is not a stranger to getting permits. Y'all know that. He's a business man. He brags that his property has benefited from this. Mine hasn't. When you walk in my yard all you see is this huge building. It's huge. There's nothing that can be done to make it look okay. You don't have room to plant no trees or anything. He's three foot off the property line which is fine. If it had been a normal size building. This is industrial. It's supposed to be for your cars in the City of Massillon. He violated every City ordinance that you have and claims that he didn't know. I've been lied to. Kevin's been to offend me. The code enforcement, they made up excuses for him. You've all read it. It was all in the minutes and I'm off looking at a monstrous industrial building. I live in the City; not in some industrial park. The building is too big. It can be taken apart and made to fit and I'll be fine with it. It's a kit. It's bolted together. Everything that they said, even when they said that he put down 12" of concrete. He did not put 12"; we're going to be lucky if it was 8". I was there when they laid the boards and everything for it and poured the concrete. I mean, basically, I have a patio off of my garage. It's basically 3' from my patio; this building. I put a lot of work into my back yard and now it's nothing. It's up to you guys and I'm stuck with it. If you think it's okay. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Thank you, Mrs. Willey.

**COUNCILWOMAN CREAMER** – Does anyone have any questions regarding this?

**COUNCIL PRESIDENT ISTNICK** – Councilman Gregg.

**COUNCILMAN GREGG** – May I ask Mrs. Willey questions?

**COUNCIL PRESIDENT ISTNICK** – Yes.

**COUNCILMAN GREGG** – Mrs. Willey.

**CHARLENE WILLEY** – Yes.

**COUNCILMAN GREGG** – You mentioned that, it sounds like your main concern is the size of the building, but you also object to the type of building that it is. Is that correct?

**CHARLENE WILLEY** – I don't object to a metal building, no. I am objecting to a building that looks industrial because of its size. Come drive around my neighborhood and almost any neighborhood in Massillon, there's no building like that. Not to mention that he's right in everybody's face that "I'm going to do what I want to do".

**COUNCILMAN GREGG** – So you object to the size and the appearance; is that right?

**CHARLENE WILLEY** – Just the size.

**COUNCILMAN GREGG** – Okay. I mean, if he were able to somehow reduce the size, the appearance wouldn't be an issue for you?

**CHARLENE WILLEY** – No.

**COUNCILMAN GREGG** – Then my other question would be, is there anything other, short of tearing it down completely, any type of compromise you would accept?

**CHARLENE WILLEY** – Meet City ordinances. Meet the codes. It was a one-car garage with an attached patio such as what we have as our patio is attached to our garage before Kevin tore it down.

**COUNCILMAN GREGG** – Okay.

**CHARLENE WILLEY** – He's such a good, all about the City and everything, he parks in his front yard. I know that doesn't have anything to do with any of this, but that's just the example and his neighbors don't like it; on his side of the street.

**COUNCILMAN GREGG** – Okay. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilwoman Harwig Smith.

**COUNCILWOMAN HARWIG SMITH** – I'm afraid that even if he makes it smaller, being a steel building; I mean, if he lowered it 3', it's still going to have the same look.

**CHARLENE WILLEY** – I don't care about it being a metal building. I really don't.

**COUNCILWOMAN HARWIG SMITH** – Would a vinyl fence or something like that would make it more appealing?

**CHARLENE WILLEY** – How do you get a permit to build 14’ or 15’ fence? I already have high plants back there. That doesn’t disguise it because you got to realize, this guy is not only has a building that’s 16’ x 6, his ground level is way above ours because he’s up on a bit of a hill. So, even though it’s only that many, it’s actually probably 3’ more than that. So, I mean, everywhere in the back of my house, inside when we look out the dining room or kitchen window, all you see is this massive building and I don’t care that it’s metal. I really don’t care about the metal. I care about how big it is. Why don’t you tell me what he can do to disguise it? The City’s not going let him put a fence that covers that up.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilman Snee.

**COUNCILMAN SNEE** – I’m not really sure who to direct this question at. Mrs. Smith came here last week and stated that he received an e-mail from the manufacturer stating that they did, indeed, apply for and receive the permits for this. Perhaps this is for the Law Dept., I’m not sure; wouldn’t the liability of tearing it down and rebuilding it to code fall on that manufacturer?

**COUNCIL PRESIDENT ISTNICK** – Thank you, Mr. Mack.

**EDMOND MACK** – Thank you, Councilman. In terms of the liability between the homeowner and manufacturer, it’s the manufacturer’s interpretation in the contract did have that between them, yes. Their builder very well could be liable for that. When you make your determination, though, that would be hearsay. So, you’ve heard a lot of direct evidence. You have a lot of evidence in the transcript that you can rely on, but making a decision on those grounds based on hearsay, the Law Dept. would caution against that because that can make your ultimate decision, whatever it is, subject to Federal challenge. Whether you decide to overturn the BZA, that does require two-thirds vote. So that’s my opinion, we were looking through the ordinances back there.

**CHARLENE WILLEY** – If I could make another...when I got my first letter for the variance, they said in there that Kevin Smith did not know that he needed a permit. So, if they’re going to try a blame it on the builder and then he comes here and he says “Well, I thought the builder was supposed to get it”. It’s too many lies; outright lies.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilman Herculane.

**COUNCILMAN HERNCANE** – Thank you, Madam President. I don’t have a question for Mrs. Willey, but I do not fault our Building Dept. in this. I think this is one of those issues and their job is already tough. I think sometimes people just do what they want to do and don’t follow the code and we catch up to them and then have to deal with it, which is where I think we are here. I don’t think it’s an omission. I don’t think it was an accident. I think this was a property owner who pretty much decided that they were going to do what they want to do and they gave everybody the middle finger because they run a business downtown and they think they’re untouchable. I intend to vote “yes” to overturn this decision. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilwoman Harwig Smith.

**COUNCILWOMAN HARWIG SMITH** – As far as the size, it’s based on the size of the house, correct? So, he has a very small house that’s like under 1,000 square feet?

**CHARLENE WILLEY** – Yes. 818, yes, his house.

**COUNCILWOMAN HARWIG SMITH** – But if he had a little bit bigger house 1,040 square feet, which is still a really small house. If he had a house that size, that would not be a violation. Am I correct in saying that or no?

**COUNCIL PRESIDENT ISTNICK** – Councilman Slutz.

**COUNCILMAN SLUTZ** – Thank you. The backyard is supposed to 25% of his backyard which is, I've seen the building. It's probably 85% of his backyard, I'd say.

**COUNCILWOMAN HARWIG SMITH** – Oh, okay. So it's not allowed to be more than 25% of your backyard?

**COUNCILMAN SLUTZ** – I believe so.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis, did you have a comment?

**COUNCILMAN LEWIS** – I was just going to say that he has multiple variances; it's the size of the house compared to the new structure, it's the size of the new structure and in relation to the size of his backyard and it's a height issue. I will say I'm in agreement with Mr. Herncane and I assume this is going to get a reading tonight, so, I'll be working over the next couple of weeks so see how the Duncan standards do apply, but, some of the standards that they named tonight...I'm paraphrasing...I'm not as well versed as our Law Director, but, does it cause undo harm or hardship on property owners around? Well, obviously, it does. It impedes on someone else's potential property values if they were to ever resell. The other one; does the structure, is it necessary for the property as far as the utilization of the property or resale of the property. I don't think something that large would be necessary on that property considering every other house in that area has a much more modestly built property. And there was a few of those other Duncan things I don't think necessarily apply, but, just quickly looking through those Duncan standards and apply it to this, I don't think we'd be out of our purview to be able to say "No, you acted against the laws and rules of this community and I'm sorry that you'll have to tear it down, but it is what it is". It also sets an undo precedence throughout the City then, which we do have to protect against. So, I would be joining along with Mr. Herncane and be in favor of overturning the Zoning Board of Appeals.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lombardi.

**COUNCILMAN LOMBARDI** – Thank you, President Istnick. I just want to say that this is in my Ward. I'm in agreement with Mr. Herncane and Mr. Lewis. I also want to look a little bit deeper into the Duncan standards and see how they apply. But, I would be in favor of overturning the Zoning Board of Appeals ruling on this.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – If there's no other questions, based on the information that we've heard tonight from the Asst. Law Director, Edmond Mack, regarding the Duncan factors, I'd like to give this first reading. Everyone can do a little bit more research, come back at the



Work Session, answer any additional questions that we may have and then move forward. And I'd like to thank Mrs. Willey tonight addressing Council. Thank you.

**CHARLENE WILLEY** – Sorry, but I wasn't really prepared to talk to you all tonight.

**COUNCIL PRESIDENT ISTNICK** – You did fine. Thank you.

**CHARLENE WILLEY** – Thank you.

**COUNCILWOMAN CREAMER** – So, first reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Councilman Herncane.

**COUNCILMAN HERNCANE** – Madam President, I have a question. Is there a timeframe on this that a decision has to be made by?

**JUSTIN RICHARD** – May address everyone from here?

**COUNCIL PRESIDENT ISTNICK** – Please, Mr. Richard.

**JUSTIN RICHARD** – Thank you. It's sixty days from the date of the appeal.

**COUNCIL PRESIDENT ISTNICK** – And what was the date of the appeal?

**COUNCILWOMAN CREAMER** – October 14, 2022.

**COUNCIL PRESIDENT ISTNICK** – October 14, 2022, okay. Thank you, Mr. Richard.

**JUSTIN RICHARD** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Res. No. 14 – 2022 has received first reading. Res. No. 15 – 2022.

**RESOLUTION NO. 15 – 2022**

**BY: FINANCE COMMITTEE**

A RESOLUTION accepting the amounts and rates as determined by the Budget Commission authorizing the necessary tax levies and certifying them to the County Auditor as listed on the attached Exhibit "A", and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – Yes. This is an annual resolution that we perform just verifying that the levies, as stated, are required by the City. Are there any questions or discussion this evening? Seeing none, I make a motion that we suspend the rules requiring three readings, bringing Res. No. 15 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Gregg. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Res. No. 15 – 2022 has passed. Res. No. 16 – 2022.

**RESOLUTION NO. 16 – 2022**

**BY: FINANCE COMMITTEE**

A RESOLUTION requesting the Stark County Auditor and Stark County Treasurer to make an advance payment to the City of Massillon, Ohio, of real estate taxes collected by Stark County on behalf of the City during the 2023 fiscal year.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – Yes. This is a resolution that is exactly as the title says. Are there any questions or discussion this evening? Seeing none, I make a motion that we suspend the rules requiring three readings, bringing Res. No. 16 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Lombardi. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Res. No. 16 – 2022 has passed.

**8. UNFINISHED BUSINESS**

**COUNCIL PRESIDENT ISTNICK** – Mr. Gregg, I apologize wholeheartedly for not getting to you at the beginning, but I was so concerned about Friday being Veterans Day and Massillon McKinley as to what color I was going to wear. So, I turn it over to you.

**COUNCILMAN GREGG** – Thank you, Madam President. I just wanted to give a shout-out, for the record, the Tigers for winning their last playoff game last week against our opponent from Canal Winchester. They played very well. The defense got the shut-out. But most importantly, it was the 81<sup>st</sup> win in our Coach Nate Moore's career with Massillon. In that case, he surpassed the great Paul Brown legend and from this point on, all additional new wins will be a new record for Coach Moore. I'd just like to state as a parent of a former Tiger football player, he's been the best thing that I've known to happen to Massillon, he and his wife, Becka, and I really appreciate all he's done for the young in that program and he represents our City with class, dignity, as do our boys and the football players and I just hope they can continue on and reach the goal that we've always had as a State Championship in Massillon. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Thank you.

**9. PETITIONS AND GENERAL COMMUNICATIONS**

**10. BILLS, ACCOUNTS AND CLAIMS**

|                         |   |                  |                                    |
|-------------------------|---|------------------|------------------------------------|
| US Bank Equip. Finance  | - | \$127.00         | November payment for Copier        |
| The Repository          | - | 69.04            | Notice of Public Hearing           |
| First Commonwealth Bank | - | <u>74.53</u>     | Office Supplies and Postage Stamps |
| <b>Total</b>            | - | <b>\$ 270.57</b> |                                    |

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I make a motion to pay the bills.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Gregg. Roll call.

9 yes to pay the bills.

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. The Clerk will pay the bills and charge them to their proper accounts.

**11. REPORTS FROM CITY OFFICIALS**

|                    |   |                |
|--------------------|---|----------------|
| Treasurer’s Report | - | September 2022 |
| Auditor’s Report   | - | October 2022   |

**COUNCIL PRESIDENT ISNTICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I make a motion to approve the Auditor’s Report.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Gregg. Roll call.

9 yes to accept the Auditor’s Report

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. The Auditor’s Report has been accepted.

**12. REPORTS OF COMMITTEES**

**COUNCIL PRESIDENT ISTNICK** – Our next Work Session will be Monday, November 14, 2022, at 6:30 p.m.

**13. RESOLUTIONS AND REQUESTS OF COUNCIL MEMBERS**

**COUNCIL PRESIDENT ISTNICK** – Councilman Lombardi.

**COUNCILMAN LOMBARDI** – Yes, Mrs. Istnick. I would like to schedule a Committee meeting for Police and Fire next Monday, November 14, 2022 at 6:00 p.m., previous to the Work Session.

**COUNCIL PRESIDENT ISTNICK** – For Police and Fire, thank you. Next Monday at 6:00 p.m. the Police and Fire Committee will meet.

**COUNCILMAN LOMBARDI** – Thank you.

**14. CALL OF THE CALENDAR**

**COUNCILMAN LEWIS** – Excuse me, President.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I would like to speak with Council and have them consider. What I'd like to do is go into Executive Session now regarding potential litigation involving the City. So, I just wanted to give you a heads up. So I guess I would like to make a motion that we go into Executive Session regarding potential litigation involving the City. We'd be inviting the Law Director and his representatives, all nine members of Council including the President of Council as well

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Lombardi. Roll call.

9 yes to enter into Executive Session – 7:30 p.m.

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. We will enter into Executive Session.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I'd like to make a motion that we exit Executive Session.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Lombardi. Roll call.

9 yes to exit Executive Session – 7:50 p.m.

**COUNCIL PRESIDENT ISTNICK** – We're back in Regular Session.

**15. THIRD READING ORDINANCE AND RESOLUTIONS**

**COUNCIL PRESIDENT ISTNICK** – Ord. No. 138 – 2022.

**ORDINANCE NO. 138 – 2022**

**BY: ECONOMIC DEVELOPMENT COMMITTEE**

AN ORDINANCE authorizing the Mayor of the City of Massillon Ohio, to enter into an agreement with Israel Robinson to provide an economic development “inducement grant” to fund start-up costs including build-out, equipment, etc. for Israel Katina located at 256 Erie St. S., Massillon, Ohio, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Herncane.

**COUNCILMAN HERNCANE** – Thank you, Madam President. This is at third reading this evening. This is a \$1,000.00 economic development inducement grant for Israel Katina located at 256 Erie St. S. Are there any questions on this matter?

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Harwig Smith.

**COUNCILWOMAN HARWIG SMITH** – Can I just recap exactly what this business is?

**COUNCILMAN HERNCANE** – Yes, I'll ask Mr. Maley to come up and talk about that.

**COUNCIL PRESIDENT ISTNICK** – Thank you, Mr. Maley.

**DAVE MALEY** – She specializes in redesigning items such as walls, murals, furniture, appliances, clothing, mirrors, etc. creating unique conversational pieces that can be purchased to add a special flair to anyone's home or business. In essence, it's mostly an online business. The location's located at that Checkered Flag's building, I believe. Because that's where she does her work out of, but, it's mostly art type stuff.

**COUNCILWOMAN HARWIG SMITH** – They don't have like open store hours. It's strictly an online business?

**DAVE MALEY** – It's mostly online.

**COUNCILWOMAN HARWIG SMITH** – Does that meet under our guidelines?

**DAVE MALEY** – It is a business.

**COUNCILWOMAN HARWIG SMITH** – Okay. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I just wanted to restate as I've said is, while I'm sure this is a lovely endeavor for this person, in my opinion, it does not meet the spirit of what the economic development grants are for, which would be fostering an environment in which you have job creation and other economic endeavors being created off of this. I know the co-op situation she's in and I think that co-op situation is great and maybe if they all join together there could be something, but individually, this is an individual person with no employees and doesn't seem to have a lot of potential for employees in the near future. So, I would be opposed to providing the grant at this time.

**COUNCIL PRESIDENT ISTNICK** – Councilman Violand.

**COUNCILMAN VIOLAND** – Thank you, Madam President. So, this individual's currently in business; in the business of selling these things or recreating or decorating furniture and stuff?

**DAVE MALEY** – My impression is, yeah. She's moved into this newer facility where she'd be working out of. I don't know if she works out of her house now or what.

**COUNCILMAN VIOLAND** – Do you have any idea of what kind of income she is bringing in?

**DAVE MALEY** – Well, she states on her application that the annual revenue is between \$20,000-\$40,000.

**COUNCILMAN VIOLAND** – Okay. Thank you.

**DAVE MALEY** – And also, I think one of the things that we looked at \$1,000, she could go up to \$2,500 that was the amount based on her score; how Mr. Lombardi had talked about before. But we did keep her down to a lower level because of some of the things that Mr. Lewis had pointed out. Also, I think what she’s doing for, she is part of this new Massillon Arts Council, I think just to try to get some more artsy stuff, it is sort of downtown. I know it’s not an actually necessary retail location, but I think she is benefiting the City and that’s we took the position of giving her some money.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilman Herncane.

**COUNCILMAN HERNCAINE** – This is at third reading, so I would bring Ord. No. 138 – 2022 forward for a vote tonight.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Harwig Smith. Roll call for passage.

4 yes; 5 no for passage – Ord. No. 138 – 2022 has been defeated

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 138 – 2022 has been defeated.

16. **SECOND READING ORDINANCES AND RESOLUTIONS**

**COUNCIL PRESIDENT ISTNICK** – Ord. No. 147 – 2022.

**ORDINANCE NO. 147 – 2022**

**BY: PUBLIC UTILITIES AND ENVIRONMENTAL COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for and receive sealed bids and enter into contract with the lowest and best bidder, upon the approval of the Board of Control, for the Disposal of Municipal Solid Waste and Recycling Services for residential customers in the City of Massillon, Ohio, from January 3, 2023 to December 31, 2027, and an option for an additional five (5) – one (1) year renewals at the election of the Safety and Service Director of the City of Massillon, Ohio, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Violand.

**COUNCILMAN VIOLAND** – Thank you, Madam President. First of all, I want to thank Mr. Mack for getting copies of the initial contract that was signed in 2012. It was my understanding that contract made Kimble the preferred, but not exclusive, trash collector in the City. In addition to that, they purchased waste management vehicles among other things for that being done. It is my understanding that all of the City’s trash collection was done at no cost by Kimble for the dumpsters that the City owns and trash needs of the City. So, my understanding is that we need to take bids to get that taken care of. I don’t know, Madam President, could we have someone come up to speak to that?

**COUNCIL PRESIDENT ISTNICK** – Thank you, Mrs. Sylvester.

**BARB SYLVESTER** – Good evening, Council. You want me to speak on behalf of this?

**COUNCILMAN VIOLAND** – Yes.

**BARB SYLVESTER** – I'll also make reference, as you said, there was an original contract and then there was the five year renewals and this Council passed the renewal for 2022, Ord. No. 9 – 2022. So that ordinance, if you research that ordinance, that will basically have everything listed in it that we're looking for as a new contract. So, there's a new contract, but it's basically a renewal similar to what was in the original contract as well as all of the renewals. So, in addition to the rates for the residential customers, we also have as a part of the contract will be for the solid waste services and the recyclable containers and collections for the City as well. So, we do have collections at basically all of our facilities throughout the City and so, included with those bids will be the rates for our City's services as well.

**COUNCIL VIOLAND** – Any questions?

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – Okay. Outside of the City's collection needs, when we're talking about commercial customers or residential customers outside of the City, are you saying that you're trying to put out to bid that only one entity will be able to collect within the City?

**BARB SYLVESTER** – No. As the Councilman said and the Law Dept. instructed, it's not exclusive. It will be open to anyone who chooses to bid.

**COUNCILMAN LEWIS** – Okay. So what my argument has been since we first had this is that we do not own the rights to any customers outside of our self's personally. So, what would be the bid process; what are they bidding on? Kimble already has their customers just like Republic or anybody else. They already have their customers. Why would they bid on a price for customers that they already retain and they're no longer going to be under contract for?

**BARB SYLVESTER** – I'm not going to speak on behalf of them. I'm going to speak on behalf of the City that we are going out to bid. They can choose to bid on it or they could choose not to. At this particular time, we've already received calls from all of the solid waste haulers that have asked us when is it going to be going out to bid?

**COUNCILMAN LEWIS** – Let me re-state that question then and we can ask the Law Director. We don't own the rights to those customers.

**BARB SYLVESTER** – We do not.

**COUNCILMAN LEWIS** – So, why? That would be like me saying I'm going to put out to bid the rights for cell phone rates within the City of Massillon. Verizon would tell us to go away; it's their customer. We do have a right to tell a private entity what they can charge when you do not own the rights to that customer, is what I'm saying.

**BARB SYLVESTER** – Maybe you can understand it similar to our aggregation programs for our utilities.

**COUNCILMAN LEWIS** – That's not what we're calling it.

**BARB SYLVESTER** – We have a choice. I mean, I have Kimble service right now. If I want to change to Republic, I have every right to do that.

**COUNCILMAN LEWIS** – So, your saying what you're wanting to do is put together a preferred package; is that right?

**BARB SYLVESTER** – That's correct.

**COUNCILMAN LEWIS** – I mean; I'm just trying to figure out what we're actually putting out to bid here.

**BARB SYLVESTER** – That's correct. They would give us the rates just similar to what they did and similar to what this Council renewed on Ord. No. 9 – 2022.

**COUNCILMAN LEWIS** – Well, no, it's not the same thing. What we renewed was a five-year extension of an original contract that will start in 2012 and then in 2012 to see if Massillon operated a waste services. We sold the rights to our customers of waste services as well as all of our equipment to the highest bidder which was Kimble which was then obligated to provide services to those customers for up to ten years if we so chose. That's what we renewed earlier this year. That contract comes to an end this year and they now retain rights to those customers. Because they're their customers. So what I'm asking is why are we going out to bid? It's their customer.

**COUNCIL PRESIDENT ISTNICK** – Councilman Herncane.

**COUNCILMAN HERNCANE** – Thank you, Madam President. In 2012 when the City bid this out, we knew the number of residential customers that had City waste. So, I'm assuming we bid out X number of customers. How do we determine, if I own a trash company and I wanted to bid this, how do we determine, because some of those may have changed from Kimble over the last ten years to somebody else? What's the number or how as a bidder do I know how many clients I'm bidding on? What exactly does the...?

**BARB SYLVESTER** – I can bring the Mayor up. Maybe she can understand what you're talking about. We don't know from the original time that we were given a customer list that anything has ever been updated to that list. We've not updated, to your point, you're correct. If somebody decided to change from Kimble and go to Republic we don't have listing; we don't know.

**COUNCILMAN HERNCANE** – Because ten years ago it was bid on as a cost per customer. Let's say we have 4,500 municipal waste users in the City, so we're bidding out a concrete amount of clients. I don't know how derived that number now.

**MAYOR CATAZARO-PERRY** – So when we did this, anyone could choose whoever they wanted to go to. So we weren't guaranteeing any number of customers at all. But what they did do is put a special package together for our residents and if anyone wanted to compete with that package, they could do so. So, that's how it was structured. So, there was no exclusivity, none of that. It just was a package that they bid on and Kimble received it. So, again, that's what we're doing now. We extended it for the five years, a few years ago, and that's what we're doing now. We're going back out to bid, very similar. We're not guaranteeing any number of customers because everyone has the right to choose who that want go to. So, it's just the company will bid on our services and they can give us a special package if they choose to for our citizens and then the other companies compete against that



as well and that's how it will be. Take it out to bid and then we open the bids and we look at the lowest and best and that's how it's structured. So, there's no guarantee of any number of customers. Every citizen in the City of Massillon has a choice of where they want to go to for their trash services. When you have a larger amount of people, you can provide a better package. So it's enticing for the customer. Just like our aggregation to go with that company.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I mean, it's obvious that some more conversation has to be had. I don't think we can get this clear tonight. Because I hear a little bit what the Mayor is saying there. It sounds like there may be a tie in if you want to service the City's trash needs. It just seems like it's somewhat convoluted. I was here on Council when we did this the first time. I was the chair of the committee you are right now and this is something I worked on with the Administration and Mr. Myer, at the time, was the Safety Service Director and he did a lot of ground work to make this happen. So, I distinctly remember that when Kimble came in, while people could change, there was no guarantee that Kimble, there was an understanding that they were going to transition our customers that we served as a City, into Kimble and that people were just starting to be served by Kimble at some point. That's not the case now. If Kimble doesn't win the bid, the Kimble customers aren't going to go to the winning bidder if they stay at Kimble. There is no transition of services anywhere other than the City's services and that's where I'm getting caught up on, why would they even care.

**MAYOR CATAZARO-PERRY** – You are correct, Mr. Lewis. But the reason that Kimble was so enticing is that their prices were so low in that package. That's why it was enticing.

**COUNCILMAN VIOLAND** – Just briefly, I understand in that situation, there was some consideration on the part of the City. Like we were getting something from that. What are we getting from giving them this opportunity? I don't see any consideration on the part of the City to make a contract. My understanding is that we just need to get bids to service our own trash needs. I don't think we have anything to give them to even get something back from them in exchange for it per what Mr. Lewis stated. These customers are not ours.

**MAYOR CATAZARO-PERRY** – They're not.

**COUNCILMAN VIOLAND** – So what...

**MAYOR CATAZARO-PERRY** – It's just the package.

**COUNCILMAN VIOLAND** – Okay, but I guess what I'm saying is that if we contracted with Kimble or one of these bidders, what is the City getting in return for that? Before and the 2012 contract that was renewed, we got free service for all of our trash needs for the City. What are we getting now for this?

**MAYOR CATAZARO-PERRY** – Barb, go ahead.

**BARB SYLVESTER** – Well, as you said, we realize that we do need to have this type of service for all of our City facilities. But as well, we're looking, as the Mayor said, to do something for the benefit of our residents. If these companies are coming to us and say we want to bid on this, that means they are going to try to put a package together, they are going, hopefully, offer lower rates for us for all of our residents.

**COUNCILMAN VIOLAND** – And then do we as a City market that? I'm kind of missing.

**MAYOR CATAZARO-PERRY** – The company that is a winning bidder, they actually send out a letter to the community. So, again, it's just like the aggregation. You get the letter from the aggregation company that's the highest bidder. The Kimble company or whichever company is successful in this bid, they will send a letter out saying this is our package that we negotiated with the City of Massillon and won the bid. If you want to join us, here's your rate. But the resident can go anywhere they want to go.

**COUNCILMAN VIOLAND** – Okay. So, we're not putting like a stamp of approval on this?

**MAYOR CATAZARO-PERRY** – Correct.

**COUNCILMAN VIOLAND** – Okay. Alright. Any other questions at this point? I would just ask that this be set for a third reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 147 – 2022 has received second reading.

**17. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS NOT ON THE AGENDA**

**18. ADJOURNMENT**

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Harwig Smith.

**COUNCILWOMAN HARWIG SMITH** – I'd like to make a motion that we adjourn.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Creamer. Roll call.

9 yes to adjourn

**COUNCIL PRESIDENT ISTNICK** – Meeting adjourned.

---

DIANE ROLLAND, COUNCIL CLERK

---

CLAUDETTE ISTNICK, PRESIDENT