

**MINUTES OF THE REGULAR MEETING  
MASSILLON CITY COUNCIL  
HELD MONDAY, DECEMBER 5, 2022**

**COUNCIL PRESIDENT ISTNICK** – Welcome to the Massillon City Council Meeting for Monday, December 5, 2022. We have in attendance the following City officials: Mayor, Kathy Catazaro-Perry, Safety Service Director, Barb Sylvester, Asst. Law Director, Edmond Mack, Economic Development Director, David Maley, Police Chief, Jason Saintenoy, Fire Chief, Matt Heck, Income Tax/Budget Director, Lori Kotagides-Boron and Police Captain Maier. 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**

**COUNCILMAN ED LEWIS IV**

**3. PLEDGE OF ALLEGIANCE**

**LED BY COUNCILMAN LEWIS**

**4. READING OF THE JOURNAL**

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

**COUNCIL CLERK ROLLAND** – Yes, they are.

**COUNCIL PRESIDENT ISTNICK** – Are there any additions or corrections to be made?

**COUNCIL CLERK ROLLAND** – No, there are not.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Then the minutes stand approved as written.

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

**DENISE RYDER** – I’m here regarding St. John’s Lutheran Church and we have a zoning issue that’s on the agenda tonight and if I could, our treasurer sent all the council an email today and

I'd just thought I would like to read that because everyone may not have had an opportunity to have read that. His name is Keith Cleve and he's not able to be here this evening.

Dear Council Members: St. John Lutheran Church needs to sell the excess property north of the church building in order to fund necessary repairs to our building. This property has zero economic value as a residential property and cannot be sold as such. In reality, it is a commercial corner. Instead of requesting a zone change for the entire property, we are only requesting a change on the empty northern portion. This allows the church to be a buffer for the neighbors to the south and across Wales with the exception of two homes that face the proposed property across a three-lane highway. There are no residential properties that abut or are adjacent to the parcel. We are aware that there are people in the area that are against this proposal. Please be aware that there are also many Massillon residents who are in favor of the change. Most of our members are Massillon residents. Arguments we have heard against the proposal are as follows: #1 - Property values will be negatively impacted. Well, there's no factual basis for this statement, just opinion. We would suggest that since the corner is already two-thirds abutted by business, that that's already factored in to the home values in that location. #2 – This is already a busy corner and adding a business will increase traffic. The fact is, the business will want to locate there to take advantage of one of the most highest traffic visible traffic pattern areas in the county. A destination type business is not likely to build on this site due to the small size of the parcel. #3 – How would traffic enter and exit the property? Well, if the property is rezoned as requested and subsequently sold, the purchaser would have to submit a use-plan to the City for approval of the egress. We ask all of you to vote in favor of our request. If you are not in favor, we would like to hear from you with a solution to our situation. Is the City willing to purchase the property to keep it as a green space? Our neighbors who are against this, willing to purchase the property for the same purpose. Any suggestion would be welcome. Sincerely, Keith Cleve, Treasurer, St. John Lutheran Church. Thank you.

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

**CHERYL WOODS** – I reside at 1821 Wales Rd. N.E., Massillon, Ohio. My home is basically catty-cornered from the church. Now the purpose is the church wants to rezone to business. What type of business? Do you want to change the zoning to business and then later the church gets a contract for let's say, a gas station or, I'd imagine you could have a fast-food or a small business, another small restaurant? We don't know. So, once the property is changed to a business, that's final. We can never go back and change it into a residential again and we're losing the integrity of our neighborhood. When you come down Wales Rd. into Massillon, you're greeted by this beautiful green space and if the property is sold to a business, what do you have? Maybe an empty building there for a couple of years? Would you rather have a green space and a beautiful neighborhood of several; there's Charity Rotch, there's Springhaven, there's Springhill. We all love our neighborhood. We have pride in our neighborhood. Let's keep it as a residential neighborhood. Let's stop building and who knows; maybe in the past, Progressive has wanted to purchase this. I'm not saying that they are or will, but, what are the odds? Do you want automobiles for sale when you come into Massillon? Do you want the neighbors to see automobiles, bright lights or parking lots? Maybe an empty building in the future years? Please keep us residential. 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. 172 – 2022.

**ORDINANCE NO. 172 – 2022**

**BY: COMMUNITY DEVELOPMENT COMMITTEE**

AN ORDINANCE authorizing the Mayor of the City of Massillon, Ohio, to enter into an agreement with Stark County Regional Planning Commission (SCRPC) for the Massillon Housing Department ending December 31, 2023, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Thank you, Madam President. As stated, this ordinance is requesting this annual agreement which entails City’s Housing Programs which are owner occupied housing, rehabilitation and home buyer assistance. This professional services includes environmental and historical reviews, initial home inspections, home rehab estimates with write ups of projects, inspections during the rehab and final inspections of complete rehabs. This compensation is \$15,000.00 per year. This amount has remained the same since 2017. It does have emergency language due to provide uninterrupted assistance for the City’s housing programs for qualified, low to moderate income households in need. Due to this emergency language, does anyone have any questions regarding this request? Seeing none, I waive the rules requiring three readings and bring Ord. No. 172 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Lewis. 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. 172 – 2022 has passed. Ord. No. 173 – 2022.

**ORDINANCE NO. 173 – 2022**

**BY: COMMUNITY DEVELOPMENT COMMITTEE**

AN ORDINANCE amending the Zoning Map of the City of Massillon, Ohio, by rezoning certain property from RM-1 Multiple Family Residential to B-3 General Business District.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Thank you, Madam President. First reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 173 – 2022 has received first reading. Councilwoman Creamer, is there a date for the public hearing on that?

**COUNCILWOMAN CREAMER** – There is a date; January 3, 2023, here at Council Chambers at 6:00 p.m.

**COUNCIL PRESIDENT ISTNICK** – January 3<sup>rd</sup>?

**COUNCILWOMAN CREAMER** – Yes.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 174 – 2022.

**ORDINANCE NO. 174 – 2022**                      **BY: COMMUNITY DEVELOPMENT COMMITTEE**

AN ORDINANCE amending the Zoning Map of the City of Massillon, Ohio, by rezoning certain property from RM-1 Multiple Family Residential to B-3 General Business District.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Thank you, Madam President. Also, first reading. There's also a public hearing for January 3<sup>rd</sup> at 6:00 p.m. here at Council Chambers. The purpose of the rezoning is to allow for motor fuel retail convenience. I believe it's a Get Go Café Market. First reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 174 – 2022 has received first reading. Ord. No. 175 – 2022.

**ORDINANCE NO. 175 – 2022**                      **BY: COMMUNITY DEVELOPMENT COMMITTEE**

AN ORDINANCE amending the Zoning Map of the City of Massillon, Ohio, by rezoning certain property from O-1 Office to R-1 One Family Residential.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Thank you, Madam President. This request is the purpose of rezoning is to allow for new residential construction. I believe the representative was from Habitat for Humanity that was here at the Work Session. We have a public hearing scheduled for January 3<sup>rd</sup> at...

**COUNCIL CLERK ROLLAND** – I think it's at 5:00 p.m.

**COUNCILWOMAN CREAMER** – Yes. So, I take that back. The public hearing for Ord. No. 173, 174 and 175 is January 3<sup>rd</sup> at 5:30 p.m.

**COUNCIL CLERK ROLLAND** – And Councilwoman Creamer if I may, we might have to reschedule that because we have to give a thirty-day notice and it's already the 5<sup>th</sup> of December. So, we might have to reschedule that to the next Council meeting or the Work Session if you want to have it before the Work Session.

**COUNCILWOMAN CREAMER** – Okay.

**COUNCIL PRESIDENT ISTNICK** – Councilman Herncane.

**COUNCILMAN HERNCANE** – We set these last week, at the Work Session which I think is sufficient. Oh, it's a time change; never mind.

**COUNCIL CLERK ROLLAND** – The time changed from 6:00 p.m. to 5:00 p.m. because had so many, but, with the now being, I mean, I know we had it at the Work Session and discussed it then, but, I didn't even have an ordinance number to put on the notice for the public hearing. It didn't become an ordinance until tonight. Last week, it was a request for legislation.

**COUNCILWOMAN CREAMER** – Just to be clear, we'll give a definitive date at the Work Session, but it is going to be a 5:30 p.m. because of the number public hearings we'll have for that evening. Thank you.

**COUNCIL PRESIDENT ISTNICK** – 5:30 p.m. instead of 5:00 p.m.?

**COUNCILWOMAN CREAMER** – Correct.

**COUNCIL PRESIDENT ISTNICK** – Thank you.

**COUNCIL CLERK ROLLAND** – So, Ord. No. 175 – 2022 received first reading?

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

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 175 – 2022 has received first reading. Ord. No. 176 – 2022.

**ORDINANCE NO. 176 – 2022**

**BY: COMMUNITY DEVELOPMENT COMMITTEE**

AN ORDINANCE amending the Zoning Map of the City of Massillon, Ohio, by rezoning certain property from R-3 One Family Residential to B-3 General Business District.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Thank you, Madam President. The purpose of this rezoning is to allow for commercial development. There are two parcels located at 1900 Wales Rd. N.E. Parcel #680121 and #680731. I know we were looking at setting a public hearing for this request and we're trying to get a definitive location. Diane were we able to finalize anything?

**COUNCIL CLERK ROLLAND** – I spoke with Mr. Pedro and he said we could use the recreation center, however, our President said that we could just have it in Council Chambers.

**COUNCILWOMAN CREAMER** – Okay. So, we'll talk about it at the Work Session and set a date and time.

**COUNCIL CLERK ROLLAND** – Okay.

**COUNCILWOMAN CREAMER** – First reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 176 – 2022 has received first reading. Ord. No. 177 – 2022.

**ORDINANCE NO. 177 – 2022**

**BY: ECONOMIC DEVELOPMENT COMMITTEE**

AN ORDINANCE authorizing the Mayor of the City of Massillon, Ohio, to enter into an agreement with Cyrus Ausar to provide an economic development “inducement grant” to fund start-up costs, including build-out, equipment, etc., for Grow Mental Health & Wellness, located at 141 – 1<sup>st</sup> St. N.E., Massillon, Ohio, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Herncane.

**COUNCILMAN HERNCANE** – First reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 177 – 2022 has received first reading. Ord. No. 178 – 2022.

**ORDINANCE NO. 178 – 2022**

**BY: ECONOMIC DEVELOPMENT COMMITTEE**

AN ORDINANCE authorizing the Mayor of the City of Massillon, Ohio, to enter into an Enterprise Zone Agreement for a tax abatement for Mast Trucking, Inc., and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Herncane.

**COUNCILMAN HERNCANE** – Thank you, Madam President. This was not at our Work Session last week. This was put on the agenda for this evening by electronic verbal from the Economic Development Committee. I would like Mr. Maley to come up to the podium to talk about this ordinance a little bit, please.

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

**DAVE MALEY** – Good evening, Mr. Chairman. This ordinance tonight, and I apologize for the not being able to do the Work Session; it has a lot of moving parts to some of this stuff. One is that we had to do school board notices which require a timeframe and then there’s also another component which is a waiver from the State Development Dept. that we anticipate that we will get because, which I can explain, but there’s some jobs that are being moved from their other facility to Massillon. Mast Trucking is a family owned business that was founded back in 1969. They currently are located; they have two facilities, the larger facility and smaller facility in Canton, but the larger is in Millersburg, right outside the city limits of Millersburg. Currently they have 219 employees. Back in 2020, they hauled over 50,000 loads and crossed 1,045 cities. So, they do quite a business here most and I think it’s on eastern side of the United States. They’re involved mostly in refrigerated transportation. One of their largest customers is Freshmark. So, I think the location that they’re looking at is down off of Richville Dr. right up by R.G. Drage which is a great location with regards to where Freshmark is currently located. They approached us, so we’ve been talking with Mast for quite some time now. They did purchase 38 acres of property over there and they’re in the process of building a facility and we would like to have to entertain a 10-year at 75% abatement enterprise zone for the company. The actual business that they’re building, a facility here in Massillon is going to be a probably about a \$6 to \$8 million-dollar investment. They are looking to have a projected full-time employment over the next three years of 50 additional employees. 20 will be transferred from the Millersburg facility to Massillon. Their projected payroll is over \$3 million dollars. That’s some of the things. I did put on all of your desk a copy of what they call, and I was on

the website looking at somethings today, called the Mast Big 5 and it just kind of list the values. Like I said, they're a family-owned business entrenched into the community down there and so, Mr. Chairman, we do have Kevin who is the president of the company is here.

**COUNCILMAN HERNCANCE** – Okay. I have one question for you; Council saw something related to Mast Trucking earlier this year, maybe even last year, I don't remember, regarding a traffic light on that on road there.

**DAVE MALEY** – Nave, yes.

**COUNCILMAN HERNCANE** – Nave. To your knowledge has anything, it's been several months, but to your knowledge, has anything changed regarding the scope of this project since then?

**DAVE MALEY** – No.

**COUNCILMAN HERNCANE** – Except for the job creation and the capital investment?

**DAVE MALEY** – No.

**COUNCILMAN HERNCANE** – Okay. I would ask, Madam President, that Mr. Mast approach the microphone at the back to say a little bit about his company and this project.

**COUNCIL PRESIDENT ISTNICK** – Mr. Mast if you could come forward.

**MR. MAST** – I think Dave said it pretty well. We're a family-owned company. We're a refrigerated food hauler and our area of operation is in the eastern half of the U.S. We have some of our main customers are right here in Stark County; Freshmark is one of them as was mentioned, Superior Dairy down the street, Case Farms over on the east side of Canton and there's a couple of others. I think within about a twenty-five mile circle we have about five or six of our main customers. We're from Millersburg. That's our home town. We're excited to move up here to Massillon. We're still going to maintain our facility in Millersburg; we're just going to do some different work down there than what we're doing up here. It only makes sense to be up here for several reasons, obviously. With some of our customers, they require us to be within a certain mile radius of where their facilities are located. I'd welcome any questions.

**COUNCILMAN HERNCANE** – A couple of questions that I have; you're looking at a 20,000 sq. ft. facility on approximately 38 acres, projected cost would be \$7 million dollars in build-out.

**MR. MAST** – Pretty close.

**COUNCILMAN HERNCANE** – And up to 219 total company employees, the amount of employees that will be relocated to Massillon would be 40 or 50?

**MR. MAST** – 20.

**COUNCILMAN HERNCANE** – 20. In addition to...this says 40.

**DAVE MALEY** – I'm sorry, Mr. Chairman.

**COUNCILMAN HERNCANE** – The legislation request says “will result in the creation of over 40”.

**DAVE MALEY** – Yeah, we anticipate over 40 new employees and then the 20 that will be transferred.

**COUNCILMAN HERNCANE** – With a total payroll of \$2.7 million, correct?

**DAVE MALEY** – Correct.

**COUNCILMAN HERNCANE** – Okay.

**DAVE MALEY** – That could obviously change and one of things I wanted to note is I think the site that they purchased was larger, so, hopefully down the road we’re looking at a larger site at some point. They aren’t committing to that, but, if things go well, I think there would be maybe some additional expansion opportunities in the future.

**COUNCILMAN HERNCANE** – Okay. Are there any questions for Mr. Mast or Mr. Maley from members of Council?

**COUNCIL PRESIDENT ISTNICK** – Councilman Snee.

**COUNCILMAN SNEE** – Thank you, Madam President. Just real quick; are you considered truckload or on the road?

**MR. MAST** – We’re truckload.

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

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

**COUNCILMAN HERNCANE** – Thank you, Madam President. We’ll give this first read tonight, but with the calendar, we need to pass this by the end of the year and you need to send this to the State of Ohio by December 31<sup>st</sup>, correct, Dave?

**DAVE MALEY** – I don’t believe I have to actually send it to the State, but I think we have to have it passed.

**COUNCILMAN HERNCANE** – Okay.

**DAVE MALEY** – I can double check, but I don’t think we have to actually send it there, but it does have to get there.

**COUNCILMAN HERNCANE** – So, today’s December 5<sup>th</sup>, when we give it first read tonight, if we were to call a special meeting and I would be in favor of that if two other Council members would join me in setting a special meeting for 6:30 p.m. next Monday for second read and then that would allow it to have third reading and a decision on Monday, December 19<sup>th</sup>.

**DAVE MALEY** – That would work.



**COUNCILMAN HERNCANE** – Is that a good time table?

**DAVE MALEY** – Yes, Mr. Chairman.

**COUNCILMAN HERNCANE** – Okay. Would you like me to give it first read first and then talk about the hearing, how do you prefer?

**COUNCIL PRESIDENT ISTNICK** – Whatever you want.

**COUNCILMAN HERNCANE** – We'll give Ord. No. 178 – 2022 first reading tonight.

**COUNCIL PRESIDENT ISTNICK** – Okay.

**COUNCILMAN HERNCANE** – And I would ask for a special meeting for next Monday at 6:30 p.m. if any others care to join. We can do it at 6:30 p.m. because it'll take three seconds to say "second reading"

**DAVE MALEY** – All you're going to do is give it second reading.

**COUNCILMAN HERNCANE** – Yeah.

**COUNCIL PRESIDENT ISTNICK** – Was that a second, Councilman Violand?

**COUNCILMAN VIOLAND** – Yes.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Violand.

**COUNCILMAN HERNCANE** – The rule says that there needs to be three.

**COUNCIL PRESIDENT ISTNICK** – Councilman Slutz.

**COUNCILMAN SLUTZ** – Yes.

**COUNCILMAN HERNCANE** – Thank you. The notices will then go out through the proper channel for that meeting, but we will revisit this next Monday at 6:30 p.m. for a special meeting. We will give it second read then.

**DAVE MALEY** – Thank you, Mr. Chairman.

**COUNCILMAN HERNCANE** – Alright. Thank you, Madam President.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 178 – 2022 has received first reading and we will have a special meeting next Monday at 6:30 p.m. Ord. No. 179 – 2022.

**ORDINANCE NO. 179 – 2022**

**BY: POLICE AND FIRE COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into a purchase agreement to purchase a 2023 MEDIX Type I ambulance on behalf of the Massillon Fire Department, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lombardi.

**COUNCILMAN LOMBARDI** – Thank you, President Istnick. We discussed this at the Work Session, however, I was misinformed and misspoken at the Work Session on where the funding for this ambulance would be coming from and President Istnick if you could call up Chief Heck, he would like to make a clarification on that, please.

**COUNCIL PRESIDENT ISTNICK** – If you could come forward, Chief Heck.

**MATT HECK** – Good evening, Madam President, Members of Council. So, after a week of discussing some of the things, I think there was some confusion and some clarity that was needed. The funds that are used for ambulance purchases actually come from EMS transport revenue. 10% of the revenue that comes in goes into the EMS Capital account. Every two years or right in that area, we use those funds to purchase the ambulance. So, no income tax dollars are being used for the purchase of this ambulance. So, that clarifies the funding of where its source is, that's the question. Everything else is the same, the two-year program that we do to replace those ambulances; the ambulance is the same going forward.

**COUNCIL PRESIDENT ISTNICK** – Any questions? Councilman Lombardi.

**COUNCILMAN LOMBARDI** – Thank you, Chief Heck. In the Work Session I said I wanted to give this more than one reading because it was taxpayers dollars. Since that's not the case, what I would like to do tonight is make a motion to suspend the rules requiring three readings and bring Ord. No. 179 – 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. 179 – 2022 has passed. Ord. No. 180 – 2022.

**ORDINANCE NO. 180 – 2022**

**BY: POLICE AND FIRE COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, upon the approval of the Board of Control, to enter into a Master Service and Purchase Agreement with Axon Enterprise, Inc., for the purpose of purchasing the CORE+ (TASER and Body Worn Camera Program) and Fleet 3 Advantage (In-Car Program) package bundles for the Massillon Police Department, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lombardi.

**COUNCILMAN LOMBARDI** – Thank you, President Istnick. Since we had the entire Police and Fire Committee besides myself and other members of Council out, could we please call Chief Saintenoy and Captain Maier up to just briefly give us a synopsis of what this is entailing?

**COUNCIL PRESIDENT ISTNICK** – Yes. Gentlemen if you could come forward.

**CHIEF SAINTENOY** – First of all, good evening. I appreciate your time and appreciate you guys giving us an opportunity to speak to you and address Council tonight. So with that being said, there were some members of Council that were not here at the last meeting and I'm glad that I'm looking at a full house here. So, there's an opportunity for those of you that have questions that maybe weren't answered and we'd like to be able to do that. So, I give a full endorsement as the Chief of Police that I think that this is a program that is going to benefit the department as well as the community equally because of its transparency and the level of services its providing. But because Captain Maier has put in all the leg work on this when it comes to details, prices, explanations; I want to turn the floor over to him and I'll allow you guys to address him directly. I think he's the best person to answer your questions.

**CAPTAIN MAIER** – Thank you, Chief. Madam President, thank you for letting me be up here. Last week we went into pretty depth with this, so, I'm going to abbreviate what we did last week a little bit and keep it a little shorter. So, the Massillon Police Dept. is in need of replacing our outgoing, body worn camera system, our fleet, which is our in-car cruiser camera system as well as our Tasers that are four or five generations old and we have multiple different models. The need for this is that the camera systems have a shelf life. The purchase of those old camera systems did not have a replacement program with them and therefore, we would have to enter into a new agreement with either that company which is actually transitioned into a new company, was purchased out by another company or do something like that. So, we came across a couple of different places and we settled on Axon Enterprise due to several reasons, but mainly because of what they can offer for our needs to our community and to our police department. So I just want to touch on them a little bit. Obviously, we're going to get body cameras for every officer. We're going to get cameras for the cars, for every car. We're going to get mobile routers for every car which would allow us to live-feed video from either their body camera or their in-car camera. We will get Tasers for every officer. There's a package that everybody had that should have some of the highlights of everything we're getting. If I went through everything that we're getting, we'd be here for a little while. This is the all-encompassing package. They come and install it, they come and get everything ready for us. In two and a half years, they come and replace the body cameras. That shelf live that I discussed, that will be replaced and we won't have to worry that. At five years, at the end of the program, we also get replacement of all the equipment as well. So, it's not just one set. There's going to be three sets in the period of time which I'm not sure if I hit on that last week, but I wanted to make sure that I told you that. Like I said, it's a need for the community. It's going to increase our transparency for our citizens which is one of the biggest things across the country and including our community and locally that citizens demand transparency from police. It's going to increase our proficiency with court writing. It'll increase our prosecution assistance with evidence and as far as the camera systems go, it will assist us with a new type of Taser that will have not one, but two probes for a longer shot or a shorter shot which will be then therefore safer for officers as well as a less lethal weapon for the citizens which will then, ultimately, be safer for them as well. If there's anything else, I can take some questions or if you need me to explain more, I will.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lombardi.

**COUNCILMAN LOMBARDI** – Thank you, President Istnick. Captain Maier, it was brought to my attention that the proposal that we looked at had a mistake in the licensing. Can you touch on that and exactly how Axon is handling that for us?

**CAPTAIN MAIER** – Yes. So, there was a mistake in the licensing. They gave us licensing for 45. That was the amount of body worn cameras that we had purchased. However, with talking to them, talking through it, we found out that we need more license than body worns so that our city’s public relations people, our records people and our Chief could have their own because the Chief, obviously, doesn’t wear his body camera like our officers on the road so that they can access the program, redact information and get it out to whoever may need it. So, Axon allowed us to enter those in without any further charge more than what was presented to you last week.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – And the fee that we’re discussing right now is the \$131,000.00; is that correct? Is that the number I remember?

**COUNCILWOMAN HARWIG SMITH** – Per year.

**COUNCILMAN LEWIS** – Per year?

**CAPTAIN MAIER** – Correct.

**COUNCILMAN LEWIS** – And some change.

**CAPTAIN MAIER** – Correct.

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

**COUNCILWOMAN HARWIG SMITH** – As far as at the end of five years, so at the end of five years, they’re going to give us cameras and everything again. If we do not re-sign with them as far as their termination agreement, all that information out there of everything that’s been filmed, it says that it’s gone within ninety days unless you make arrangements. So, they own all that? If someone wants to go back from eighteen months into the police. So that information, is that kind of basically locking us in indefinitely with them?

**CAPTAIN MAIER** – No, it does not lock us in indefinitely. There is a retention schedule that is supposed to be followed. It’s kind of in depth as far as what type of information they’ll keep for us, but the vast majority would be deleted within ninety days. Our current system deletes everything in forty-five days if we do not specify what type of retention would need for that specific thing. So, a normal interaction, nothing happens, there’s no criminal or civil issue that we need to deal with, that gets deleted in forty-five days automatically by the system that we have now. So, Axon’s is ninety days. So we’d have to set up retentions. We do that with auto-tagging events so if an event is something that would have a larger retention, say a murder scene, that is something that would get tagged and it would be setup into a retention schedule with them.

**COUNCILWOMAN HARWIG SMITH** – Okay. And I have another question, I know last week my big concern is the almost \$11,000 a month; it just seems like a lot of taxpayer money. As far as other proposals and estimates from other companies, how many companies did you talk to and what were their proposals?

**CAPTAIN MAIER** – So I talked to two other companies. One was the oncoming company that's taken over ours. They were supposed to send me a proposal. I have never received that proposal. That was approximately two months ago. I have not got anything from them. And the other company was a Motorola company. They did send me a proposal. That proposal came up to a little over \$400,000 and then we were going to have to purchase what's called "cradle points" for each car and we would also have to in play a third party to have everything installed. So, when that was all said and done, it was reaching to the matter approximately \$500,000. It was going to cost us merely for body cameras and in-car cameras so we would have lost out on the Taser piece of that as well.

**COUNCILWOMAN HARWIG SMITH** – And as far as grants that have been applied for, I was looking at the Axon site and numerous ones, they have police grants for like fleet II. Did they discuss any of that with you or offer to help you get grants for that or what grants have we applied for and specify this financial need?

**CAPTAIN MAIER** – The grants; we applied for a grant with the State of Ohio, the Dept. of Public Safety for a grant for this program, mainly for the body worn piece of it. Right now, at least for the State of Ohio and some of the grant systems that we've used in the past, did not have anything for the in-car piece or the Taser piece. But they did for the body worn piece. The Ohio Collaborative wants every office in the State of Ohio to have a body worn camera, so they continuously put out these grants over the last several years. That grant is under review. They are behind schedule. We are hoping to know something. We just talked to them last week and we're hoping to know something by mid-January on whether we would get that grant or not; if we would be denied or accepted for that grant.

**COUNCILWOMAN HARWIG SMITH** – So if we accept that grant then we can apply that directly towards what we're paying?

**CAPTAIN MAIER** – It is a reimbursement grant. So, we would purchase the item and then they would reimburse us. The amount is set by the State of Ohio, determined by the need of the program. Some of the things that they wanted was obviously, buy worn cameras and the other big push is cloud-base services which this program would handle both of that. So, I'm very optimistic about getting that grant.

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

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Captain Maier's did that include drones?

**CAPTAIN MAIER** – So the drone piece was actually discussed and purchased. The unions have an officer safety fund. This year they came to us, we always discuss it. In the past we've purchased things like ballistic shields and firearms and stuff like that in the past. They have a fund that they discuss with myself and the chief. This year they decided they would like to start a drone program because they believe that the drone program could go further towards officer safety and gives a navigation piece to a city such as Massillon and we wouldn't have to buy a helicopter. Probably don't want to buy a helicopter, that's a little pricey. But anyways, they decided to use their safety money towards that program. They're going to purchase, at this point, at least one drone which will have an infrared camera so it will be able to see bodies in the woods or if some kid got lost or if we were searching for a subject. They're using that money for that as well as purchasing software with Axon to communicate together with this

system as well, so everything can link up. But that is kind of a separate piece to this that they're purchasing out of that fund.

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

**COUNCILMAN GREGG** – Thank you, Madam President. Captain Maier I believe that you mentioned last week that this proposal is actually a bundled package that had we purchased these packages separately, would cost a lot more. Can you touch on that?

**CAPTAIN MAIER** – Yes. So, one of the things I looked at when we were discussing all this package was state contract prices and for example; for the Taser, the state contract price for a Taser 7, just the Taser piece itself, not any of the extra stuff that you would need for the Taser, would be \$17,050.00. They're selling it to us for \$1,353.00 per Taser, that's what it comes out to. So, if that kind of explains it that the bundle price saves approximately 24% all together on the whole package.

**COUNCILMAN GREGG** – On the whole package, 24%?

**CAPTAIN MAIER** – Correct.

**COUNCILMAN GREGG** – So, if we didn't go with this package and got these items separately, not that we would, but if we did, we'd be paying 24% more?

**CAPTAIN MAIER** – Correct.

**COUNCILMAN GREGG** – Okay, thank you.

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

**COUNCILMAN SNEE** – Thank you, Madam President. Just real quick; do we know of any municipalities around the surrounding Massillon area that are using comparable programs such as this?

**CAPTAIN MAIER** – So there's a couple that use comparable programs. Jackson Twp. has a program. Their program does not include the Tasers. Theirs is only the body worn cameras as well as the in-car cameras and I'm not sure if they had some type of camera system the purchased for around the township or not that went with it or not. Sometimes they do. I'd have to check with them if that was incorporated. North Canton Police Dept. has a program. Akron has a program; they do not have in-car, that I know of. And there's several other agencies around. The biggest two when you start to look around at agencies, its either Axon or Motorola.

**COUNCILMAN SNEE** – Would it be safe to say if I was a young individual thinking about becoming a police officer, this could be used as a recruiting point as well?

**CAPTAIN MAIER** – I think the package program with what we're getting here and the way that society sort of demand that they have on police these days as far as this goes, allows young recruits to feel comfortable coming to a place that would have a camera system that would protect them. It protects them, it protects the citizens as well and I think that's something that they all want. All the younger officers want body cameras. They want to show what they're

doing because they know they're not doing anything that would, the vast majority officers know that they're not doing anything that would violate any rights or anything like that. So they want that transparency. So it protects them, it protects the citizens from rouge officers as well. So I think based on the package, that's going to eventually come together especially with our drones that the union so graciously decided they wanted their purchase. I think that will be really good for recruiting tools in the future to highlight some of the good equipment that we would have here.

**COUNCILMAN SNEE** – Perfect. Thank you very much.

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

**COUNCILMAN LOMBARDI** – Thank you, President Istnick. Captain Maier, Chief Saintenoy, I'd like to thank you for all the work that you've put in on this. As I said at the Work Session, this kind of money, I don't want to try and even pass it on first reading, but, I believe at the next Council session I will be bringing it forward for a vote. So tonight, we give it first reading. Thank you.

**CAPTAIN MAIER** – Thank you. Thank you for your time.

**COUNCIL PRESIDENT ISTNICK** – Thank you gentlemen. Ord. No. 180 – 2022 has received first reading. Ord. No. 181 – 2022.

**ORDINANCE NO. 181 – 2022**

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

AN ORDINANCE authorizing the Director of Law of the City of Massillon, Ohio, to renew a one (1) year agreement with the Stark County Public Defender's Office, for the purpose of providing representation for indigent defendants that are charged under City Ordinances, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Gregg.

**COUNCILMAN GREGG** – Thank you, Madam President. We discussed this legislation at the Work Session. This is something that we do each year, renew this contract. It's a one-year agreement with Stark County Public Defender's office, for the purpose of providing representation for indigent defendants. The amount has not changed since the previous contract, so, given that; is there any discussion on this ordinance? Seeing none, I'd like to make a motion that we waive the rules requiring three readings and bring Ord. No. 181 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Herncane. 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. 181 – 2022 has passed. Ord. No. 182 – 2022.

**ORDINANCE NO. 182 – 2022**

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

AN ORDINANCE to approve the 2022 Replacement Pages to the Codified Ordinances of the City of Massillon, Ohio, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Gregg.

**COUNCILMAN GREGG** – Thank you, Madam President. Similarly, this is something we need to do each year regarding the replacement pages to the Codified Ordinances, it's routine. Any questions or discussion? Seeing none, I'd like to make a motion that we waive the rules requiring three readings and bring Ord. No. 182 – 2022 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Herncane. 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. 182 – 2022 has passed. Ord. No. 183 – 2022.

**ORDINANCE NO. 183 – 2022**

**BY: FINANCE COMMITTEE**

AN ORDINANCE making certain appropriations from the unappropriated balance of the 1401 Income Tax – Capital Improvement Fund, for the year ending December 31, 2022, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – Yes. This is the appropriation of \$230,170.00 for the ambulance purchase. Are there any questions or discussion this evening? Seeing none, I make a motion to suspend the rules requiring three readings, bringing Ord. No. 183 – 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. 183 – 2022 has passed. Ord. No. 184 – 2022.



**ORDINANCE NO. 184 – 2022**

**BY: FINANCE COMMITTEE**

AN ORDINANCE making certain appropriations from the 1100 General Fund, for the year ending December 31, 2022, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – Considering that Councilman Gregg led the conversation last week, I'd like to hand over discussion to his lead.

**COUNCIL PRESIDENT ISTNICK** – Okay. Councilman Gregg.

**COUNCILMAN GREGG** – Thank you, Mr. Lewis. We discussed this last week; appropriating from the unappropriated balance \$225,000.00 to the City Improvement Project. Do we have discussion this evening?

**COUNCIL PRESIDENT ISTNICK** – Councilman Herncane.

**COUNCILMAN HERNCANE** – Can you please refresh my memory of what the improvement project is?

**COUNCILMAN GREGG** – I need to call someone from City Administration.

**COUNCIL CLERK ROLLAND** – It's the demolition of Tiger Rags.

**COUNCILMAN GREGG** – Oh, okay.

**COUNCILMAN HERNCANE** – That's right. Thank you.

**COUNCILMAN LEWIS** – I'm sorry; I just assumed there was probably more conversation last week and I was hoping that you pulled that in. If not, then I apologize.

**COUNCIL PRESIDENT ISTNICK** – Do you want Mr. Maley to come forward?

**COUNCILMAN GREGG** – Mr. Maley, please come forward to discuss this.

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

**DAVE MALEY** – Council, Mr. Chairman, this is for the Tiger Rags at 125 and 129 Lincoln Way E. demolition. We have been awarded a reimbursement grant through the State of Ohio. We had put aside, at this point, \$225,000.00. The bids did come in last week. They are under \$225,000.00, so we feel very comfortable that we'll stay within that range of \$225,000.00 and we'd like to have it passed so that we could possibly...we just put forward the survey report submitting bids right now. I think they'll be next Monday for the remediation part of it, but once the remediation is done, we probably should move forward quickly to have the buildings demolished.

**COUNCIL PRESIDENT ISTNICK** – Any questions? Councilman Lewis.

**COUNCILMAN LEWIS** – Again, I apologize; I thought there was more conversation. That’s why I handed it over to Mr. Gregg, so I apologize for not giving you a heads up either. So, last week when we brought it, was there any conversation that was had about how this is a private owned building?

**DAVE MALEY** – Not a lot, but it’s been discussed internally.

**COUNCILMAN LEWIS** – This is not a publicly held property. This is a privately held property that has had orders of demolition and this proposal that we have in front of us is that we would fund that demolition and then receive the reimbursement grant.

**DAVE MALEY** – That is correct. I did have discussion with the property owner, the building owner and they said that they did not have the \$225,000.00 that we anticipate it’s going to cost.

**COUNCILMAN LEWIS** – However, the grant would allow, if the property owner were to spend their own money for demolition, the grant would allow for us to pass that on to them, the grant monies?

**DAVE MALEY** – Well, yes. We had discussion with the Auditor about this, I mean, we’ve been going round and round on this for a little bit of time. We had asked whether they could provide the money, put it into a fund; we would use that fund, get reimbursed from the state and then reimburse them. But, ultimately, they said they did not have the money to do it, to put in and it really comes back to the fact that if we don’t do it, the property owner could walk away from the property and we’d have to demolish it anyway. We just don’t want to take a chance of losing the funding, to be honest with you. But, I’m following where you’re at on the whole issue.

**COUNCIL PRESIDENT ISTNICK** – Councilman Gregg.

**COUNCILMAN GREGG** – Thank you, Madam President. So, I know we did discuss that, but one thing I don’t believe we discussed is what happens to that property once the demolition is complete. It’s still owned by the current owner?

**DAVE MALEY** – Yes.

**COUNCILMAN GREGG** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Has there been any discussion regarding relocation of this business somewhere in Massillon?

**DAVE MALEY** – They already have relocated. There’s next door to the Huntington.

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

**COUNCIL PRESIDENT ISTNICK** – Councilman Snee.

**COUNCILMAN SNEE** – Thank you, Madam President. Just for my own curiosity; is there a declared value for the reimbursement grant? Is that going to cover the full amount or is it just that there's a set value?

**DAVE MALEY** – Well, there's \$225,000.00 that's been set aside. We anticipate to use all of that, but it doesn't like we're going to use all that and we made it clear to them that any money that was expended over that amount...the City should not be held liable for any of this. So, whatever additional money that's being required is going to come from them.

**COUNCILMAN SNEE** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I'd like to call forward a representative from the Law Dept.

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

**EDMOND MACK** – Good afternoon, Chairman.

**COUNCILMAN LEWIS** – I'm just looking at this and I know we have demolition orders that we are basically saying that this property is no longer safe, telling the property owner that they have to alleviate this issue. My concern is that if the City pays for the demolition, are we opening ourselves up to some sort of liability because now we are paying to demolish a property that we do not own and then does that property owner somehow potentially have a grievance us if maybe it exceeds cost and maybe come out-of-pocket or if they say it was done improperly and devalue the property in some what? Like, could they have a grievance against us?

**EDMOND MACK** – First and foremost, whether somebody files a lawsuit against the City, it doesn't mean a loss of having merit. I mean, \$300.00 and a pen is all, you're going to file a lawsuit. But in terms of actual exposure to the City, in demolition cases, cities, building departments, they can get into problems when they don't get proper notice and there's not due process to the property owner and potential lien holders. So, as long as that threshold notice of demolition orders, the right to appeal as adhered to, the possibility of liabilities wouldn't be very well. The City's going to be further protected in proceeding with any type of demolition because of the immunity that Ohio State law provides to cities. That's going to be something that would be considered a governmental function and when we are engaged in governmental function, our immunities are very, very high. Now that doesn't mean that we can just tear down the property without recourse, no, the Constitution says that if the City deprives somebody of their property, they have to get just compensation and so, that would really be the analysis. So, as long as the proper procedures are adhered to, I think the City's exposure would likely be fairly low.

**COUNCILWOMAN HARWIG SMITH** – Mr. Mack, I have a question; as far as during the demolition process, if the building that is like up against, are any of the surrounding properties are damaged, who is liable for that?

**EDMOND MACK** – That would be a complicated question. It really depends on what happens. Obviously, our taxpayers can say things of that perspective, but the City's coffers. The first thing that we would be looking at is, was this thing torn down properly? Was the contractor

that was engaged here, do they have the ability? That's where the liability would focus. I'm not saying at all that it would be impossible if, for the City to be liable for an improper demolition that where it collapses another building, but the focus would start with and likely be the demolition contractor and their bond and their insurance policy. If that answers your question.

**COUNCILWOMAN HARWIG SMITH** – Okay, thank you. I just want to make sure that whoever we contracted wasn't bonded and would be responsible for anything that they could possibly do to surrounding structures. Thank you.

**EDMOND MACK** – For sure, for sure.

**COUNCIL PRESIDENT ISTNICK** – Councilman Herncane.

**COUNCILMAN HERNCANE** – Thank you, Madam President. Mr. Mack, is there anything that precludes if the property owner retains title to the property, is there anything that precludes he or she from building another structure on that site once it's torn down?

**EDMOND MACK** – Once it's torn down; possibly. So, we'll say we have an amount owed to us for tearing down; say we're not fully compensated. Say we have demolition costs that are on the title to that property; that could prevent the approval of their site plans to build another structure. But in the abstract, as long as everybody's paid from the City vantage point, there wouldn't necessarily be something that would prevent them as long as their site plans are approved. Now, you just can't build a structure, for instance, when you tear down a residential home, they fill it in to restructure. In the abstract, Councilman, no, there wouldn't be anything.

**COUNCILMAN HERNCANE** – And I say that because it does, my brain is thinking a little bit here, but if the property owner's basically getting a free demolition because of the grant funding that the City is utilizing to tear down this structure and he or she retained legal ownership of the property, couldn't that have been negotiated as part of this, that the title would transfer to the City for like a \$1.00? We could have used it for additional downtown parking or something? I mean, this person is going to always own this land.

**EDMOND MACK** – Yes. That can be done.

**COUNCILMAN HERNCANE** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – And to that point, that's where I'm hesitating. Like, we're essentially alleviating an issue for a property owner and then they get all of the benefit. We're improving this property because as it is now, it is useable. So, we're improving this property for free to a land owner and we don't offer that same advantage to other land owners throughout the City. If my house were to be deemed condemned, I don't see the City saying, "Don't worry. We went and got a grant from the State. We'll take care of it" and I now have a nice green lot that I can do whatever I want it. I'd still be responsible for the demolition. That's my concern. The equal treatment across the board.

**COUNCIL PRESIDENT ISTNICK** – Anyone else?

**EDMOND MACK** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Councilman Gregg.

**COUNCILMAN GREGG** – I believe that this is still Mr. Lewis' committee. So, I defer to Mr. Lewis.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis. Oh, Mr. Maley.

**DAVE MALEY** – Just a couple of things. One is that this is a real unusual situation because this was like a one-time grant that the State, I think there was \$150,000,000.00 that they awarded throughout the State for demolitions. Each county got \$500,000.00 of 100% and first come, first serve. We were the second one in and were able to get the full amount of what we wanted, \$225,000.00. It is unusual and the way we looked at it and I don't disagree with some of the thinking. I don't know what our legal odds would be to go after the property owner. I think the intention is to build something else on the property. But, like I said, if the property owner would walk away from the property and we did have this grant, and we did get approval. I mean, we will, as part of this, have approval from the property owner to tear it down. We have to have that also, but it's a little bit of an unusual situation and I know other property owners have approached me with, "Well, is there money?". Yeah but there really isn't something that's going happen very often, I think, at this point. So, it is a little unusual, though.

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

**COUNCILMAN SNEE** – I believe this question was posed, did we ever get clarification if this is going to have a chain reaction to where Margarita's is at?

**DAVE MALEY** – As far as the buildings?

**COUNCILMAN SNEE** – Yeah. Because I believe it was posed as a question, I don't know if we got a clarification or answer to that.

**DAVE MALEY** – No. It should not and I think it's important that we get the right demolition company. So, we are vetting the demolition companies. We got some good bid numbers back, but we are going make sure that we are comfortable with the company that does it, that has proven they can do these types of delicate projects.

**COUNCILMAN SNEE** – Yeah. I'm just wondering if there has to be some kind of a, maybe it's an engineering question; if there has to be some kind of a structure support wall put up next to that to prevent a chain reaction from occurring. Since these buildings are up against one another.

**DAVE MALEY** – Correct. I don't believe that that's an issue because the contractor that we've talked to feels comfortable that they can do it. That's not to say that we don't know what that building's going to look like when take and what that wall is going to look like, also. It's hard to say but I think the companies that have bid, like I said, we've got nine bids or so and some good companies that have bid. So, we feel comfortable that we'll be able to get a quality company to do the job and do it the right way.

**COUNCILMAN SNEE** – Thank you.

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

**COUNCILMAN GREGG** – I just want to follow-up on what Mr. Snee was questioning. So, if the remaining wall that's now part of Margarita's needs to be reinforced or something under that, would that be part of this project or would that be something separate that we'd have to pay for?

**DAVE MALEY** – Well, if we can include it as part of the project, the guidelines, if we include it in the project, sure. If we have the additional money, we'll try to get it done. If we can't, that's the property owner's responsibility to pay for that. I mean, we'll have to work with the Margarita's property owner and find out who's paying for what.

**COUNCILMAN GREGG** – Right. Because I think we had the discussion that those walls when originally built weren't made as exterior walls. So now we're making an interior wall and exterior wall and it may not have the proper support. So, I don't want the City to be liable for additional costs after the fact and then we discover, well, we've got to do some work on this wall.

**DAVE MALEY** – I don't anticipate that the City will be liable for any of this. We should be able to get everything covered and whatever we don't have covered the property owner will definitely have to pay for.

**COUNCILMAN GREGG** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lombardi.

**COUNCILMAN LOMBARDI** – Thank you, President Istnick. So, just to clarify, Mr. Maley; if we knock down Tiger Rags and it causes a problem with Margarita's, Margarita's is on the hook for what we just did?

**DAVE MALEY** – I would not say that Margarita's is on the hook.

**COUNCILMAN LOMBARDI** – Well, whoever owns that building. If we knock down the two...

**DAVE MALEY** – I think they would have some recourse with the property owner. We're not the property owner.

**COUNCILMAN LOMBARDI** – I guess I'm looking at a more drastic situation; I'm just making this up in my head. But let's say Margarita's is leaning against Tiger Rags; we knock down Tiger Rags and all of a sudden we open a hole in Margarita's; their out of business until that can be repaired. I would think we would have to be prepared for a contingency such as this rather than just saying "Oh, well, that's your building, that's your problem".

**DAVE MALEY** – Well, Mr. Lombardi, I guess at this point we don't know until we get there what it's going to look like, 'til they tear those buildings down. I mean, this isn't the first time we've had buildings torn down in old cities; buildings like this. So, once the buildings are torn down they'll have to value what it looks like. We don't see anything right now that's going to be an issue for Margarita's. But until you get those walls and get them separated out, it's going to be harder. Either way we're stuck because we have a situation where we have unsafe

buildings. They have to come down. It's not a very good situation for anybody; we're just trying to do the best that we can now but it's a little bit complicated.

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

**COUNCILMAN LEWIS** – First reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 184 – 2022 has received first reading. Ord. No. 185 – 2022.

**ORDINANCE NO. 185 – 2022**                      **BY: FINANCE COMMITTEE**

AN ORDINANCE making certain appropriations from the 1100 General Fund, for the year ending December 31, 2022, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – First reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 185 – 2022 has received first reading.

**8. UNFINISHED BUSINESS**

**9. PETITIONS AND GENERAL COMMUNICATIONS**

**10. BILLS, ACCOUNTS AND CLAIMS**

Office Depot                      -                      \$ 81.38                      Copy Paper

**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. The Clerk will pay the bills and charge them to their proper accounts.

**11. REPORTS FROM CITY OFFICIALS**

Auditor's Report                      -                      November 2022

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis

**COUNCILMAN LEWIS** – I make a motion to accept the Auditor's Report.

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

9 yes to accept the Auditor's Report

**COUNCIL PRESIDENT ISTNICK** – Thank you. The Auditor's Report has been accepted. It looks like Mayor Kathy has something for us.

**MAYOR CATAZARO-PERRY** – Good evening, Madam President, Members of Council. Just a few updates I have for you tonight. Those of you that attended the candlelight walk last night and the ceremony, it was absolutely beautiful. Congratulations to everyone that had a hand in that. It's been two years since we've had COVID and we weren't able to have and we had about 1,000 people in St. Mary's Church. It was very, very nice. Also, the skate rink bid is opening up on Wednesday, this week. So, we'll give you more details next Monday on how that went. You're going to be noticing on Erie St. S., that we're tearing down some trees at the fence there right before you hit Rt. 21. So, it was really unsightly and we did clear, if you recall, up by the Rt. 21 and the movie theatre and it just really opened up our City. So, we're trying to get the southeast area cleaned up as well. A couple of other things I just wanted to go over with you; we have awarded the Getz Bldg. restrooms. So that project is moving forward. The sidewalks on Charles St., the bid opening for the new street, underground utilities will be December 14<sup>th</sup>; that's coming up. December 8<sup>th</sup> is Diamond Ct. So, we're going to be removing two of these large apparatuses back there in between the Getz Bldg. and the Annex Bldg. We've worked on that, I'm going to guess about three years, maybe three and a half or four. But we've finally been able to make some headway and work together with both AT&T and Dominion. So that is exciting to get that completed and started. Police renovations; we're going to be working on those. The RQ's are due December 20<sup>th</sup> and our solid waste contract, the bid is due December 13<sup>th</sup>. I want to remind all of our Council members that our project now for ARPA are in designed. So next year, don't be surprised when you get a lot of complaints that there's a lot of construction going on. There will be quite a bit of construction next year throughout the City and that's a positive. It's just going to be a hardship going through the construction phase. And we hope that you saw that some of the roads got paved this year and some of the roads did not get paved this year. The roads that did not get paved, the contractors were very, very busy. So they were able to do what they could do. So those roads that were on the list that did not get paved this year will be caught up in the spring or the summer with another list for next year. So, we have lots of paving going on in this next year. Any questions for me? Okay. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Thank you, Mayor.

## 12. REPORTS OF COMMITTEES

**COUNCIL PRESIDENT ISTNICK** – Our next Work Session will be Monday, December 12, 2022, at 6:30 p.m. and we will also have a Special Meeting at 6:30 p.m. prior to the Committee Meeting.

## 13. RESOLUTIONS AND REQUESTS OF COUNCIL MEMBERS

## 14. CALL OF THE CALENDAR

## 15. THIRD READING ORDINANCE AND RESOLUTIONS

**COUNCIL PRESIDENT ISTNICK** – 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 No. 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 and creating the position of Equal Employment Opportunity Officer and 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’ve had multiple discussions on this legislation in the past. It appears that when you look at the writing of the legislation to be somewhat complicated, but again, I mentioned that the issue really isn’t. We need to separate that position into two positions. It should not have been combined in the first place and we need to have the Civil Service Administrator reporting the Civil Service Commission and not to the City Administration. So, are there any further questions or any further discussion on this legislation? Seeing none, I’d like to move that we bring Ord. No. 155 – 2022 forward for a vote.

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

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 155 – 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 “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** – There’s additional conversation needed. So with that, I will make a motion that we table Ord. No. 160 – 2022 until December 19, 2022 meeting.

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

9 yes to table Ord. No. 160 – 2022 until December 19, 2022

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 160 – 2022 has been tabled until December 19, 2022. 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** – I make a motion that we table Ord. No. 161 – 2022 until December 19, 2022 meeting.

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

9 yes to table Ord. No. 161 – 2022 until December 19, 2022

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 161 – 2022 has also been tabled until December 19, 2022. Res. No. 14 – 2022.

**RESOLUTION NO. 14 – 2022**

**BY: COMMUNITY DEVELOPMENT COMMITTEE**

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 request is to reverse the decision of the Massillon Board of Zoning Appeals in Variance Case No. 2022-16. The first variance is to allow for a structure that is too large for the available space. The dimensions of the structure are 26' x 40' which is a detached garage in the rear yard of Parcel #619373 and the second variance is to allow the structure with a height of 17' 6", whereas the legal limit is 14'. This structure is located in Ward 1 at 843 Sheffield Ave. N.E., Massillon, Ohio. I would like to bring up Asst. Law Director, Edmond Mack just to give us an overview of this request. We've been having multiple discussions over the last few weeks and I would just like him to recap or any additional information he may have regarding this.

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

**EDMOND MACK** – Thank you, Chairwoman and the issue before you tonight is an appeal of a variance that was granted by the Board of Zoning Appeals to the applicant, Mr. Kevin Smith. Now the appeal of that decision was filed by neighbor property owners pursuant to the Massillon Codified Ordinance by Mr. Richard Willey and Ms. Charlene Willey. In determining these issues in considering this resolution that's before you, should you pass this ordinance by the two-thirds majority that's required under the Massillon ordinances, then the variance that was granted to Mr. Smith will be reversed and denied. I would like the record to reflect that both Mr. Smith, the applicant is present here in the room this evening as are the individuals that filed the notice of appeal, Ms. Willey and Mr. Willey. The transcripts have already been provided to each of the Council members that was developed in front of the Board of Zoning Appeals. Of course you consider that all of the information in those transcripts and the exhibits

that were before the BZA in addition to the information that you've discussed during your meetings for which we have transcripts and minutes of those as well. Should the Chairwoman or the Council members ask any questions of either the appellants or the variance applicant, I prefer they be sworn in and I'll be sitting in an area and ready to administer any oath from any person that the Council would like to hear from and I would encourage that the Council an opportunity of both, the appellants and the applicant to address this body. The legal standards that should apply to your decision making, and we've discussed before, but just to kind of briefly summarize them once more, the standards to evaluate the BZA's decision on the variance are set forth in Massillon Codified ordinance 11.29.05(d) and 11.29.05(b) and those ordinances, of course, speak for themselves, but, what the ordinance speaks to is this, when you have an application for a use variance, which is what this is, the burden is on the applicant to demonstrate that the variance is appropriate and under our ordinance, they have to demonstrate two things, which is practical difficulties and that can be granted without substantially impairing the intent and purpose of the zoning ordinance. May determine and determination as to whether the existence of practical difficulties are present, requires application of the Duncan factors, which were announced by the Ohio Supreme Court in Duncan vs. Millfield and this body's discussed them on many occasions, certainly the Duncan's speaks for itself. But I appreciate the seriousness in which you're approaching this issue and I, of course as your counsel, will be able to answer any questions that you might have or do anything else that could be useful in assisting you in your deliberation. Thank you, Chairwoman.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – I would like to ask the appellants if they would like to come up and have any additional information or would like to speak to Council before I would bring up the applicant. So, Ms. Willey would you have any additional information that you would like to come up and speak to Council regarding?

**CHARLENE WILLEY** – I don't know what else I can tell you.

**EDMOND MACK** – Do you mind if I swear you in, real quick?

**CHARLENE WILLEY** – Sure.

**EDMOND MACK** – Do you swear and affirmed that the testimony that you're about to provide is the whole truth and nothing but the truth, so help you God?

**CHARLENE WILLEY** – I do.

**EDMOND MACK** – Thank you.

**COUNCILWOMAN CREAMER** – I know you spoke weeks ago.

**CHARLENE WILLEY** – Yes.

**COUNCILWOMAN CREAMER** – And I just would like to give you this opportunity just to recap on things or provide us any additional information at this time since tonight is the third reading and I will be bringing this forward for a vote.

**CHARLENE WILLEY** – Well, there's a number of you who have been by and looked at the building on the back of my property and y'all know that there was no permits and the building's too tall. It's too big. It takes up most of his backyard when it's only supposed to take up 25%. So, and I've read over all the ordinances and it defeats all of them and it speaks to "we just put up any building we want to on our properties in the city". It's obnoxious. It doesn't fit in our neighborhood. There are no other buildings even around it or compare to this and it devalues my property. You might say that it did something for his, but it didn't do anything for my property. It's an eyesore and I don't see any way to make it go away. I mean, Mr. Silla said that maybe I could put up something to disguise it. Well, nobody's going to let me put up anything big enough if I go through the legal things and try to get permits. I think we'd have to put up a building as big as his and that's not legal in the City of Massillon. So, I don't see any other choice unless he wants to make it fit his property, reconstruct it. Anybody want to ask me anything?

**COUNCILWOMAN CREAMER** – Does anyone have any questions for Mrs. Willey? Mr. Violand.

**COUNCILMAN VIOLAND** – Yes, thank you. Hi, Mrs. Willey. Just a couple of questions for you here. How long has Mr. Smith lived on that property?

**CHARLENE WILLEY** – Not very long. Maybe two years.

**COUNCILMAN VIOLAND** – Okay. But, it was in his family before that, to your knowledge?

**CHARLENE WILLEY** – Yes. It was his grandparents.

**COUNCILMAN VIOLAND** – Okay. You stated that you feel like your property is devalued based on this structure. What particularly? Is it affecting your air space, your light, you view?

**CHARLENE WILLEY** – That's how you see my backyard now. I mean, you can see this huge building.

**COUNCILMAN VIOLAND** – Okay. Have you had a formal appraisal done or anything or are you just of the opinion that your property is devalued because of this obstruction, I guess?

**CHARLENE WILLEY** – No, I haven't, other than I had people say that they wouldn't purchase my house because of that building.

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

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

**COUNCILWOMAN CREAMER** – Thank you.

**CHARLENE WILLEY** – Thank you.

**COUNCILWOMAN CREAMER** – The applicant, Mr. Kevin Smith, would you like to come forward and recap or provide Council any additional information that you may have?

**EDMOND MACK** – Mr. Smith, you swear and affirm that the testimony that you're about to provide is the whole and nothing but the truth, so help you God?

**KEVIN SMITH** – I do.

**EDMOND MACK** – Thank you.

**KEVIN SMITH** – I'd just like to downstream some of the Duncan factors with you. I guess the first Duncan factor; would the property yield a reasonable return. The property value is at \$75,000 to \$85,000 before the garage was built. The property value is now \$137,000. The neighbor to my west who adjoins my property, his property value went up over \$20,000 after the garage was built, that's the only difference. He did nothing else. And so as far as lowering other people's property value, I would ask them to seek an appraisal on their house. I can't appraise a house. My best friends can't appraise a house; that's what a professional is for. I own a F350 truck. That garage 20' long and 12' wide. The pickup myself is 22' long. If you look it up on a google or whatever you want to do for a F350, it's 22' long. It wouldn't fit in a garage. A standard truck would not fit in the garage. If you had a full-size car, it would not fit in the garage. They had a Focus that fit in and then they had a Mercury, small Mercury that they had. They're talking about a patio beside the garage. It was not a patio; it was a carport. If you look at an appraisal, they deduct on my first one for having a carport. I don't want to park my car out in the weather. I don't want to park my truck out in the weather. So, as far as that saying, there's no way; I couldn't park it in. So, if you're asking for a practical reason, that's why I need it. I go out, I work every day. I work 80+ hours a week. I run the restaurant. I work a full-time job which brings more money to Massillon. So, the yield to my house is definitely going to be better. You're talking about 25% of the overall property is how it was explained to me and that's how it was approached by the Zoning Board. The garage is 15%, the house covers 12%. That's 27%. You say substantial in the Duncan factors. Is 2% substantial? I don't believe 2% is substantial. I re-measured the garage; you're saying the height is 17' 6". It is not. It's closer to 16'. So, if you want to measure it, I'd welcome anyone to do that. It's not 17 ½'. It's closer to 16' than anything. It was windy on the day that I was trying to measure it. I couldn't get the tape measure to say. I didn't have a ladder. So I don't believe that 2% is substantial. They said that there's not another building in our neighborhood like that. It's funny that when I talked to the neighbor that's complaining, he told me where to go and look at the building that's very similar to it. That's less than a block away between 8<sup>th</sup> and 9<sup>th</sup> street and it's taller than 14'. If you look at the things about my yard, if you look down on Erie Street, there's a house there that's residential that has no yard and two garages. Do they have to tear theirs down too? I'm not a rebel. I'm 53 yrs. old. I could have filled this place up tonight. I just think that's insanity. I build a garage; I have pictures showing you. This is a two-car garage with storage space or a three-car garage with the middle storage space. I've got the measurements right here. You can google where that garage is. I can show you where I park. I a Subaru Crosstrack. I have two Jeeps and a truck and a van that I gave away to somebody that I took in who was homeless because he lost his job. Now I let him live with me until he gets back on his feet. Is that a guy that's looking to take the system? Absolutely not. I have twenty employees. My restaurant is built on an equity line off that house. When you make me tear down that house, you'll lose \$100,000.00 worth of payroll. You're going to put 20 people out of a job that live here in Massillon. So, again, its only 2% above 25% as it was explained to me. Fact #3; character of the neighborhood. Again, you need to walk a block down the street; we can go show you the house. It sits between 8<sup>th</sup> or 9<sup>th</sup> St.; right down the street from me. He's the one that told me to go and look at the building. I went and looked at the building and built the same building. How it affects government

properties with sewer, gas; it's not affecting any of those. You're saying I've owned properties or businesses in Massillon and that I should know all of the ordinances. If you want to ask me about the restaurant industry, I could tell you. People say that I'm an idiot because I've tried three times to build a restaurant in Massillon; I've invested my money in people. They probably say that I'm not very smart because that's a very tough industry. But I work full-time. I take zero from that restaurant that provides 20 people with a living. I take zero income. The restaurant itself can go inside. Again, it's way better than what it used look like. Providing 20 Massillon residents a job. Could I be able to do it without putting that size of a building? The truck is big. The truck is 8' tall. I can't fit it in a standard garage door. I had to put 10' garage doors on. You got to have a foot or two above them for the rollout which raised the height of the building. If I knew I was going to have to go through this, I would have made sure that it was under 14'. Why would I want to go through this? Why would I want to put you through this? It really makes no sense. They came on a Friday, I didn't know they were there. I came home at 8:30 p.m., they were three-quarter ways done with it. They showed up the next day and fenced it and asked me for cash and I'm like, you're out of your mind. I went to the credit union and got them a cashier check and paid them. I contracted them in April 30, 2021, to build the building. They didn't show up until November 30<sup>th</sup> or somewhere in that area and they just showed up and started building. And they were there, did it, paid and gone. I had to go through tries in Youngstown to get them to even answer their phone. They still won't return my calls. I've been trying since I came here. They subbed it out to a company in Youngstown that's called Highpoint something. They came down and subcontracted so a different guy came down and put up the structure. The structure's way above the standards. I'm having my house painted the same color. You have eight other neighbors who signed that paper that I gave you a copy of with their signatures that have no problem with it, but you going to let one neighbor dictate what we do here in Massillon. How many of my neighbors have called you? Now, I could have filled the place up tonight. I'm not going to be a jerk. I'm not going to do that to you. I wouldn't feel right about it. I feel bad about it. But, I could have filled the place with people that support me. I could have. I could have put a sign at the restaurant. I could have put a petition at the restaurant. I could put a petition on Facebook. I'm giving you guys the truth. I'm not here to cause anybody problems. I've talked to them about the building. If there's a problem; you could have walked across the thing or could have seen me out there with my dogs every day and said, hey, are you going to build it that big? What is your plan? How high is it going to be? I would have done everything. Listen, I don't cause any problems. I would have done it; I would have done it. All you have to do is ask. Anybody that knows me knows that I would give you the shirt off my back if you need it. Why do I want to go through this? I work two full-time jobs. It doesn't make sense. Again, Lighting Steel, if you're trying to get a hold of them, good luck. Again, you're talking about one neighbor. I have eight neighbors, you have their signatures, that are enjoying the property too. They have no problem with it. I have pictures that show you the twelve inches. I have pictures of the garage showing that how little space there is. There's a picture of the opening that I have for the truck. If you turn sideways, there's my Subaru, there's a little bit of space over here for storage. How's that too big? Listen, if you want me to tear down the building, the bank's come in with the equity line I have on it and you would put twenty people out of work. I care about them people. I care about them. I didn't do this for me. I've done restaurant business. I did this for my cousin and his wife and his four children because that's their dream. I didn't need to do this again. Anybody that knows me will tell you, I'm the worse liar in the world; it's all over my face. I'm compassionate, I'm hardworking and I'll do everything I can for this community. That's who I am. So, if you want to take that personally, make me tear down the garage; I'll move out of it. I'll shut down that restaurant, you'll put twenty people out of work. I'll continue

to survive because I'm a fighter. I'm not a rebel by any means. I'm a survivor. I grew up the hard way.

**COUNCILWOMAN CREAMER** – Thank you, Mr. Smith. Does any Council members have any questions for Mr. Smith?

**COUNCILMAN LEWIS** – I just want to clarify; you have two Willey's jeeps, a Subaru and a pickup truck in the garage?

**KEVIN SMITH** – There's a van. The pickup truck's not there right now. I a van and the pickup truck needs to go in there.

**COUNCILMAN LEWIS** – Okay.

**KEVIN SMITH** – I don't want to keep storing it at a friend's house or whatever like that.

**COUNCILMAN LEWIS** – That's all my questions for him.

**COUNCILWOMAN CREAMER** – Anyone else? Councilman Violand.

**COUNCILMAN VIOLAND** – Mr. Smith, just a few a questions here. First of all, I think you heard Mrs. Willey state that you've owned the property for two years now, is that correct?

**KEVIN SMITH** – I can't give you the exact date. Honestly, I don't know.

**COUNCILMAN VIOLAND** – Estimatly.

**KEVIN SMITH** – Two and half; three years maybe.

**COUNCILMAN VIOLAND** – Okay. And how long before that, you said your family owned the property?

**KEVIN SMITH** – My grandparents owned the property, correct.

**COUNCILMAN VIOLAND** – Okay. And they were able to get some beneficial use of the property as a homestead, correct?

**KEVIN SMITH** – As homestead, yes. I get beneficial as a homestead.

**COUNCILMAN VIOLAND** – What specific topographical conditions or extraordinary conditions of the property that warrants a variance in this case?

**KEVIN SMITH** – It doesn't say extreme. It says reasonable.

**COUNCILMAN VIOLAND** – No, in 1129.05(b) it talks about a variance and it says "by reason of acceptable merit specific piece or exceptional property value". What is it about the property that is preventing you from getting beneficial use out of it, based on those factors?

**KEVIN SMITH** – Based on the factor that I couldn't fit my car in the garage. I couldn't fit a truck in the garage. I couldn't fit anything in the garage was there and it was falling over.

**COUNCILMAN VIOLAND** – Okay.

**KEVIN SMITH** – The garage was not safe. It was standing there and it had 2' x 4's going all the way trying to keep it from going in. The cracked block, I can bring you pictures of it; blocks that were cracked. The outside of the west side.

**COUNCILMAN VIOLAND** – Okay. I'm not asking about that. I was asking...do you know; did you present any of this evidence to the Zoning Board of Appeals? Did you walk through the Duncan factors with them?

**KEVIN SMITH** – They didn't require me to. I just went there and I filed my paperwork.

**COUNCILMAN VIOLAND** – Okay.

**KEVIN SMITH** – I didn't. If you want me to pay a bigger fine, I am willing to do that. I'm willing to put up a fence, I'm willing to plant trees, I'm willing to put windows in the back of it to make it look not industrial. But, you're saying obnoxious? So, what's obnoxious?

**COUNCILMAN VIOLAND** – So, I guess, did I say obnoxious?

**KEVIN SMITH** – They did (the Willey's).

**COUNCILMAN VIOLAND** – Okay. I didn't say obnoxious. So, the question is, you state that you have a lot of vehicles and you have a 22' long truck that wouldn't fit in your prior garage, correct?

**KEVIN SMITH** – Correct.

**COUNCILMAN VIOLAND** – Okay. And you said the truck is approximately 8' high and that this building is what, 16½ ' high, is that correct?

**KEVIN SMITH** – The truck is approximately 96" tall. The problem is that they will not fit in a standard garage door. It has to be 10' so that there's clearance. Then above that there has to be room for the roll-up garage door or if you even use a standard garage door, it's usually 2'. So then from there, that pushed it up. If I could lower the building and not make it unsafe; you can't cut the structure.

**COUNCILMAN VIOLAND** – I don't have any other questions. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Anyone else?

**COUNCILWOMAN CREAMER** – I have a question. So, was this garage; was this the only option for a garage that you could purchase to meet your needs?

**KEVIN SMITH** – They're all similar garages.

**COUNCILWOMAN CREAMER** - The size; the 26' x 40'. Was that the only option available when you went shopping to put a garage in yard your rear yard? Was that the only option provided to you?



**KEVIN SMITH** – The option that fit the vehicles I have. The number I had with a little extra storage. That's what fit. I mean, that's what made reasonable sense to me. If I would have known, I would have made sure that it was smaller. I would have cut 2' off of it to make it. I would have told them, is there a different roof style that I could use to make it under the 14'. If I would have been aware of these, I wouldn't have to go through all this. I wouldn't have.

**COUNCILWOMAN CREAMER** – Alright. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Any other questions? Councilwoman Harwig Smith.

**COUNCILWOMAN HARWIG SMITH** – So, you purchased this garage in April, it wasn't built until November; so in all that time, you never made one attempt to get a building permit, is that true?

**KEVIN SMITH** – They were supposed to get the permit. Their contract, if you have your house built, they get the building permit, the contractor gets the building permit.

**COUNCILWOMAN HARWIG SMITH** – So, the contractor, if they did not get a building permit, then they would be liable.

**KEVIN SMITH** – Correct and I hired an attorney. I'm working on that. We're going to send them a letter and ask them why they didn't do it.

**COUNCILWOMAN HARWIG SMITH** – That would not be a hardship on you. They would be responsible because they did not get the building permit.

**KEVIN SMITH** – It depends on how the court rules. I don't know that answer.

**COUNCILWOMAN HARWIG SMITH** – So when you purchased the building, it tells you the size, the width and the height. The size and the width and the height, we were told is 26' x 40' x 17' 6".

**KEVIN SMITH** – It's not 17', though, it's not.

**COUNCILWOMAN HARWIG SMITH** – Is that what you purchased, a building that was 17' 6"?

**KEVIN SMITH** – I don't believe that's it.

**COUNCILWOMAN HARWIG SMITH** – I don't know why you would have to go and measure it yourself because whatever you purchased it just should say on your contract what it is.

**KEVIN SMITH** – And it probably does, but I didn't look at that. I just wanted to measure it because I have a tape measure.

**COUNCILWOMAN HARWIG SMITH** – But you said that you're not sure if it was accurate because the wind was blowing. More accurate than whatever the contractor.

**KEVIN SMITH** – Right, and I think I have that with me. I can look, I do not know the answer to that.

**COUNCILWOMAN HARWIG SMITH** – I asked the similar questions of you the very first time we talked to you and you said you would provide that information and I never got anything back as far as that they were responsible for the building permit. But you're saying they are, so.

**KEVIN SMITH** – And I also said that I called them and they won't return the calls. I had to drive there. Then I had to wait for an interpreter to come that spoke English in order to bring the papers down to the Building Dept.

**COUNCILWOMAN HARWIG SMITH** – I hate this. I think it's a nice building, but when I look at where it's at, I mean, you're talking 2%. When I look at the ordinance or the variance, it's 25% of your back yard, it cannot exceed 25% of your back yard. The building looks like it takes up over 50%, 60%, 70%, I mean it's huge and I would almost agree with Ms. Willey. It's a nice building, but for where it's at it is very obnoxious and the problem that I have is that with no permit, I mean, if you would have got a building permit or they would have gotten a building permit, this would never be. But the problem is that if we allow you to do this, then it sets a precedence for the City that anybody can do whatever they want to do and pay a \$125.00 fine and that's where I have a problem with it. Because then why do we have any laws.

**KEVIN SMITH** – I agree with you. If I would have known that they didn't get a permit; when I found out I stepped to get the permit. If they didn't get it, what am I to do. And they said that this is what we need you to do. They told me that it's 25% of total property and they told you that in here as well, that they said it's 25% of square footage of the property. That's what they said in here and that's the way they explained it to me and that's why I'm going with the 2% over.

**COUNCILWOMAN HARWIG SMITH** – Do we know what it is? Is it 25% of the rear property? What is our actual rule?

**EDMOND MACK** – The interpretation that was given by the Board of Zoning Appeals is in the minutes. Under the variance that was requested, the variance with respect to the ordinance was requested by the applicant during the hearing. So, that's what the interpretation that was served as the foundation for what the gentleman was asking for. So, I think that's the interpretation that's in front of this body.

**COUNCILWOMAN HARWIG SMITH** – What is the actual thing though for the City of Massillon? What is our rule?

**EDMOND MACK** – The ordinance?

**COUNCILWOMAN HARWIG SMITH** – Yes.

**EDMOND MACK** – I'd be happy to pull it up for you.

**COUNCILWOMAN HARWIG SMITH** – That's all the questions I have if anyone else has another question while he's looking for that.

**COUNCIL PRESIDENT ISTNICK** – Councilman Violand.

**COUNCILMAN VIOLAND** – Just to answer that question, it's 25% of the required...

**COUNCILMAN LEWIS** – Point of order. I apologize; we got to get this under control. We have Mr. Smith sworn it. Do we have any more questions for Mr. Smith? If not, then we need to dismiss him so that he can sit and we can continue our discussion.

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

**KEVIN SMITH** – Before I go, I want to get established that I was give 25%. They gave that. Asked me for a deed, property square footage and they said it's 25% of the total footage and they even, you'll have to call over and ask them, but that's what I was told and that's what I went by. So, that's the way it was explained to me. That's the way it was when we came the first time. So, it's 25% and that's the way it explained it to me and they even said that's the way they did it.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – I'm just waiting for Mr. Mack to respond to Ms. Harwig Smith.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – While he's continuing to look that up, I have a few comments I want to make. First off, I just want to make sure that Council understands that the fact that the property owner owns a business and has made statements that he would close such business if we were to find not in his favor; should have no bearing on your decision this evening because it is an unrelated matter and should not be brought up in conjunction with this matter. As far as the Duncan factors are concerned and the statements that have been made as to whether the property in question would yield a measurable return; whether there can be any beneficial use of the property without the variance, I would say that the entire neighborhood is built with properties of similar stature and similar structures prior to this building, so, it would be reasonable to assume that it would still have a return on the investment as any other property in the area would. I know there was debate or discussion brought up about the truck. Well, I as well as many people I know, do own large trucks and it is known when you purchase a large truck in an older neighborhood that you most likely will be parking it outside because garages are not outfitted for that. My garage will not fit my truck, height or depth either and it sits outside all winter. It just is, by nature, when I bought that truck, it was a known variable. Likewise, my next house that I purchase, if the garage is too small, I will know that my truck will not fit. It does not give me a right to ask for variances of local law in order to fit my truck. I find it further interesting that it went beyond just fitting a duly truck. We are looking at a structure that can hold two jeeps, a van, a Subaru and possibly also the 22' long 8' high truck. That is in say excess of the need of just the truck. So, I think that speaks to whether the answer of substantial. There are two variances being requested so that has made it substantial. I used to live in that neighborhood for about two or three years of my life and I worked in that neighborhood for about six years of my life and am very familiar with the character of that neighborhood and I would say that a building of this size taking up that much area is definitely not the character that that neighborhood is known for. And then, whether the property owner purchased the property with knowledge of the zoning, I guess I can never speak exactly to someone's knowledge. However, if they were to have followed protocol and got proper building permits, they would have been made very well aware of the variances and the zoning

rules of that area. That is why I personally will not be support or I will be in support of reversing this decision that the Zoning Board of Appeals has made.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer. Oh, I’m sorry. Councilman Lombardi.

**COUNCILMAN LOMBARDI** – Thank you, President Istnick. I just want to make a clarification here that a “yes” vote on this reverses the decision of the Zoning Board and a “no” vote leaves it stand.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Thank you, Madam President. Does anyone else have any additional information? We all know this is an area variance. We know that the applicant must prove these two conditions due to exceptional conditions at such property. Strict application of the regulations would result in practical difficulties. Mr. Lewis reviewed some of the Duncan factors stated. Anything additional? Mr. Mack is ready to respond.

**EDMOND MACK** – Yes. Just to the question about the percentage and again, we’re talking about the third area, the third aspect of the variance. And so, passage of this ordinance will overturn both, all three of the aspects of the variances that were granted by the BZA. But, as to the third portion of that, I’d like to think, the Chairwoman who provided me a copy of this, Massillon Ordinance 11.01(c) reads as follows: “An accessory building shall not occupy more than 25% of a required rear yard, plus 40% of any non-required rear yard provided that no instance shall accessory building exceed the ground floor area of the main building”. And so, when you look at the transcript of the BZA, it explains how they interpreted that calculation and the basis for the variance request. So, again, passage of this resolution before you tonight would include all three. Not just the percentage area.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Thank you, Madam President. So at this time, seeing no additional comments or questions, I would like to bring Res. No. 14 – 2022 up for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Snee. Before we do roll call, is everyone straight in their head what a “yes” and a “no” vote is doing tonight? Are there any questions from anybody? Okay, roll call.

8 yes; 1 abstention for passage – Slutz abstained

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

## 16. **SECOND READING ORDINANCES AND RESOLUTIONS**

**COUNCIL PRESIDENT ISTNICK** – Ord. No. 166 – 2022.

**ORDINANCE NO. 166 – 2022**

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

AN ORDINANCE amending Section 2(D) OCCUPATION LIST OF CLASS TITLES of Ordinance No. 127 – 1997, 845 COMMUNITY DEVELOPMENT-PLANNING DEPARTMENT to increase Class Grade Pay Schedule for Economic Development Director for 22S SU UN to Class Grade 26S SU UN.

**COUNCIL PRESIDENT ISTNICK** – Councilman Gregg.

**COUNCILMAN GREGG** – Thank you, Madam President. This has been given one reading so far. It does not have emergency language, so, I’m going to give this another reading tonight. So, second reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 166 – 2022 has received second reading. Ord. No. 167 – 2022.

**ORDINANCE NO. 167 – 2022**

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

AN ORDINANCE amending CHAPTER 165 of the Codified Ordinances of the City of Massillon, Ohio, by enacting Section 165.01 to require that employees of the City reside within Stark County or any adjacent county.

**COUNCIL PRESIDENT ISTNICK** – Councilman Gregg.

**COUNCILMAN GREGG** – Thank you, Madam President. Second reading.

**COUNCIL PRESIDENT ISTNICK** – Thank you. Ord. No. 167 – 2022 has received second reading.

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

**18. ADJOURNMENT**

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I make a motion to adjourn.

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

9 yes to adjourn

**COUNCIL PRESIDENT ISTNICK** – Meeting adjourned.

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DIANE ROLLAND, COUNCIL CLERK

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CLAUDETTE ISTNICK, PRESIDENT