

The City Record

Official Publication of the Council of the City of Cleveland



November the Third, Two Thousand and Four

Jane L. Campbell
Mayor

Frank G. Jackson
President of Council

Valarie J. McCall
City Clerk, Clerk of Council

| Ward | Name |
|------|---------------------|
| 1 | Joseph T. Jones |
| 2 | Robert J. White |
| 3 | Zachary Reed |
| 4 | Kenneth L. Johnson |
| 5 | Frank G. Jackson |
| 6 | Patricia J. Britt |
| 7 | Fannie M. Lewis |
| 8 | Sabra Pierce Scott |
| 9 | Kevin Conwell |
| 10 | Roosevelt Coats |
| 11 | Michael D. Polensek |
| 12 | Edward W. Rybka |
| 13 | Joe Cimperman |
| 14 | Nelson Cintron, Jr. |
| 15 | Merle R. Gordon |
| 16 | Michael C. O'Malley |
| 17 | Matthew Zone |
| 18 | Jay Westbrook |
| 19 | Dona Brady |
| 20 | Martin J. Sweeney |
| 21 | Michael A. Dolan |

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www.clevelandcitycouncil.org

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DIRECTORY OF CITY OFFICIALS

CITY COUNCIL – LEGISLATIVE

President of Council – Frank G. Jackson

| Ward | Name | Residence | |
|------|---------------------|------------------------|-------|
| 1 | Joseph T. Jones | 4691 East 177th Street | 44128 |
| 2 | Robert J. White | 9703 Cardwell Avenue | 44105 |
| 3 | Zachary Reed | 3734 East 149th Street | 44120 |
| 4 | Kenneth L. Johnson | 2948 Hampton Road | 44120 |
| 5 | Frank G. Jackson | 2327 East 38th Street | 44115 |
| 6 | Patricia J. Britt | 12402 Britton Drive | 44120 |
| 7 | Fannie M. Lewis | 7416 Star Avenue | 44103 |
| 8 | Sabra Pierce Scott | 9212 Kempton Avenue | 44108 |
| 9 | Kevin Conwell | 10647 Ashbury Avenue | 44106 |
| 10 | Roosevelt Coats | 1775 Cliffview Road | 44112 |
| 11 | Michael D. Polensek | 17855 Brian Avenue | 44119 |
| 12 | Edward W. Rybka | 6832 Indiana Avenue | 44105 |
| 13 | Joe Cimperman | 3053 West 12th Street | 44113 |
| 14 | Nelson Cintron, Jr. | 3004 Vega Avenue | 44113 |
| 15 | Merle R. Gordon | 1700 Denison Avenue | 44109 |
| 16 | Michael C. O'Malley | 6710 Brookside Drive | 44144 |
| 17 | Matthew Zone | 1228 West 69th Street | 44102 |
| 18 | Jay Westbrook | 1278 West 103rd Street | 44102 |
| 19 | Dona Brady | 1272 West Boulevard | 44102 |
| 20 | Martin J. Sweeney | 3632 West 133rd Street | 44111 |
| 21 | Michael A. Dolan | 16519 West Park Road | 44111 |

City Clerk, Clerk of Council – Valerie J. McCall, 216 City Hall, 664-2840
First Assistant Clerk – Sandra Franklin

MAYOR – Jane L. Campbell

Debra M. Janik, Chief of Staff
Darnell Brown, Chief Operating Officer
Timothy Mueller, Executive Assistant
Craig Tame, Executive Assistant
Galen L. Schuerlein, Executive Assistant
_____, Director, Office of Equal Opportunity
Margreat A. Jackson, Legislative Affairs Liaison
Erik Janas, Inter-Governmental Affairs Officer
Lorna Wisham, Chief Public Affairs Officer

DEPT. OF LAW – Subodh Chandra, Director, Teresa Beasley, Chief Counsel, Rm. 106
Karen E. Martines, Law Librarian, Room 100

DEPT. OF FINANCE – Robert H. Baker, Director, Room 104;
Frank Badalamenti, Manager, Internal Audit

DIVISIONS: Accounts – Alan Schneider, Commissioner, Room 19
Assessments and Licenses – Dedrick Stephens, Commissioner, Room 122
City Treasury – Algeron Walker, Treasurer, Room 115
Financial Reporting and Control – James Gentile, Controller, Room 18
Information Technology and Services – James S. Higgins, Commissioner, 1404 East 9th Street
Purchases and Supplies – Myrna Branche, Commissioner, Room 128
Printing and Reproduction – Michael Hewitt, Commissioner, 1735 Lakeside Avenue
Taxation – Nassim Lynch, Tax Administrator, 1701 Lakeside Avenue

DEPT. OF PUBLIC UTILITIES – Julius Ciaccia, Director, 1201 Lakeside Avenue

DIVISIONS – 1201 Lakeside Avenue
Cleveland Public Power – James F. Majer, Commissioner
Street Lighting Bureau – _____, Acting Chief
Utilities Fiscal Control – Dennis Nichols, Commissioner
Water – John Christopher Nielson, Commissioner
Water Pollution Control – Ollie Shaw, Commissioner

DEPT. OF PORT CONTROL – John C. Mok, Director

Cleveland Hopkins International Airport, 5300 Riverside Drive
Burke Lakefront Airport – Khalid Bahur, Commissioner
Cleveland Hopkins International Airport – Fred Szabo, Commissioner

DEPT. OF PUBLIC SERVICE – Mark Ricchiuto, Director, Room 113

DIVISIONS: Architecture – Kurt Wiebusch, Commissioner, Room 517
Engineering and Construction – Randall E. DeVaul, Commissioner, Room 518
Motor Vehicle Maintenance, Daniel A. Novak, Commissioner, Harvard Yards
Streets – Randall T. Scott, Commissioner, Room 25
Traffic Engineering – Robert Mavec, Commissioner, 4150 East 49th Street, Building #1
Waste Collection and Disposal – Ron Owens, Commissioner, 5600 Carnegie Avenue

DEPT. OF PUBLIC HEALTH – Matthew Carroll, Director, Mural Building, 1925 St. Clair Ave.

DIVISIONS: Air Quality – _____, Commissioner
Corrections – Robert Taskey, Commissioner, Cleveland House of Corrections, 4041 Northfield Rd.
Environment – Willie Bess, Acting Commissioner, Mural Building, 1925 St. Clair Ave.
Health – Dr. Wendy Johnson, Acting Commissioner, Mural Building, 1925 St. Clair Ave.

DEPT. OF PUBLIC SAFETY – Sanford E. Watson, Director, Room 230

DIVISIONS: Dog Pound – John Baird, Chief Dog Warden, 2690 West 7th Street
Emergency Medical Service – Edward Eckart, Commissioner, 1708 South Pointe Drive
Fire – Paul A. Stubbs, Chief, 1645 Superior Avenue
Police – Edward F. Lohn, Chief, Police Hdqtrs. Bldg., 1300 Ontario Street

DEPT. OF PARKS, RECREATION & PROPERTIES – Natalie A. Ronayne, Director

Cleveland Convention Center, Clubroom A, 1220 East 6th Street
DIVISIONS: Convention Center & Stadium – James Glending, Commissioner
Public Auditorium, East 6th Street and Lakeside Avenue
Parking Facilities – Dennis Donahue, Commissioner
Public Auditorium, East 6th Street and Lakeside Avenue
Park Maintenance and Properties – Richard L. Silva, Commissioner
Public Auditorium – East 6th Street and Lakeside Avenue
Property Management – Tom Nagle, Commissioner, East 49th Street & Harvard
Recreation – Michael Cox, Commissioner, Room 8
Research, Planning & Development – Mark Fallon, Commissioner, 1501 N. Marginal Road
Burke Lakefront Airport

DEPT. OF COMMUNITY DEVELOPMENT – Daryl Rush, Director, 3rd Floor, City Hall

DIVISIONS: Administrative Services – Terrence Ross, Commissioner
Neighborhood Services – Louise V. Jackson, Commissioner
Neighborhood Development – Joseph A. Sidoti, Commissioner

DEPT. OF BUILDING AND HOUSING – James G. Williams, Director, Room 500

DIVISIONS: Code Enforcement – Tyrone L. Johnson, Commissioner
Construction Permitting – Timothy R. Wolosz, Commissioner

DEPT. OF PERSONNEL AND HUMAN RESOURCES – Gina Routen, Director, Room 121

DEPT. OF ECONOMIC DEVELOPMENT – Gregory G. Huth, Director, Room 210

DEPT. OF AGING – Jane E. Fumich, Director, Room 122

DEPT. OF CONSUMER AFFAIRS – Kenya Taylor, Director

COMMUNITY RELATIONS BOARD – Room 11, Jeffrey D. Johnson, Director; Mayor Jane

L. Campbell, Chairman Ex-Officio; Rev. Charles Lucas, Jr., Vice-Chairman; Councilman Kevin Conwell, Councilman Matthew Zone, City Council Representatives; Charles L. Patton, Jr., Paula Castleberry, Emmett Saunders, John Banno, Kathryn M. Hall, Evangeline Hardaway, Janet Jankura, Gia Hoa Ryan, Rev. Jesse Harris, Magda Gomez, Fred J. Livingstone, Margot James Copeland.

CIVIL SERVICE COMMISSION – Room 119, Reynaldo Galindo, President; Rev. Earl

Preston, Vice President; Jonalyn M. Krupka, Secretary; Members: Diane M. Downing, William Morrison.

SINKING FUND COMMISSION – Jane L. Campbell, President; Council President Frank

G. Jackson; Betsy Hruby, Asst. Sec'y.; Robert H. Baker, Director.

BOARD OF ZONING APPEALS – Room 516, Carol A. Johnson, Chairman; Members;

Margaret Hopkins, Ozell Dobbins, Joan Shaver Washington, Christopher Carmody, _____, Secretary.

BOARD OF BUILDING STANDARDS AND BUILDING APPEALS – Room 516, J. F. Denk,

Chairman; James Williams, Arthur Saunders, Alternate Members – D. Cox, P. Frank, E. P. O'Brien, Richard Pace, J.S. Sullivan.

BOARD OF REVISION OF ASSESSMENTS – Law Director Subodh Chandra, President;

Finance Director Robert H. Baker, Secretary; Council President Frank G. Jackson.

BOARD OF SIDEWALK APPEALS – Service Director Mark Ricchiuto; Law Director

Subodh Chandra; Councilman Martin J. Sweeney.

BOARD OF REVIEW – (Municipal Income Tax) – Law Director Subodh Chandra; Utilities

Director _____; Council President Frank G. Jackson.

CITY PLANNING COMMISSION – Room 501 – Christopher S. Ronayne, Director;

Anthony J. Coyne, Chairman; David Bowen, Lillian W. Burke, Lawrence A. Lumpkin, Gloria Jean Pinkney, Rev. Sam Edward Small, Councilman Joseph Cimperman.

FAIR EMPLOYMENT WAGE BOARD – Room 210 – Gerald Meyer, Chair; Angela Caldwell,

Vice Chair; Patrick Gallagher, Kathryn Jackson, Draydean McCaleb, Council Member Nelson Cintron, Ed Romero.

HOUSING ADVISORY BOARD – Room 310 – Keith Brown, Terri Hamilton Brown, Vickie

Eaton-Johnson, Mike Foley, Eric Hodderson, Janet Leohr, Mark McDermott, Marcia Nolan, David Perkowski, Joan Shaver Washington, Keith Sutton, Council Member Merle Gordon.

FAIR HOUSING BOARD – Charles See, Chair; Cindy Barber, Vice Chair; Michael Doud,

Doris Honsa, Richard Lenard.

CLEVELAND BOXING AND WRESTLING COMMISSION – Robert Jones, Chairman;

Clint Martin, Mark Rivera.

MORAL CLAIMS COMMISSION – Law Director Subodh Chandra; Chairman; Finance

Director Robert H. Baker; Council President Frank G. Jackson; Councilman Dona Brady; Councilman Martin J. Sweeney.

BOARD OF EXAMINERS OF ELECTRICIANS – Samuel Montfort, Chairman; Donald

Baulknight, Anton J. Eichmuller, J. Gilbert Steele, Raymond Ossovicki, Chief Electrical Inspector; Laszlo V. Kemes, Secretary to the Board.

BOARD OF EXAMINERS OF PLUMBERS – Joseph Gyorky, Chairman; Earl S. Bumgarner,

Alfred Fowler, Jozef Valencik, Lawrence Skule, Chief Plumbing Inspector; Laszlo V. Kemes, Secretary to the Board.

CLEVELAND LANDMARKS COMMISSION – Room 519 – Paul Volpe, Chair; Ted Sande,

Vice Chair; James Gibans, India Pierce Lee, Robert Madison, Randall B. Shorr, Chris Ronayne, N. Kurt Wiebusch, Council Member Joe Cimperman, Dwayne J. Simpson; Robert Keiser, Secretary.

CLEVELAND MUNICIPAL COURT JUSTICE CENTER – 1200 ONTARIO STREET JUDGE COURTROOM ASSIGNMENTS

| Judge | Courtroom |
|---|-----------|
| Presiding and Administrative Judge Larry A. Jones | 14B |
| Judge Ronald B. Adrine | 15A |
| Judge Emanuella Groves | 13A |
| Judge Mabel M. Jasper | 14D |
| Judge Kathleen Ann Keough | 13D |
| Judge Mary Eileen Kilbane | 14C |
| Judge Anita Laster Mays | 12C |
| Judge Lauren C. Moore | 12B |
| Judge Raymond L. Pianka (Housing Court Judge) | 13B |
| Judge Angela R. Stokes | 15C |
| Judge Pauline H. Tarver | 12A |
| Judge Robert J. Triozzi | 14A |
| Judge Joseph J. Zone | 13C |

Earle B. Turner – Clerk of Courts, Michael E. Flanagan – Court Administrator, Paul J. Mizerak – Bailiff;
Regina Daniel – Chief Probation Officer, Gregory F. Clifford – Chief Magistrate

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OFFICIAL PUBLICATION OF THE COUNCIL OF THE CITY OF CLEVELAND

Vol. 91

WEDNESDAY, NOVEMBER 3, 2004

No. 4743

CITY COUNCIL

MONDAY, NOVEMBER 1, 2004

The City Record

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Address all communications to

VALARIE J. McCALL

City Clerk, Clerk of Council
216 City Hall

PERMANENT SCHEDULE STANDING COMMITTEES OF THE COUNCIL 2002-2005

MONDAY

9:30 A.M. — **Public Parks, Property & Recreation Committee:** Johnson, Chairman; White, Vice Chairman; Cimperman, Dolan, Jones, Rybka, Sweeney.

MONDAY—Alternating

11:00 A.M. — **Public Service Committee:** Sweeney, Chairman; Jones, Vice Chairman; Brady, Cimperman, Johnson, O'Malley, Polensek, White, Zone.

11:00 A.M. — **Employment, Affirmative Action & Training Committee:** Lewis, Chairman; Conwell, Vice Chairman; Cintron, Coats, Johnson, Reed, Polensek.

MONDAY

2:00 P.M. — **Finance Committee:** Jackson, Chairman; Sweeney, Vice Chairman; Brady, Britt, Coats, Gordon, O'Malley, Reed, Pierce Scott, Westbrook, White.

TUESDAY

9:30 A.M. — **Community and Economic Development Committee:** Gordon, Chairman; Cimperman, Vice Chairman; Cintron, Coats, Jones, Lewis, Reed, Pierce Scott, Zone.

TUESDAY—Alternating

1:00 P.M. — **Health & Human Services Committee:** Britt, Chairman; Zone, Vice Chairman; Cintron, Conwell, Gordon, Pierce Scott, Polensek.

1:30 P.M. — **Legislation Committee:** White, Chairman; Pierce Scott, Vice Chairman; Dolan, Gordon, Johnson, Rybka, Westbrook.

WEDNESDAY—Alternating

10:00 A.M. — **Aviation & Transportation Committee:** Westbrook, Chairman; Sweeney, Vice Chairman; Britt, Dolan, Gordon, Reed, Rybka.

10:00 A.M. — **Public Safety Committee:** Reed, Chairman; Britt, Vice Chairman; Brady, Cimperman, Coats, Conwell, Jones, White, Zone.

WEDNESDAY—Alternating

1:30 P.M. — **Public Utilities Committee:** Coats, Chairman; O'Malley, Vice Chairman; Brady, Cintron, Jones, Polensek, Sweeney, Westbrook, Zone.

1:30 P.M. — **City Planning Committee:** Cimperman, Chairman; Rybka, Vice Chairman; Conwell, Lewis, O'Malley, Pierce Scott, Westbrook.

The following Committees are
subject to the Call of the Chairman:

Rules Committee: Jackson, Chairman; O'Malley, Reed, Sweeney, Westbrook.

Personnel and Operations Committee: Gordon, Chairman; Britt, Cimperman, Coats, Pierce Scott.

Mayor's Appointment Committee: Coats, Chairman; Cintron, Reed, Pierce Scott, Westbrook.

OFFICIAL PROCEEDINGS CITY COUNCIL

NO MEETING

THE CALENDAR

The following measures will be on
their final passage at the next meet-
ing:

NONE

BOARD OF CONTROL

October 27, 2004

The regular meeting of the Board
of Control convened in the Mayor's
office on Wednesday, October 27,
2004, at 10:30 a.m. with Mayor Camp-
bell presiding.

Present: Mayor Campbell, Acting
Directors Horvath, Dumas, Director
Ciaccia, Acting Director Szabo,

Directors Ricchiuto, Carroll, Acting
Director Pettus, Directors Ronayne,
Rush, Routen, Huth, Fumich, Taylor
and Acting Director Vilkas.

Absent: None.

Others: Mike Abouserhal, Acting
Commissioner, Purchases and Sup-
plies.

Carol Whitaker, Acting Director,
Office of Equal Opportunity.

On motions, the following resolu-
tions were adopted, except as may
be otherwise noted:

Resolution No. 599-04.

By Director Baker.

Whereas, by Resolution No. 106-04,
adopted March 10, 2004, under the
authority of Ordinance Nos. 1681-03,
respectively passed by Cleveland
City Council on September 22, 2003,
this Board affirmed and approved
First Communications, LLC as the
lowest and best bidder for long dis-
tance services,

Whereas, upon subsequent re-
examination of the bids for such ser-
vices, the City determined that the
bid of SBC Global Services, Inc. was
lower than the bid of First Commu-
nications, LLC, that it met all other
bid specifications and requirements,
and that it is the apparent lowest
and best bidder for such services;
now, therefore,

Be it resolved by the Board of
Control of the City of Cleveland that
Resolution No. 106-04, adopted March
10, 2004, approving a contract with
First Communications, LLC for long
distance services, is rescinded.

Yeas: Mayor Campbell, Acting
Directors Horvath, Dumas, Director
Ciaccia, Acting Director Szabo,
Director Ricchiuto, Acting Director
Pettus, Directors Ronayne, Rush,
Routen, Huth, Fumich, Taylor and
Acting Director Vilkas.

Nays: None.

Absent: Director Carroll.

Resolution No. 600-04.

By Director Baker.

Resolved, by the Board of Control
of the City of Cleveland that the bid
of SBC Global Services, Inc., for an
estimated quantity of long distance
telephone service, item nos. 1-3, for
the Division of Information Tech-
nology and Services, Department of
Finance, for the period of two (2)
years beginning with the date of
execution of a contract, received on
December 18, 2003, under the author-
ity of Ordinance No. 1681-03 passed
September 22, 2003, which on the
basis of the estimated quantity
would amount to Fifty Thousand
One Hundred Eighty and 43/100 Dol-
lars (\$50,180.43) (Net), is affirmed
and approved as the lowest and best

bid, and the Director of Finance is requested to enter into a requirement contract for such goods and/or services, which shall provide for the immediate purchase as the initial amount of such contract of the following:

Requisition No. 141810A which shall be certified against such contract in the sum of Forty Thousand and 00/100 Dollars (\$40,000.00).

The requirement contract shall further provide that the Contractor shall furnish the remainder of the City's requirements for such goods and/or services, whether more or less than the estimated quantity, as may be ordered under subsequent requisitions separately certified against the contract.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Director Ricchiuto, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: Director Carroll.

Resolution No. 601-04.

By Director Ciaccia.

Be it resolved, by the Board of Control of the City of Cleveland that all bids received on September 10, 2004, for an estimated quantity of Vitrified Clay Pipe, all items, for the Division of Water Pollution Control, Department of Public Utilities, pursuant to the authority of Section 129.27 of Codified Ordinances of Cleveland, Ohio of 1976, be and the same are hereby rejected.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Director Ricchiuto, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: Director Carroll.

Resolution No. 602-04.

By Director Ciaccia.

Be it resolved by the Board of Control of the City of Cleveland that the bid of Fabrizi Trucking & Paving Co., Inc. for the public improvement of rehabilitating and replacing of West 28th St./Chatham Avenue Area Sewer System, (Base Bid All Items including the 10% contingency allowance) for the Division of Water Pollution Control, Department of Public Utilities, received on September 9, 2004, pursuant to the authority of Ordinance No. 838-04, passed June 14, 2004, upon a unit basis for the improvement, in the aggregate amount of One Hundred Ninety Six Thousand Eight Hundred Twenty Three and 00/100 Dollars (\$196,823.00), is hereby affirmed and approved as the lowest responsible bid; and the Director of Public Utilities is hereby authorized to enter into contract for said improvement with said bidder.

Be it further resolved by the Board of Control of the City of Cleveland that the employment of the following subcontractors by Fabrizi Trucking and Paving Co., Inc. for the above-mentioned public improvement is hereby approved:

SUBCONTRACTOR **WORK**
MBE/FBE

McTech Corporation
MBE \$35,000.00 (17.78%)

Friedel Trucking
FBE \$10,000.00 (5.08%)

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Director Ricchiuto, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: Director Carroll.

Resolution No. 603-04.

By Director Ciaccia.

Be it resolved by the Board of Control of the City of Cleveland that the bid of Orion Painting & Contracting, Inc. for an estimated quantity of labor and materials necessary to paint streetside elements, all items, for the Division of Cleveland Public Power, Department of Public Utilities, for a period of one (1) year beginning with the date of execution of a contract, received on the 29th day of July 2004, pursuant to the authority of Ordinance No. 249-04, passed June 7, 2004, on the basis of the estimated quantity would amount to Three Hundred Eighteen Thousand Five Hundred and no/100 Dollars (\$318,500.00) (Net 30 Days), is affirmed and approved as the lowest and best bid, and the Director of Public Utilities is requested to enter into requirement contract for the commodities, which shall provide for the immediate purchase as the initial amount of the contract of the following:

Requisition No. 153218 which shall be certified against such contract in the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00).

Said requirement contract shall further provide that the Contractor will furnish the remainder of the requirement for the commodities, whether more or less than said estimated quantity, as may be ordered under subsequent requisitions separately certified against the contract.

Be it further resolved by the Board of Control of the City of Cleveland that the employment of the following subcontractor by Orion Painting & Contracting, Inc., for labor and materials necessary to paint streetside elements for the above mentioned requirement contract is approved.

SUBCONTRACTOR **MBE/FBE**

Able Contracting Group, Inc.
\$18,000.00
(FBE)5.65%

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Director Ricchiuto, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: Director Carroll.

Resolution No. 604-04.

By Director Ciaccia.

Be it resolved by the Board of Control of the City of Cleveland that the bid of Professional Electric Products Company for an estimated quantity of high voltage switching equipment, all items, for the Division of Cleveland Public Power, Department of Public Utilities, for a period of two (2) years beginning with the date of execution of a contract, received on March 18, 2004, under the authority of Section 129.26 of the Codified Ordinances of Cleveland, Ohio 1976, which on the basis of the estimated quantity would amount to Six Hundred Thirty Four Thousand Seventy Six and no/100 Dollars (\$634,076.00) (0%, Net 30 Days), is affirmed and approved as the lowest and best bid, and the Director of Public Utilities is requested to enter into requirement contract for the commodities, which shall provide for the immediate purchase as the initial amount of the contract of the following:

Requisition No. 153192 which shall be certified against the contract in the sum of One Hundred Seventy One Thousand Five Hundred Fifty Five and no/100 Dollars (\$171,505.00).

Said requirement contract shall further provide that the Contractor will furnish the remainder of the requirement for the commodities, whether more or less than said estimated quantity, as may be ordered under subsequent requisitions separately certified against the contract.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Director Ricchiuto, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: Director Carroll.

Resolution No. 605-04.

By Director Ciaccia.

Be it resolved, by the Board of Control of the City of Cleveland that the bid of Utilicon Corp. for the public improvement of labor and materials needed to construct and repair catch basins and manholes, all items including a ten percent (10%) contingency allowance, for the Division of Water Pollution Control, Department of Public Utilities, received on the 15th day of September 2004, pursuant to the authority of Section 129.291 of Codified Ordinances of Cleveland, Ohio 1976, upon a unit basis for the improvement to be performed as ordered during the period of one (1) year beginning with the date of execution of a contract, at the unit prices set forth in the said bid, which on the basis of the estimated work to be done would amount to Three Hundred Fifty Nine Thousand Three Hundred Fifteen and 00/100 Dollars (\$359,315.00), is hereby affirmed and approved as the lowest responsible bid, and the Director of Public Utilities is hereby requested to enter into a requirement contract for said improvement, which contract shall provide for the initial performance of the following work hereunder:

Requisition No. 137672 which shall be certified against such contract in the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00).

Said requirement contract shall further provide that the contractor will perform so much of the balance of the work as may be ordered under subsequent requisitions separately certified against said requirement contract, whether the same shall be less than the total estimate of work to be performed under said contract or shall exceed the same by not more than ten percent.

Be it further resolved by the Board of Control of the City of Cleveland that the employment of the following subcontractors by Utilicon Corporation for the contract authorized herein is approved:

| <u>SUBCONTRACTOR</u> | <u>WORK</u> |
|---------------------------|-------------------------|
| <u>MBE/FBE</u> | |
| Dan Ray Construction | |
| MBE | \$54,100.00 (15.06%) |
| Collinwood Brick & Supply | |
| FBE | \$17,975.00 (5.00%) |

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Director Ricchiuto, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: Director Carroll.

Resolution No. 606-04.

By Director Ricchiuto.

Be it resolved by the Board of Control of the City of Cleveland, that pursuant to authority of Ordinance No. 327-04, passed by the Council of the City of Cleveland April 5, 2004, the firm of Smith & Nejedlik, Inc. is hereby selected upon the nomination of the Director of Public Service from a list of qualified consultants or firms of such consultants determined to be available after a full and complete canvass by the Director of Public Service as the firm to be employed by contract to supplement the regularly employed staff of the several departments of the City in order to provide professional services necessary to perform appraisal evaluations for all right-of-way necessary for the Adelbert Road Bridge, West 53rd Street Bridge, East 105th Street Bridge and the Woodland Avenue Bridge.

Be it further resolved that the Director of Public Service hereby is authorized to enter into a written contract with Smith & Nejedlik, Inc. based on its proposal dated September 30, 2004 provided that the compensation to be paid shall not exceed Thirty-One Thousand Three Hundred and 00/100 Dollars (\$31,300.00). The agreement authorized hereby shall be prepared by the Director of Law and shall contain such other provisions as the Director of Law deems necessary to protect and benefit the public interest.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting

Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: None.

Resolution No. 607-04.

By Director Ricchiuto.

Whereas, under authority of Ordinance No. 2227-03, passed by the Cleveland City Council on February 9, 2004, this Board of Control, by its Resolution No. 458-04 adopted August 4, 2004, approved Vandra Brothers Construction, Inc. as lowest responsible bidder for the public improvement of rehabilitating and reconstructing Bennington Avenue between West 130th Street and the easterly end, for the Division of Engineering and Construction, Department of Public Service, in the aggregate amount of \$498,180.00; and

Whereas, Vandra Brothers Construction, Inc. wishes to employ Fabrizi Trucking & Paving Co., Inc. as an additional subcontractor; now, therefore,

Be it resolved by the Board of Control of the City of Cleveland that the employment of the following subcontractor by Vandra Brothers Construction, Inc. for the above-mentioned public improvement is approved:

Fabrizi Trucking & Paving Co., Inc.
\$48,500.00 — 9.735%

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: None.

Resolution No. 608-04.

By Director Ricchiuto.

Resolved, by the Board of Control of the City of Cleveland that the bid of American Landfill, Inc. for an estimated quantity of transfer and disposal of tires, some on rims, Contract T, item 1, for the Division of Waste Collection and Disposal, Department of Public Service, for the period of one (1) year beginning with the date of execution of a contract, received on August 27, 2004 pursuant to the authority of Ordinance No. 575-04, passed April 26, 2004, which on the basis of the estimated quantity would amount to approximately One Hundred Forty Three Thousand Five Hundred Fifty and no/100 Dollars (\$143,550.00), is hereby affirmed and approved as the lowest and best bid, and the Director of Public Service is hereby requested to enter into a requirement contract for such goods and/or services, which shall provide for the immediate purchase as the initial amount of such contract of the following:

Requisition No. 130490 which shall be certified against such contract in the sum of Fifteen Thousand and no/100 Dollars (\$15,000.00).

Said requirement contract shall further provide that the Contractor shall furnish the remainder of the City's requirements for such goods and/or services, whether more or less than said estimated quantity, as

may be ordered under subsequent requisitions separately certified against said contract.

Be it further resolved by the Board of Control of the City of Cleveland that the employment of the following subcontractors by American Landfill, Inc. for the transfer and disposal of tires is hereby approved:

C. Barnes, Inc.
MBE — 20.25% — \$29,070.00

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: None.

Resolution No. 609-04.

By Director Ricchiuto.

Resolved by the Board of Control of the City of Cleveland that all bids for Items 2, 3, and 4, received on August 27, 2004 for transfer and disposal of tires for the Division of Waste Collection, Department of Public Service pursuant to the authority of Ordinance No. 575-04, passed April 26, 2004, be and the same are hereby rejected.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: None.

Resolution No. 610-04.

By Director Ricchiuto.

Resolved, by the Board of Control of the City of Cleveland that the bid of Valley Sterling Truck Sales, Inc. for an estimated quantity of cab/chassis with chip dump body/aerial device, for the various divisions of City government for the period of one (1) year beginning with the date of execution of a contract, received on June 23, 2004, pursuant to the authority of Ordinance No. 1683-03, passed by the Council of the City of Cleveland on September 22, 2003, which on the basis of the estimated quantity would amount to One Hundred Sixteen Thousand Nine Hundred Eighty-Eight and 00/100 Dollars (\$116,988.00) (0%-30 Days), is hereby affirmed and approved as the lowest and best bid, and the Director of Public Service is hereby requested to enter into a requirement contract for such goods and/or services, which shall provide for the immediate purchase as the initial amount of such contract of the following:

Requisition No. 153963 which shall be certified against such contract in the sum of One Hundred Sixteen Thousand Nine Hundred Eighty-Eight and 00/100 Dollars (\$116,988.00).

Said requirement contract shall further provide that the Contractor shall furnish the remainder of the City's requirements for such goods and/or services, whether more or less than said estimated quantity, as may be ordered under subsequent requisitions separately certified against said contract.

Be it further resolved by the Board of Control of the City of Cleveland that the employment of the following subcontractors by Valley Sterling Truck Sales, Inc. for the above mentioned purchase is hereby approved:

LIFT-ALL, Division of Hydra-Tech, Inc.
\$58,678.00 per unit — 50.16%

All Points Systems
\$2,880.00 per unit — 2.46%

Logical Services Inc.
FBE — \$800.00 per unit — 0.68%

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.
Absent: None.

Resolution No. 611-04.

By Director Ricchiuto.

Resolved, by the Board of Control of the City of Cleveland that the bid of Refuse Equipment & Truck Service, Inc. for an estimated quantity of various size front end loader containers, Group A, Item Nos. 1-6, including freight, for the Division of Waste Collection and Disposal, Department of Public Service, for the period of one (1) year, beginning with the date of execution of a contract, received on August 26, 2004, pursuant to the authority of Ordinance No. 1257-03, passed July 16, 2003, which on the basis of the estimated quantity would amount to approximately Forty Eight Thousand Seven Hundred Seventy and no/100 Dollars (\$48,770.00), is hereby affirmed and approved as the lowest and best bid, and the Director of Public Service is hereby requested to enter into a requirement contract for such goods and/or services, which shall provide for the immediate purchase as the initial amount of such contract of the following:

Requisition No. 130504

which shall be certified against such contract in the sum of Forty Eight Thousand Seven Hundred Seventy and no/100 Dollars (\$48,770.00).

Said requirement contract shall further provide that the Contractor shall furnish the remainder of the City's requirements for such goods and/or services, whether more or less than said estimated quantity, as may be ordered under subsequent requisitions separately certified against said contract.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.
Absent: None.

Resolution No. 612-04.

By Director Ricchiuto.

Resolved, by the Board of Control of the City of Cleveland that the bid of Northwest Services, Inc. for an estimated quantity of various size roll off dumpster containers, Group B, Item Nos. 1-5, for the Division of

Waste Collection and Disposal, Department of Public Service, for the period of one (1) year, beginning with the date of execution of a contract, received on August 26, 2004, pursuant to the authority of Ordinance No. 1257-03, passed July 16, 2003 which on the basis of the estimated quantity would amount to approximately Sixty Three Thousand Five Hundred Ten and no/100 Dollars (\$63,510.00), is hereby affirmed and approved as the lowest and best bid, and the Director of Public Service is hereby requested to enter into a requirement contract for such goods and/or services, which shall provide for the immediate purchase as the initial amount of such contract of the following:

Requisition No. 130505

which shall be certified against such contract in the sum of Sixty Three Thousand Five Hundred Ten and no/100 Dollars (\$63,510.00).

Said requirement contract shall further provide that the Contractor shall furnish the remainder of the City's requirements for such goods and/or services, whether more or less than said estimated quantity, as may be ordered under subsequent requisitions separately certified against said contract.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.
Absent: None.

Resolution No. 613-04.

By Director Ronayne.

Whereas, pursuant to the authority of Ordinance No. 369-99, passed December 15, 2003, by the Council of the City of Cleveland, the Commissioner of Purchases and Supplies is authorized, by and at the direction of the Board of Control, to sell City-owned property no longer needed for public use, described therein and located at the City of Cleveland's municipal parking lot between East 116th Street, East 117th Street and Buckeye Avenue, also known as Permanent Parcel Numbers 129-18-083, 084, 085, 086 and 087 to Buckeye Area Development Corporation, Inc.; and

Whereas, said Ordinance No. 369-99 provided that the consideration to be paid for said parcel shall be at a price not less than the fair market value as determined by the Board of Control; now, therefore,

Be it resolved by the Board of Control of the City of Cleveland that pursuant to Ordinance No. 369-99, passed by the Council of the City of Cleveland on December 15, 2003, the Commissioner of Purchases and Supplies is hereby directed, to sell City-owned property no longer needed for public use, described therein and located at the City of Cleveland's municipal parking lot between East 116th Street, East 117th Street and Buckeye Avenue, also known as Permanent Parcel Numbers 129-18-083, 084, 085, 086 and 087 to Buckeye Area Development Corporation, Inc. The consideration to be paid for said property is hereby fixed at One Dollar (\$1.00) and other valuable consideration which amount is determined to be not less than the fair market value.

Be it further resolved that the Mayor of the City of Cleveland is hereby requested to execute and deliver the official deed, of the City of Cleveland conveying said parcels which document shall contain such additional terms and conditions as the Director of Law shall deem necessary to protect and benefit the public interest.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.
Absent: None.

Resolution No. 614-04.

By Director Rush.

Whereas, pursuant to Ordinance No. 2076-76 passed October 25, 1976, the City is conducting a Land Reutilization Program in accordance with the provision of Chapter 5722 of the Ohio Revised Code; and

Whereas, City has acquired Permanent Parcel No. 008-16-078, located on Corning Avenue under said Land Reutilization Program; and

Whereas, Ordinance No. 1507-04 passed October 18, 2004, authorized the sale of said parcel for a consideration established by the Board of Control at not less, than the Fair Market Value; and

Whereas, Cleveland Housing Network, Inc. has proposed to the City to purchase and develop said parcel; now, therefore,

Be it resolved by the Board of Control of the City of Cleveland that pursuant to the authorization of Ordinance No. 1507-04 passed October 18, 2004, by the Cleveland City Council, the Mayor is hereby authorized to execute an official deed for and on behalf of the City of Cleveland with Cleveland Housing Network, Inc. for the sale and development of Permanent Parcel No. 008-16-078, as described in said Ordinance in accordance with the Land Reutilization Program in such manner as best carries out the intent of said program.

Be it further resolved that the consideration for said parcel shall be \$100.00, which amount is hereby determined to be not less than the fair market value of said parcel for uses in accordance with the Land Reutilization Program.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.
Absent: None.

Resolution No. 615-04.

By Director Rush.

Whereas, pursuant to Ordinance No. 2076-76 passed October 25, 1976, the City is conducting a Land Reutilization Program in accordance with the provision of Chapter 5722 of the Ohio Revised Code; and

Whereas, City has acquired Permanent Parcel No. 118-26-075, located at East 76th Street under said Land Reutilization Program; and

Whereas, Ordinance No. 1676-04 passed October 18, 2004, authorized the sale of said parcel for a consideration established by the Board of Control at not less, than the Fair Market Value; and

Whereas, Paulette Bryant has proposed to the City to purchase and develop said parcel; now, therefore,

Be it resolved by the Board of Control of the City of Cleveland that pursuant to the authorization of Ordinance No. 1676-04 passed October 18, 2004, by the Cleveland City Council, the Mayor is hereby authorized to execute an official deed for and on behalf of the City of Cleveland with Paulette Bryant for the sale and development of Permanent Parcel No. 118-26-075, as described in said Ordinance in accordance with the Land Reutilization Program in such manner as best carries out the intent of said program.

Be it further resolved that the consideration for said parcel shall be \$100.00, which amount is hereby determined to be not less than the fair market value of said parcel for uses in accordance with the Land Reutilization Program.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: None.

Resolution No. 616-04.

By Director Rush.

Whereas, pursuant to Ordinance No. 2076-76 passed October 25, 1976, the City is conducting a Land Reutilization Program in accordance with the provision of Chapter 5722 of the Ohio Revised Code; and

Whereas, City has acquired Permanent Parcel No. 106-15-103, located at East 70th Street under said Land Reutilization Program; and

Whereas, Ordinance No. 1281-04 passed October 11, 2004, authorized the sale of said parcel for a consideration established by the Board of Control at not less, than the Fair Market Value; and

Whereas, Mildred Jeffries has proposed to the City to purchase and develop said parcel; now, therefore,

Be it resolved by the Board of Control of the City of Cleveland that pursuant to the authorization of Ordinance No. 1281-04 passed October 11, 2004, by the Cleveland City Council, the Mayor is hereby authorized to execute an official deed for and on behalf of the City of Cleveland with Mildred Jeffries for the sale and development of Permanent Parcel No. 106-15-103, as described in said Ordinance in accordance with the Land Reutilization Program in such manner as best carries out the intent of said program.

Be it further resolved that the consideration for said parcel shall be \$1.00, which amount is hereby determined to be not less than the fair market value of said parcel for uses in accordance with the Land Reutilization Program.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: None.

Resolution No. 617-04.

By Director Rush.

Whereas, pursuant to Ordinance No. 2076-76 passed October 25, 1976,

the City is conducting a Land Reutilization Program in accordance with the provision of Chapter 5722 of the Ohio Revised Code; and

Whereas, City has acquired Permanent Parcel No. 138-11-109, located on Ferris Avenue under said Land Reutilization Program; and

Whereas, Ordinance No. 1292-04 passed October 11, 2004, authorized the sale of said parcel for a consideration established by the Board of Control at not less, than the Fair Market Value; and

Whereas, Mildred Johnson has proposed to the City to purchase and develop said parcel; now, therefore,

Be it resolved by the Board of Control of the City of Cleveland that pursuant to the authorization of Ordinance No. 1292-04 passed October 11, 2004, by the Cleveland City Council, the Mayor is hereby authorized to execute an official deed for and on behalf of the City of Cleveland with Mildred Johnson for the sale and development of Permanent Parcel No. 138-11-109, as described in said Ordinance in accordance with the Land Reutilization Program in such manner as best carries out the intent of said program.

Be it further resolved that the consideration for said parcel shall be \$100.00, which amount is hereby determined to be not less than the fair market value of said parcel for uses in accordance with the Land Reutilization Program.

Yeas: Mayor Campbell, Acting Directors Horvath, Dumas, Director Ciaccia, Acting Director Szabo, Directors Ricchiuto, Carroll, Acting Director Pettus, Directors Ronayne, Rush, Routen, Huth, Fumich, Taylor and Acting Director Vilkas.

Nays: None.

Absent: None.

JEFFREY B. MARKS,
Secretary

CIVIL SERVICE NOTICES

General Information

Application blanks and information, regarding minimum entrance qualifications, scope of examination, and suggested reference materials may be obtained at the office of the Civil Service Commission, Room 119, City Hall, East 6th Street, and Lakeside Avenue.

Application blanks must be properly filled out on the official form prescribed by the Civil Service Commission and filed at the office of the commission not later than the final closing date slated in the examination announcement.

EXAMINATION RESULTS: Each applicant whether passing or failing will be notified of the results of the examination as soon as the commission has graded the papers. Thereafter, eligible lists will be established which will consist of the names of those candidates who have been successful in all parts of the examination.

PHYSICAL EXAMINATION: All candidates for original entrance positions who are successful in other parts of the examinations must submit to a physical examination.

REYNALDO GALINDO,
President

SCHEDULE OF THE BOARD OF ZONING APPEALS

MONDAY, NOVEMBER 15, 2004

9:30 A.M.

Calendar No. 04-248: 17877 St. Clair Avenue (Ward 11)

17877 Property Ltd, c/o Carl Munn, owner, and Tree of Hope Enrichment, c/o Robert Farmer, tenant, appeal to establish use of space in an existing 35' x 340' two-story masonry, industrial building for a day care facility, situated on an approximate 490' x 584' lot, located in Semi-Industry and General Industry Districts on the northerly side of St. Clair Avenue at 17877 St. Clair Avenue; the day care as proposed would be in a location that is split zoned for industrial use as described in Sections 345.03 and 345.04 and subject to the limitations of, and by reference to Section 337.02(f), the use as a day care requires the Board of Zoning Appeals approval to determine that such use is appropriately located and designed and that it will meet a community need without adversely affecting the neighborhood.

Calendar No. 04-249: 15709 Lorain Avenue (Ward 21)

Tracy Brown, owner, and Angela Paluch, tenant, appeal to establish use as a tattoo/ body piercing operation in a portion of the first floor of a mixed use two-story, brick building, situated on a 45' x 156' lot located in a General Retail Business District on the south side of Lorain Avenue at 15709 Lorain Avenue; the proposed use is subject to the requirements of Specific Uses Regulated, that permit a tattooing/body piercing use only if it is a distance of 1000' from a residential district, an elementary or secondary school, library, church or a public or non-profit recreation center and as proposed, the use abuts a residential district and is within the required 1000' distance from Newton D. Baker Elementary School, a YMCA/YWCA facility, a public library and a church at the corner of Rockport Avenue and Triskett Road, and is contrary to Section 347.12(b)(1) of the Codified Ordinances.

Calendar No. 04-250: 14704 Hale Avenue (Ward 10)

Byron Thomas, owner, appeals to erect and enclose a 6'- 4" x 11'- 3" rear porch addition to an existing two-story, frame dwelling, situated on a 35' x 69' lot in a Two-Family District on the south side of Hale Avenue at 14704 Hale Avenue; contrary to the Yards and Courts Requirements for Yards and Courts, the porch is proposed where the rear property line is at an angle, and a distance of 13' and 7' are proposed, where a 20' rear yard depth is required as stated in Section 357.08 of the Codified Ordinances.

Calendar No. 04-253: 13221 Sprecher Avenue (Ward 20)

Bobby and Thelma Conley, owners, appeal to erect a 29' x 31' two-story additional floor area to an

existing single family dwelling situated on a 40' x 148' lot in an A1 One-Family District on the south side of Sprecher Avenue at 13221 Sprecher Avenue; contrary to Section 357.08 of the Yards and Courts Requirements, a 13'-3" rear yard distance is provided where 20' is required; and the shortest interior side yard is 1'-8" with a total interior side yard of 9'-11" provided where a total interior side yard of 10' is required; and subject to the provisions for Nonconforming Uses, the Board of Zoning Appeals approval is required, as stated in Section 359.01 of the Codified Ordinances.

Calendar No. 04-254: 16200 Munn Road (Ward 21)

William and Donna Trunko, owners, appeal to erect a 32' x 20' one-story frame, accessory garage on the rear portion of a 41' x 137' corner lot, where there is an existing two-story brick dwelling located in an A1 One-Family District on the southwest corner of Munn Road and West 162nd Street at 16200 Munn Road; contrary to the requirements for a corner lot on a side street in any use district, where the rear lot line of the corner lot is also the side line of the butt lot in the rear of a corner lot and a setback building line is established for such butt lot, no building shall be erected nearer to the side street at the rear line of the corner lot than the setback building line of the butt lot; and a setback of 21' is provided where 29' is required according to Section 357.05 of the Codified Ordinances.

Calendar No. 04-251: Appeal of Victor Keshishian, d.b.a. Leader Builders

Victor Keshishian, d.b.a. Leader Builders, appeals under Section 76-6(b) of the Charter of the City of Cleveland from the indefinite suspension issued by Daryl P. Rush, the Director of Community Development, by letter dated July 30, 2004, advising Victor Keshishian and Leader Builders of a suspension from all work sponsored and funded by the City of Cleveland Department of Community Development, effective three (3) days after July 30, 2004.

Secretary

**REPORT OF THE BOARD
OF ZONING APPEALS**

MONDAY, NOVEMBER 1, 2004

At the meeting of the Board of Zoning Appeals on Monday, November 1, 2004, the following appeals were heard by the Board:

The following appeals were **Approved:**

Calendar No. 04-237: 2926 Chester Avenue

Albert M. Higley Company appealed to expand the lobby area of a one-story office building in a General Retail Business District.

Calendar No. 04-238: 7243 Kinsman Road

St. Teresa Holiness Science Church appealed to construct a 102' x 103' one-story church building and parking lot in split zoning for a Multi-Family and General Retail Business District; subject to modified plan.

The following appeals were **Denied:**

Calendar No. 04-231: 16502 Chatfield Avenue

Nandy and Meethradeo Budhar appealed to install 45' of 58" high solid wooden fence along the northeast side street yard of a corner lot in a B1 Two-Family District.

Calendar No. 04-240: 12775 Berea Road

Grand C. Corporation, d.b.a. AC Supply appealed to install an approximate 33 s/f, additional ID cabinet sign to an existing sign pole where there is a 72 s/f sign in a General Industry District.

Calendar No. 04-214: Appeal of Lakewood Hospital Assoc., 12409 Lorain Avenue

Lakewood Hospital Association appealed from a Notice of Violation issued by the Department of Building and Housing.

The following appeal was **Postponed:**

Calendar No. 04-233: 5718 Bridge Avenue postponed to November 22, 2004.

The following appeals were **Withdrawn:**

Calendar No. 04-235: 5360 Brookpark Road

Sun Properties appealed to change from a warehouse to a bingo hall the use of a one-story building in split zoning for Semi-Industry and General Industry Districts.

Calendar No. 04-210: Appeal of Hikmat Dakdok, 2118 Broadview Road

Hikmat Dakdok appealed from an order issued by the Director of Public Service regarding a Sidewalk Citation and failure to comply with an order of the Board of Sidewalk Appeals.

In Executive Session on November 1, 2004, the following appeals heard by the Board on October 25, 2004 were adopted and approved.

The following appeals were **Approved:**

Calendar No. 04-227: 2225 West 38th Street

Frank Torres appealed to erect a 16' x 12' open wooden porch with a roof at the front of a one family dwelling in a Two-Family District.

Calendar No. 04-228: 3789 Ridge Road

Mike Weiss, d.b.a. A & C Auto appealed to change from storage to an auto wrecking yard a one-story building in a Semi-Industry District; subject to conditions.

Calendar No. 04-229: 3805 Ridge Road
Mike Weiss, d.b.a. A & C Auto appealed to change from a machine shop to an office and storage, accessory to a wrecking yard, two one-story buildings in a Semi-Industry District; subject to conditions.

Calendar No. 04-230: 3819 Ridge Road
Mike Weiss, d.b.a. A & C Auto appealed to change from manufacturing to an office and storage, accessory to a wrecking yard, a one-story building in a Semi-Industry District; subject to conditions.

Calendar No. 04-212: 1537 East 31st Street

Pak Sun Lui appealed to erect a 6' x 15' one and a half frame, bedroom addition to a dwelling house in a Two-Family District.

The following appeal was **Denied:**

Calendar No. 04-234: 3267 West 82nd Street

Irma Mitchell appealed to establish a Type A Day Care in a one family dwelling in an A1 One-Family District.

In Executive Session on November 1, 2004, the following appeal heard by the Board on October 8, 2004 was adopted and approved:

The following appeal was **Denied:**

Calendar No. 04-206: 2118 Broadview Road

Hikmat Dakdok appealed to use the 10' established setback on Broadview Road to provide accessory parking for a retail sales store in a Local Retail Business District.

In Executive Session on November 1, 2004, the following appeals were heard on October 11, 2004 were adopted and approved:

The following appeals were **Approved:**

Calendar No. 04-215: 720 East 152nd Street

Brett Greer appealed to install a 6' high chain link fence along the front and side street yard of a corner lot in a General Retail Business District; subject to conditions.

Calendar No. 04-216: 15020 Cardinal Avenue

Brett Greer appealed to install a 6' high chain link fence along the front of a vacant lot in a General Retail Business District; subject to conditions.

Secretary

**REPORT OF THE BOARD
OF BUILDING STANDARDS
AND BUILDING APPEALS**

NO MEETING

PUBLIC NOTICE

NONE

NOTICE OF PUBLIC HEARING

**Notice of Public Hearing
By the Council Committee
on Community and Economic
Development**

**Mercedes Cotner
Committee Room
Cleveland City Hall,
601 Lakeside Avenue, Room 217
On Tuesday, November 16, 2004
9:30 A.M.**

Notice is hereby given in accordance with Chapter 324 of the Codified Ordinances of Cleveland, Ohio that the Council Committee on Community and Economic Development will hold a Public Hearing on November 16, 2004 at 9:00 a.m. in the Mercedes Cotner Committee Room, Cleveland City Hall, 601 Lakeside Avenue, Room 217, Cleveland, Ohio to consider Ordinance No. 849-04 relating to the existence of blight at the following properties and the necessity of acquiring said properties to eliminate the blight and prevent its recurrence: 17300 Lakeshore Boulevard and 1120 East 169th Street.

All interested persons are encouraged to attend or be represented at the Public Hearing in order to be heard and to present their views.

MERLE R. GORDON,
Chairwoman
Community and Economic
Development Committee

November 3, 2004 and November 10, 2004

CITY OF CLEVELAND BIDS**For All Departments**

Sealed bids will be received at the office of the Commissioner of Purchases and Supplies, Room 128, City Hall, in accordance with the appended schedule, and will be opened and read in Room 128, City Hall, immediately thereafter.

Each bid must be made in accordance with the specifications and must be submitted on the blanks supplied for the purpose, all of which may be obtained at the office of the said Commissioner of Purchases and Supplies, but no bid will be considered unless delivered to the office of the said commissioner previous to 12:00 noon (Eastern Standard Time) on the date specified in the schedule.

187.10 Negotiated contracts; Notice required in Advertisement for Bids.

Where invitations for bids are advertised, the following notice shall be included in the advertisement: "Pursuant to the MBE/FBE Code, each prime bidder, each minority business enterprise ("MBE") and each female business enterprise ("FBE") must be certified before doing business with the City. Therefore, any prime contractor wishing to receive credit for using an MBE or FBE should ensure that applications for certification as to MBE or FBE status compliance with the Code, affirmative action in employ-

ment and, if applicable, joint venture status, are submitted to the Office of Equal Opportunity ("OEO") prior to the date of bid opening or submission of proposals or as specified by the Director. Failure to comply with the business enterprise code or with representations made on these forms may result in cancellation of the contract or other civil or criminal penalties."

THURSDAY, NOVEMBER 11, 2004

Hot Water Heaters, for the Division of Convention Center and Stadium, Department of Parks, Recreation, and Properties, as authorized by Ordinance No. 1273-04, passed by the Council of the City of Cleveland, August 11, 2004.

THERE WILL BE A MANDATORY PRE-BID, THURSDAY, NOVEMBER 12, 2004 AT 9:00 A.M., CLEVELAND CONVENTION CENTER, 500 LAKESIDE AVENUE, CLEVELAND, OHIO 44114.

THE CITY WILL NOT CONSIDER THE BID OF ANYONE WHO DOES NOT ATTEND A MANDATORY PRE-BID CONFERENCE.

October 27, 2004 and November 3, 2004

WEDNESDAY, NOVEMBER 17, 2004

Income Tax Forms, for the Division of Taxation, Department of Finance, as authorized by Ordinance No. 987-04, passed by the Council of the City of Cleveland, June 7, 2004.

THERE WILL BE A NON-MANDATORY PRE-BID MEETING THURSDAY, NOVEMBER 4, 2004 AT 10:00 A.M., DIVISION OF TAXATION, CONFERENCE ROOM, 1701 LAKESIDE AVENUE, CLEVELAND, OHIO 44114.

October 27, 2004 and November 3, 2004

FRIDAY, NOVEMBER 19, 2004

Uniform Clothing Supplies — 2005, for the Division of Police, Department of Public Safety, as authorized by Section 135.06, of the Codified Ordinances of Cleveland, Ohio, 1976.

THERE WILL BE A NON-MANDATORY PRE-BID MEETING THURSDAY, NOVEMBER 11, 2004 AT 10:00 A.M., CLEVELAND POLICE ACADEMY, 1300 ONTARIO STREET, 7TH FLOOR, ROOM 2, CLEVELAND, OHIO 44113.

Miscellaneous Test Equipment, Repair & Testing, for the Division of Cleveland Public Power, Department of Public Utilities as authorized by Ordinance No. 247-04, passed by the Council of the City of Cleveland, May 3, 2004.

THERE WILL BE A MANDATORY PRE-BID, THURSDAY, NOVEMBER 12, 2004 AT 9:00 A.M., CLEVELAND CONVENTION CENTER, 500 LAKESIDE AVENUE, CLEVELAND, OHIO 44114.

THE CITY WILL NOT CONSIDER THE BID OF ANYONE WHO DOES NOT ATTEND A MANDATORY PRE-BID CONFERENCE.

October 27, 2004 and November 3, 2004

WEDNESDAY, NOVEMBER 17, 2004

Luke Easter Park Playground Site Improvements, for the Division of Research, Planning & Development, Department of Parks, Recreation and Properties, as authorized by Ordinance Nos. 1114-02 and 2151-03, passed by the Council of the City of Cleveland, June 17, 2002 and December 15, 2003, respectively.

THERE WILL BE A REFUNDABLE FEE FOR PLANS/SPECIFICATIONS IN THE AMOUNT OF TWENTY-FIVE DOLLARS (\$25.00) IN THE FORM OF A CASHIER'S CHECK AND/OR MONEY ORDER.

THERE WILL BE A NON-MANDATORY PRE-BID MEETING THURSDAY, NOVEMBER 11, 2004 AT 10:00 A.M., BURKE LAKEFRONT AIRPORT, 1ST FLOOR CONFERENCE ROOM, 1501 NORTH MARGINAL ROAD, CLEVELAND, OHIO 44114.

November 3, 2004 and November 10, 2004

THURSDAY, NOVEMBER 18, 2004

West 122nd Street Sewer Replacement Project, for the Division of Water Pollution Control, Department of Public Utilities, as authorized by Ordinance No. 839-04, passed by the Council of the City of Cleveland, June 14, 2004.

THERE WILL BE A REFUNDABLE FEE FOR PLANS/SPECIFICATIONS IN THE AMOUNT OF FIFTY DOLLARS (\$50.00) IN THE FORM OF A CASHIER'S CHECK AND/OR MONEY ORDER.

THERE WILL BE A NON-MANDATORY PRE-BID MEETING, FRIDAY, NOVEMBER 12, 2004, AT 10:00 A.M., DIVISION OF WATER POLLUTION CONTROL, 12302 KIRBY AVENUE, CLEVELAND, OHIO 44108.

November 3, 2004 and November 10, 2004

WEDNESDAY, DECEMBER 1, 2004

Photographic Bureau Office Relocation, for the Division of Architecture, Department of Public Service, as authorized by Ordinance No. 837-02, passed by the Council of the City of Cleveland, June 10, 2002.

THERE WILL BE A REFUNDABLE FEE FOR PLANS/SPECIFICATIONS IN THE AMOUNT OF FIFTY DOLLARS (\$50.00) IN THE FORM OF A CASHIER'S CHECK AND/OR MONEY ORDER.

THERE WILL BE A MANDATORY PRE-BID MEETING, FRIDAY, NOVEMBER 12, 2004 AT 10:00 A.M., DIVISION OF ARCHITECTURE, ROOM 517, CITY HALL, 601 LAKESIDE AVENUE, CLEVELAND, OHIO 44114.

THE CITY WILL NOT CONSIDER THE BID OF ANYONE WHO DOES NOT ATTEND A MANDATORY PRE-BID CONFERENCE.

November 3, 2004 and November 10, 2004

**ADOPTED RESOLUTIONS
AND ORDINANCES**

Res. No. 2073-04.

By Council Member Britt.

An emergency resolution objecting to the transfer of ownership of a C2 and C2X Liquor Permit at 1930 East 79th Street.

Whereas, Council has been notified by the Department of Liquor Control of an application for the transfer of ownership of a C2 and C2X Liquor Permit from Cascians Corporation, Inc., DBA Quik Pik Market, 1930 East 79th Street, Cleveland, Ohio 44103, Permanent Number 1302675 to Chesters All Service Mart, Inc., DBA Quik Pik Market, 1930 East 79th Street, Cleveland, Ohio 44103, Permanent Number 1421706; and

Whereas, the granting of this application for a liquor permit to this high crime area, which is already saturated with other liquor outlets, is contrary to the best interests of the entire community; and

Whereas, the applicant does not qualify to be a permit holder and/or has demonstrated that he has operated his liquor business in disregard of the laws, regulations or local ordinances of this state or any other state; and

Whereas, the place for which the permit is sought has not conformed to the building, safety or health requirements of the governing body of this County or City; and

Whereas, the place for which the permit is sought is so arranged or constructed that law enforcement officers or agents of the Department of Liquor Control are prevented reasonable access to the establishment; and

Whereas, the place for which the permit is sought is so located with respect to the neighborhood that it substantially interferes with public decency, sobriety, peace or good order; and

Whereas, this objection is based on other legal grounds as set forth in Revised Code Section 4303.292; and

Whereas, this resolution constitutes an emergency measure providing for the immediate preservation of the public peace, prosperity, safety and welfare pursuant to Section 4303.26 of the Ohio Revised Code. Council's objection to said permit must be received by the Director of Liquor Control within 30 days of notification; now, therefore,

Be it resolved by the Council of the City of Cleveland:

Section 1. That Council does hereby record its objection to the transfer of ownership of a C2 and C2X Liquor Permit from Cascians Corporation, Inc., DBA Quik Pik Market, 1930 East 79th Street, Cleveland, Ohio 44103, Permanent Number 1302675 to Chesters All Service Mart, Inc., DBA Quik Pik Market, 1930 East 79th Street, Cleveland, Ohio 44103, Permanent Number 1421706; and requests the Director of Liquor Control to set a hearing for said application in accordance with provisions of Section 4303.26 of the Revised Code of Ohio.

Section 2. That the Clerk of Council be and she is hereby directed to transmit two certified copies of this resolution, together with two copies of a letter of objection and two copies of a letter requesting that the hearing be held in Cleveland, Cuyahoga County.

Section 3. That this resolution is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Adopted October 25, 2004.

Effective October 27, 2004.

Res. No. 2074-04.

By Council Member Dolan.

An emergency resolution objecting to a New C1 Liquor Permit at 4217 Rocky River Drive.

Whereas, Council has been notified by the Department of Liquor Control of an application for a New C1 Liquor Permit at Culvers Trucking, Inc., DBA Autocare Unlimited, 4217 Rocky River Drive, Cleveland, Ohio 44111, Permanent Number 1849017; and

Whereas, the granting of this application for a liquor permit to this high crime area, which is already saturated with other liquor outlets, is contrary to the best interests of the entire community; and

Whereas, the applicant does not qualify to be a permit holder and/or has demonstrated that he has operated his liquor business in disregard of the laws, regulations or local ordinances of this state or any other state; and

Whereas, the place for which the permit is sought has not conformed to the building, safety or health requirements of the governing body of this County or City; and

Whereas, the place for which the permit is sought is so arranged or constructed that law enforcement officers or agents of the Department of Liquor Control are prevented reasonable access to the establishment; and

Whereas, the place for which the permit is sought is so located with respect to the neighborhood that it substantially interferes with public decency, sobriety, peace or good order; and

Whereas, this objection is based on other legal grounds as set forth in Revised Code Section 4303.292; and

Whereas, this resolution constitutes an emergency measure providing for the immediate preservation of the public peace, prosperity, safety and welfare pursuant to Section 4303.26 of the Ohio Revised Code. Council's objection to said permit must be received by the Director of Liquor Control within 30 days of notification; now, therefore,

Be it resolved by the Council of the City of Cleveland:

Section 1. That Council does hereby record its objection to a New C1 Liquor Permit at Culvers Trucking,

Inc., DBA Autocare Unlimited, 4217 Rocky River Drive, Cleveland, Ohio 44111, Permanent Number 1849017; and requests the Director of Liquor Control to set a hearing for said application in accordance with provisions of Section 4303.26 of the Revised Code of Ohio.

Section 2. That the Clerk of Council be and she is hereby directed to transmit two certified copies of this resolution, together with two copies of a letter of objection and two copies of a letter requesting that the hearing be held in Cleveland, Cuyahoga County.

Section 3. That this resolution is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Adopted October 25, 2004.

Effective October 27, 2004.

Res. No. 2075-04.

By Council Member Johnson.

An emergency resolution objecting to a New C1 Liquor Permit at 10017 Sophia Avenue.

Whereas, Council has been notified by the Department of Liquor Control of an application for a New C1 Liquor Permit at Hayfa, Inc., DBA Sophia Food Market, 10017 Sophia Avenue, Cleveland, Ohio 44104, Permanent Number 3693704; and

Whereas, the granting of this application for a liquor permit to this high crime area, which is already saturated with other liquor outlets, is contrary to the best interests of the entire community; and

Whereas, the applicant does not qualify to be a permit holder and/or has demonstrated that he has operated his liquor business in disregard of the laws, regulations or local ordinances of this state or any other state; and

Whereas, the place for which the permit is sought has not conformed to the building, safety or health requirements of the governing body of this County or City; and

Whereas, the place for which the permit is sought is so arranged or constructed that law enforcement officers or agents of the Department of Liquor Control are prevented reasonable access to the establishment; and

Whereas, the place for which the permit is sought is so located with respect to the neighborhood that it substantially interferes with public decency, sobriety, peace or good order; and

Whereas, this objection is based on other legal grounds as set forth in Revised Code Section 4303.292; and

Whereas, this resolution constitutes an emergency measure providing for the immediate preservation of the public peace, prosperity, safety and welfare pursuant to Section 4303.26 of the Ohio Revised Code. Council's objection to said permit must be received by the

Director of Liquor Control within 30 days of notification; now, therefore,

Be it resolved by the Council of the City of Cleveland:

Section 1. That Council does hereby record its objection to a New C1 Liquor Permit at Hayfa, Inc., DBA Sophia Food Market, 10017 Sophia Avenue, Cleveland, Ohio 44104, Permanent Number 3693704; and requests the Director of Liquor Control to set a hearing for said application in accordance with provisions of Section 4303.26 of the Revised Code of Ohio.

Section 2. That the Clerk of Council be and she is hereby directed to transmit two certified copies of this resolution, together with two copies of a letter of objection and two copies of a letter requesting that the hearing be held in Cleveland, Cuyahoga County.

Section 3. That this resolution is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Adopted October 25, 2004.

Effective October 27, 2004.

Res. No. 2076-04.

By Council Member Polensek.

An emergency resolution objecting to the transfer of ownership of a C1 Liquor Permit at 15222 Waterloo Road.

Whereas, Council has been notified by the Department of Liquor Control of an application for the transfer of ownership of a C1 Liquor Permit from Clark Retail Enterprises, Inc., DBA Clark Store #1267, 15222 Waterloo Road, Cleveland, Ohio 44110, Permanent Number 15255111267 to Tap Stations Investments, LLC, 15222 Waterloo Road, Cleveland, Ohio 44110, Permanent Number 87987000175; and

Whereas, the granting of this application for a liquor permit to this high crime area, which is already saturated with other liquor outlets, is contrary to the best interests of the entire community; and

Whereas, the applicant does not qualify to be a permit holder and/or has demonstrated that he has operated his liquor business in disregard of the laws, regulations or local ordinances of this state or any other state; and

Whereas, the place for which the permit is sought has not conformed to the building, safety or health requirements of the governing body of this County or City; and

Whereas, the place for which the permit is sought is so arranged or constructed that law enforcement officers or agents of the Department of Liquor Control are prevented reasonable access to the establishment; and

Whereas, the place for which the permit is sought is so located with respect to the neighborhood that it substantially interferes with public decency, sobriety, peace or good order; and

Whereas, this objection is based on other legal grounds as set forth in Revised Code Section 4303.292; and

Whereas, this resolution constitutes an emergency measure providing for the immediate preservation of the public peace, prosperity, safety and welfare pursuant to Section 4303.26 of the Ohio Revised Code. Council's objection to said permit must be received by the Director of Liquor Control within 30 days of notification; now, therefore,

Be it resolved by the Council of the City of Cleveland:

Section 1. That Council does hereby record its objection to the transfer of ownership of a C1 Liquor Permit from Clark Retail Enterprises, Inc., DBA Clark Store #1267, 15222 Waterloo Road, Cleveland, Ohio 44110, Permanent Number 15255111267 to Tap Stations Investments, LLC, 15222 Waterloo Road, Cleveland, Ohio 44110, Permanent Number 87987000175; and requests the Director of Liquor Control to set a hearing for said application in accordance with provisions of Section 4303.26 of the Revised Code of Ohio.

Section 2. That the Clerk of Council be and she is hereby directed to transmit two certified copies of this resolution, together with two copies of a letter of objection and two copies of a letter requesting that the hearing be held in Cleveland, Cuyahoga County.

Section 3. That this resolution is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Adopted October 25, 2004.

Effective October 27, 2004.

Res. No. 2077-04.

By Council Members Zone, Westbrook, Gordon, Jackson, Brady, Britt, Cimperman, Cintron, Coats, Conwell, Dolan, Johnson, Jones, Lewis, O'Malley, Pierce Scott, Polensek, Rybka, Sweeney, White.

An emergency resolution expressing this Council's strong opposition to State Issue 1; urging the citizens of the City of Cleveland to vote NO on State Issue 1 on November 2, 2004; and supporting political, business, labor and community leaders in opposition to the constitutional amendment and working to ensure its defeat and assisting in all ways possible.

Whereas, Cleveland City Council seeks to promote a strong economy and protect the health, welfare and rights of all of its citizens; and

Whereas, the Ohio Constitution should never be used to deny or take away rights to its citizens, but rather should only be used to protect our citizens from governmental interference with constitutional rights; and

Whereas, current state law already defines marriage; and

Whereas, State Issue 1 is an extreme and detrimental proposal that would prohibit the City of

Cleveland and all other public and private employers from offering benefits or protections to unmarried employees in relationships; and

Whereas, State Issue 1 would jeopardize property, health benefits, and inheritance rights for all unmarried couples in the City of Cleveland and the State of Ohio; and

Whereas, State Issue 1 is opposed by a broad coalition of political, business, labor, and citizen advocacy groups and leaders including, the Cleveland Federation of Labor, COSE, Congresswoman Stephanie Tubbs Jones, Congressman Dennis Kucinich, Governor Bob Taft, United States Senator George Voinovich, United States Senator Michael DeWine, Attorney General Jim Petro, the Mayors of all of Ohio's major cities, AARP, the Ohio League of Women Voters, The Cleveland Plain Dealer, and numerous religious and civic leaders; and

Whereas, this resolution constitutes an emergency measure for the immediate preservation of public peace, property, health, or safety, now, therefore,

Be it resolved by the Council of the City of Cleveland:

Section 1. That this Council strongly opposes State Issue 1 and urges the citizens of the City of Cleveland to vote NO on State Issue 1 on November 2, 2004.

Section 2. That this Council urges political, business, labor and community leaders to voice their opposition to the constitutional amendment and work to ensure its defeat and assist in all ways possible to defeat State Issue 1.

Section 3. That this resolution is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Adopted October 25, 2004.

Effective October 27, 2004.

Ord. No. 487-A-04 (As a substitute for Ord. No. 487-04).

By Council Members Westbrook and Dolan.

An emergency ordinance to repeal Sections 611.01 to 611.10 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by various ordinances; and to supplement the codified ordinances by enacting new Sections 611.01 to 611.12 regarding gambling.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the following sections of the Codified Ordinances of Cleveland, Ohio, 1976,

Sections 611.01 and 611.02, as amended by Ordinance No. 184-02, passed June 10, 2002,

Section 611.03, as amended by Ordinance No. 1475-78, passed October 9, 1978,

Section 611.04, as amended by Ordinance No. 1667-95, passed January 8, 1996,

Section 611.05, as amended by Ordinance No. 1414-86, passed November 3, 1986,

Sections 611.06 and 611.07, as amended by Ordinance No. 90-96, passed March 18, 1996,

Section 611.08, as amended by Ordinance No. 1475-78, passed October 9, 1978,

Section 611.09, as amended by Ordinance No. 90-96, passed March 18, 1996, and

Section 611.10, as amended by Ordinance No. 1475-78, passed October 9, 1978, are repealed.

Section 2. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Sections 611.01 and 611.12 to read as follows:

Section 611.01 Definition

As used in this chapter:

(a) "Bookmaking" means the business of receiving or paying off bets.

(b) "Bet" means the hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk.

(c) "Scheme of chance" means a slot machine, lottery, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit.

(d) "Game of chance" means poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.

(e) "Game of chance conducted for profit" means any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

(f) "Gambling device" means any of the following:

(1) A book, totalizer, or other equipment for recording bets;

(2) A ticket, token, or other device representing a chance, share, or interest in a scheme of chance or evidencing a bet;

(3) A deck of cards, dice, gaming table, roulette wheel, slot machine, or other apparatus designed for use in connection with a game of chance;

(4) Any equipment, device, apparatus, or paraphernalia specially designed for gambling purposes;

(5) Bingo supplies sold or otherwise provided, or used, in violation of this chapter.

(g) "Gambling offense" means any of the following:

(1) A violation of Sections 611.02 to 611.10 or Sections 2915.02 to 2915.11 of the Revised Code;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States substantially equivalent to any section listed in division (g)(1) of this section or a violation of Section 2915.06 of the Revised Code as it existed prior to July 1, 1996;

(3) An offense under an existing or former municipal ordinance or

law of this or any other state or the United States, of which gambling is an element;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense under division (g) of this section.

(h) Except as otherwise provided in this chapter, "charitable organization" means any tax exempt religious, educational, veteran's, fraternal, sporting, service, nonprofit medical, volunteer rescue service, volunteer firefighter's, senior citizen's, historic railroad educational, youth athletic, amateur athletic, or youth athletic park organization. An organization is tax exempt if the organization is, and has received from the internal revenue service a determination letter that currently is in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, or if the organization is a sporting organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(7) of the Internal Revenue Code. To qualify as a charitable organization, an organization, except a volunteer rescue service or volunteer fire fighter's organization, shall have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under Section 2915.08 of the Revised Code or the conducting of any game of chance as provided in division (D) of Section 2915.02 of the Revised Code. A charitable organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is created by a veteran's organization, a fraternal organization, or a sporting organization does not have to have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under Section 2915.08 of the Revised Code or the conducting of any game of chance as provided in division (D) of Section 2915.02 of the Revised Code.

(i) "Religious organization" means any church, body of communicants, or group that is not organized or operated for profit and that gathers in common membership for regular worship and religious observances.

(j) "Educational organization" means any organization within this state that is not organized for profit, the primary purpose of which is to educate and develop the capabilities of individuals through instruction by means of operating or contributing to the support of a school, academy, college, or university.

(k) "Veteran's organization" means any individual post or state headquarters of a national veteran's association or an auxiliary unit of any individual post of a national veteran's association, which post, state headquarters, or auxiliary unit has been in continuous existence in this state for at least two years and incorporated as a nonprofit corporation and either has received a letter

from the state headquarters of the national veteran's association indicating that the individual post or auxiliary unit is in good standing with the national veteran's association or has received a letter from the national veteran's association indicating that the state headquarters is in good standing with the national veteran's association. As used in this division, "national veteran's association" means any veteran's association that has been in continuous existence as such for a period of at least five years and either is incorporated by an act of the United States congress or has a national dues-paying membership of at least five thousand persons.

(l) "Volunteer firefighter's organization" means any organization of volunteer firefighters, as defined in Section 146.01 of the Revised Code, that is organized and operated exclusively to provide financial support for a volunteer fire department or a volunteer fire company and that is recognized or ratified by a county, municipal corporation, or township.

(m) "Fraternal organization" means any society, order, state headquarters, or association within this state, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge, or chapter of a national or state organization, that exists exclusively for the common business or sodality of its members, and that has been in continuous existence in this state for a period of five years.

(n) "Volunteer rescue service organization" means any organization of volunteers organized to function as an emergency medical service organization, as defined in Section 4765.01 of the Revised Code.

(o) "Service organization" means either of the following:

(1) Any organization, not organized for profit, that is organized and operated exclusively to provide, or to contribute to the support of organizations or institutions organized and operated exclusively to provide, medical and therapeutic services for persons who are crippled, born with birth defects, or have any other mental or physical defect or those organized and operated exclusively to protect, or to contribute to the support of organizations or institutions organized and operated exclusively to protect, animals from inhumane treatment or provide immediate shelter to victims of domestic violence;

(2) Any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is an organization, nor organized for profit, that is organized and operated primarily to provide, or to contribute to the support of organizations or institutions organized and operated primarily to provide, medical and therapeutic services for persons who are crippled, born with birth defects, or have any other mental or physical defect.

(p) "Nonprofit medical organization" means either of the following:

(1) Any organization that has been incorporated as a nonprofit corporation for at least five years and that has continuously operated and will be operated exclusively to provide, or to contribute to the support of organizations or institutions organized and operated exclusively to provide, hospital, medical, research, or therapeutic services for the public;

(2) Any organization that is described and qualified under subsection 501(c)(3) of the Internal Revenue Code, that has been incorporated as a nonprofit corporation for at least five years, and that has continuously operated and will be operated primarily to provide, or to contribute to the support of organizations or institutions organized and operated primarily to provide, hospital, medical, research, or therapeutic services for the public.

(q) "Senior citizen's organization" means any private organization, not organized for profit, that is organized and operated exclusively to provide recreational or social services for persons who are fifty-five years of age or older and that is described and qualified under subsection 501(c)(3) of the Internal Revenue Code.

(r) "Charitable bingo game" means any bingo game described in division (s)(1) or (2) of this section that is conducted by a charitable organization that has obtained a license under Section 2915.08 of the Revised Code and the proceeds of which are used for a charitable purpose.

(s) "Bingo" means either of the following:

(1) A game with all of the following characteristics:

A. The participants use bingo cards or sheets, including paper formats and electronic representation or image formats, that are divided into twenty-five spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space.

B. The participants cover the spaces on the bingo cards or sheets that correspond to combinations of letters and numbers that are announced by a bingo game operator.

C. A bingo game operator announces combinations of letters and numbers that appear on objects that a bingo game operator selects by chance, either manually or mechanically, from a receptacle that contains seventy-five objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the seventy-five possible combinations of a letter and a number that can appear on the bingo cards or sheets.

D. The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers as described in division (s)(1)C. of this section, that a predetermined and preannounced pattern of spaces has been covered on a bingo card or sheet being used by the participant.

(2) Instant bingo, punch boards, and raffles.

(t) "Conduct" means to back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo or a game of chance.

(u) "Bingo game operator" means any person, except security personnel, who performs work or labor at the site of bingo, including, but not limited to, collecting money from participants, handing out bingo cards or sheets or objects to cover spaces on bingo cards or sheets, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on bingo cards or sheets, calling out the combinations of letters and numbers, distributing prizes, selling or redeeming instant bingo tickets or cards, supervising the operation of a punch board, selling raffle tickets, selecting raffle tickets from a receptacle and announcing the winning numbers in a raffle, and preparing, selling, and serving food or beverages.

(v) "Participant" means any person who plays bingo.

(w) "Bingo session" means a period that includes both of the following:

(1) Not to exceed five continuous hours for the conduct of one or more games described in division (s)(1) of this section, instant bingo, and seal cards;

(2) A period for the conduct of instant bingo and seal cards for not more than two hours before and not more than two hours after the period described in division (w)(1) of this section.

(x) "Gross receipts" means all money or assets, including admission fees, that a person receives from bingo without the deduction of any amounts for prizes paid out or for the expenses of conducting bingo. "Gross receipts" does not include any money directly taken in from the sale of food or beverages by a charitable organization conducting bingo, or by a bona fide auxiliary unit or society of a charitable organization conducting bingo, provided all of the following apply:

(1) The auxiliary unit or society has been in existence as a bona fide auxiliary unit or society of the charitable organization for at least two years prior to conducting bingo.

(2) The person who purchases the food or beverage receives nothing of value except the food or beverage and items customarily received with the purchase of that food or beverage.

(3) The food and beverages are sold at customary and reasonable prices.

(y) "Security personnel" includes any person who either is a sheriff, deputy sheriff, marshal, deputy marshal, township constable, or member of an organized police department of a municipal corporation or has successfully completed a peace officer's training course under Sections 109.71 to 109.79 of the Revised Code and who is hired to provide security for the premises on which bingo is conducted.

(z) "Charitable purpose" means that the net profit of bingo, other than instant bingo, is used by, or is given, donated, or otherwise transferred to, any of the following:

(1) Any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(2) A veteran's organization that is a post, chapter, or organization of veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post, chapter, or organization organized in the United States or any of its possessions, at least seventy-five per cent of the members of which are veterans and substantially all of the other members of which are individuals who are spouses, widows, or widowers of veterans, or such individuals, provided that no part of the net earnings of such post, chapter, or organization inures to the benefit of any private shareholder or individual, and further provided that the net profit is used by the post, chapter, or organization for the charitable purposes set forth in division (B)(12) of Section 5739.02 of the Revised Code, is used for awarding scholarships to or for attendance at an institution mentioned in division (B)(12) of Section 5739.02 of the Revised Code, is donated to a governmental agency, or is used for nonprofit youth activities, the purchase of United States or Ohio flags that are donated to schools, youth groups, or other bona fide nonprofit organizations, promotion of patriotism, or disaster relief;

(3) A fraternal organization that has been in continuous existence in this state for fifteen years and that uses the net profit exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, if contributions for such use would qualify as a deductible charitable contribution under subsection 170 of the Internal Revenue Code;

(4) A volunteer firefighter's organization that uses the net profit for the purposes set forth in division (1) of this section.

(aa) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as now or hereafter amended.

(bb) "Youth athletic organization" means any organization, not organized for profit, that is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are twenty-one years of age or younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association.

(cc) "Youth athletic park organization" means any organization, not organized for profit, that satisfies both of the following:

(1) It owns, operates, and maintains playing fields that satisfy both of the following:

A. The playing fields are used at least one hundred days per year for athletic activities by one or more organizations, not organized for profit, each of which is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are eighteen years of age or

younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association.

B. The playing fields are not used for any profit-making activity at any time during the year.

(2) It uses the proceeds of bingo it conducts exclusively for the operation, maintenance, and improvement of its playing fields of the type described in division (cc)(1) of this section.

(dd) "Amateur athletic organization" means any organization, not organized for profit, that is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are training for amateur athletic competition that is sanctioned by a national governing body as defined in the "Amateur Sports Act of 1978," 90 Stat. 3045, 36 U.S.C.A. 373.

(ee) "Bingo supplies" means bingo cards or sheets; instant bingo tickets or cards; electronic bingo aids; raffle tickets; punch boards; seal cards; instant bingo ticket dispensers; and devices for selecting or displaying the combination of bingo letters and numbers or raffle tickets. Items that are "bingo supplies" are not gambling devices if sold or otherwise provided, and used, in accordance with this chapter. For purposes of this chapter, "bingo supplies" are not to be considered equipment used to conduct a bingo game.

(ff) "Instant bingo" means a form of bingo that uses folded or banded tickets or paper cards with perforated break-open tabs, a face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners. "Instant bingo" includes seal cards. "Instant bingo" does not include any device that is activated by the insertion of a coin, currency, token, or an equivalent, and that contains as one of its components a video display monitor that is capable of displaying numbers, letters, symbols, or characters in winning or losing combinations.

(gg) "Seal card" means a form of instant bingo that uses instant bingo tickets in conjunction with a board or placard that contains one or more seals that, when removed or opened, reveal pre-designated winning numbers, letters, or symbols.

(hh) "Raffle" means a form of bingo in which the one or more prizes are won by one or more persons who have purchased a raffle ticket. The one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle.

(ii) "Punch board" means a board containing a number of holes or receptacles of uniform size in which are placed, mechanically and randomly, serially numbered slips of paper that may be punched or drawn from the hole or receptacle when used in conjunction with instant bingo. A player may punch or draw the numbered slips of paper from the holes or receptacles and obtain the prize established for the game if the number drawn corre-

sponds to a winning number or, if the punch board includes the use of a seal card, a potential winning number.

(jj) "Gross profit" means gross receipts minus the amount actually expended for the payment of prize awards.

(kk) "Net profit" means gross profit minus expenses.

(ll) "Expenses" means the reasonable amount of gross profit actually expended for all of the following:

(1) The purchase or lease of bingo supplies;

(2) The annual license fee required under Section 2915.08 of the Revised Code;

(3) Bank fees and service charges for a bingo session or game account described in Section 2915.10 of the Revised Code;

(4) Audits and accounting services;

(5) Safes;

(6) Cash registers;

(7) Hiring security personnel;

(8) Advertising bingo;

(9) Renting premises in which to conduct a bingo session;

(10) Tables and chairs;

(11) Expenses for maintaining and operating a charitable organization's facilities, including, but not limited to, a post home, club house, lounge, tavern, or canteen and any grounds attached to the post home, club house, lounge, tavern, or canteen;

(12) Any other product or service directly related to the conduct of bingo that is authorized in rules adopted by the attorney general under division (B)(1) of Section 2915.08 of the Revised Code.

(mm) "Person" has the same meaning as in Section 1.59 of the Revised Code and includes any firm or any other legal entity, however organized.

(nn) "Distributor" means any person who purchases or obtains bingo supplies and who does either of the following:

(1) Sells, offers for sale, or otherwise provides or offers to provide the bingo supplies to another person for use in this state.

(2) Modifies, converts, adds to, or removes parts from the bingo supplies to further their promotion or sale for use in this state.

(oo) "Manufacturer" means any person who assembles completed bingo supplies from raw materials, other items, or subparts or who modifies, converts, adds to, or removes parts from bingo supplies to further their promotion or sale.

(pp) (1) "Electronic bingo aid" means an electronic device used by a participant to monitor bingo cards or sheets purchased at the time and place of a bingo session and that does all of the following:

A. It provides a means for a participant to input numbers and letters announced by a bingo caller.

B. It compares the numbers and letters entered by the participant to the bingo faces previously stored in the memory of the device.

C. It identifies a winning bingo pattern.

(2) "Electronic bingo aid" does not include any device into which a coin, currency, token, or an equivalent is inserted to activate play.

(qq) (1) "Slot" machine means either of the following:

A. Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain, the outcome of which is determined largely or wholly by chance;

B. Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct or dispense bingo or a scheme or game of chance.

(2) "Slot machine" does not include a skill-based amusement machine.

(rr) "Historic railroad educational organization" means an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, that owns in fee simple the tracks and the right of way of a historic railroad that the organization restores or maintains and on which the organization provides excursions as part of a program to promote tourism and educate visitors regarding the role of railroad transportation in Ohio history, and that received as donations from a charitable organization that holds a license to conduct bingo under this chapter an amount equal to at least fifty per cent of that licensed charitable organization's net proceeds from the conduct of bingo during each of the five years preceding June 30, 2003. "Historic railroad" means all or a portion of the tracks and right of way of a railroad that was owned and operated by a for profit common carrier in this state at any time prior to January 1, 1950.

(ss) (1) "Skill-based amusement machine" means a skill-based amusement device, such as a mechanical, electronic, video, or digital device, or machine, whether or not the skill-based amusement machine requires payment for use through a coin or bill validator or other payment of consideration or value to participate in the machine's offering or to activate the machine, provided that all of the following apply:

A. The machine involves a task, game, play, contest, competition, or tournament in which the player actively participates in the task, game, play, contest, competition, or tournament.

B. The outcome of an individual's play and participation is not determined largely or wholly by chance.

C. The outcome of play during a game is not controlled by a person not actively participating in the game.

(2) All of the following apply to any machine that is operated as described in division (aaa)(1) of this section:

A. As used in this section, "task," "game," and "play" mean one event from the initial activation of the machine until the results of play are determined without payment of additional consideration. An individual utilizing a machine that involves a single task, game, play, contest, competition, or tournament may be awarded prizes based on the results of play.

B. Advance play for a single task, game, play, contest, competition, or

tournament participation may be purchased. The cost of the contest, competition, or tournament participation may be greater than a single non-contest, competition, or tournament play.

C. To the extent that the machine is used in a contest, competition, or tournament, that contest, competition, or tournament has a defined starting and ending date and is open to participants in competition for scoring and ranking results toward the awarding of prizes that are stated prior to the start of the contest, competition, or tournament.

(tt) "Pool not conducted for profit" means a scheme in which a participant gives a valuable consideration for a chance to win a prize and the total amount of consideration wagered is distributed to a participant or participants.

(uu) "Sporting organization" means a hunting, fishing, or trapping organization, other than a college or high school fraternity or sorority, that is not organized for profit, that is affiliated with a state or national sporting organization, including but not limited to, the Ohio League of sportsmen, and that has been in continuous existence in this state for a period of three years.

(vv) "Charitable game of chance operator" means any person, except security personnel, who perform work or labor at the site of a charitable game of chance, including, but not limited to, distributing or collecting money, chips, cards, or dice from participants, distributing anything of value to winners of the charitable game of chance, and serving food or beverages.

Section 611.02 Gambling; Exceptions for Charitable Organizations

(a) No person shall do any of the following:

(1) Engage in bookmaking, or knowingly engage in conduct that facilitates bookmaking;

(2) Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance;

(3) Knowingly procure, transmit, exchange, or engage in conduct that facilitates the procurement, transmission, or exchange of information for use in establishing odds or determining winners in connection with bookmaking or with any game of chance conducted for profit or any scheme of chance;

(4) Engage in betting or in playing any scheme or game of chance as a substantial source of income or livelihood;

(5) With purpose to violate this section, acquire, possess, control, or operate any gambling device.

(b) For purposes of division (a)(1) of this section, a person facilitates bookmaking if the person in any way knowingly aids an illegal bookmaking operation, including, without limitation, placing a bet with a person engaged in or facilitating illegal bookmaking. For purposes of division (a)(2) of this section, a person facilitates a game of chance conducted for profit or a scheme of chance if the person in any way knowingly aids in the conduct or operation of any such game or scheme, including, without limi-

tation, playing any such game or scheme.

(c) This section does not prohibit conduct in connection with gambling expressly permitted by law.

(d) This section does not apply to any of the following:

(1) Games of chance, if all of the following apply:

A. The games of chance are not craps for money or roulette for money.

B. The games of chance are conducted by a charitable organization that is, and has received from the internal revenue service a determination letter that is currently in effect, stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code.

C. The games of chance are conducted at festivals of the charitable organization that are conducted either for a period of four consecutive days or less and not more than twice a year or for a period of five consecutive days not more than once a year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games of chance, on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization and that have been owned by the lessor veteran's or fraternal organization for a period of no less than one year immediately preceding the conducting of the games of chance.

A charitable organization shall not lease premises from a veteran's or fraternal organization to conduct a festival described in division (d)(1)C. of this section if the veteran's or fraternal organization already has leased the premises four times during the preceding year to charitable organizations for that purpose. If a charitable organization leases premises from a veteran's or fraternal organization to conduct a festival described in division (d)(1)C. of this section, the charitable organization shall not pay a rental rate for the premises per day of the festival that exceeds the rental rate per bingo session that a charitable organization may pay under division (B)(1) of Section 2915.09 of the Revised Code when it leases premises from another charitable organization to conduct bingo games.

D. All of the money or assets received from the games of chance after deduction only of prizes paid out during the conduct of the games of chance are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

E. The games of chance are not conducted during, or within ten hours of, a bingo game conducted for amusement purposes only under Section 2915.12 of the Revised Code

No person shall receive any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly,

for operating or assisting in the operation of any game of chance.

(2) Any tag fishing tournament operated under a permit issued under Section 1533.92 of the Revised Code, as "tag fishing tournament" is defined in Section 1531.01 of the Revised Code.

(3) Bingo conducted by a charitable organization that holds a license issued under Section 2915.08 of the Revised Code.

(e) Division (d) of this section shall not be construed to authorize the sale, lease, or other temporary or permanent transfer of the right to conduct games of chance, as granted by that division, by any charitable organization that is granted that right.

(f) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. This section shall not apply in any case in which the conduct constitutes a felony under the laws of the State of Ohio.

Section 611.03 Charitable Games of Chance; Hours and Operators

(a) No charitable organization shall conduct a charitable game of chance or charitable scheme of chance between the hours of midnight and 10:00 a.m. on Mondays through Fridays, and no charitable organization shall conduct a charitable game of chance or charitable scheme of chance between the hours of 1:00 a.m. and 10:00 a.m. on Saturdays and Sundays.

(b) No person who has been convicted for a felony or gambling offense in any jurisdiction shall serve as a charitable game of chance operator.

(c) No person who is under the age of 18 years shall serve as a charitable game of chance operator.

(d) Whoever violates any provision of this section is guilty of a misdemeanor of the first degree. Each day upon which a violation occurs shall constitute a separate offense.

Section 611.04 Registration Required for Charitable Games of Chance; Fee

(a) No charitable organization shall conduct a charitable game of chance, as defined in the Revised Code, without first registering with the Director of Public Safety in accordance with this section.

(b) The registration to conduct a charitable game of chance shall be furnished by the Director of Public Safety and shall contain the following information:

(1) the name and address of the charitable organization;

(2) an affirmation that the charitable organization is a charitable organization;

(3) the location at which the charitable organization will conduct the game of chance;

(4) the days of the week and the times on each of such days when a game of chance will be conducted;

(5) a sworn statement that charitable organization will comply with all of the requirements for conducting a game of chance under Section 2915.02 of the Revised Code;

(6) a sworn statement that it will take reasonable steps to ensure that all of the charitable game of chance operators are volunteers, are over

the age of 18 and are not felons, and that none of the volunteers will be paid. A signed affidavit from each charitable game of chance operator attesting to these facts is a reasonable step. The Director of Public Safety shall provide sample affidavits to any charitable organization requesting them;

(7) a sworn statement that the charitable organization is receiving 100% of the proceeds less any costs or expenses allowed by law;

(8) identification of the source of the equipment and supplies for the operation of the charitable game of chance.

(c) A five dollar (\$5.00) fee for each charitable game of chance shall accompany each registration application.

(d) Registration of a charitable game of chance shall be made at least twenty-one (21) days prior to the proposed date of the charitable game of chance.

(e) Registration shall not be required for a charitable game of chance involving the sale of raffle tickets when the sale of raffle tickets may occur at more than one location.

(f) The Director of Public Safety, upon receiving a completed registration form, shall issue to the applicant a proof of registration. This proof of registration shall be kept at the gambling site during all hours of operation and shall be shown to any Cleveland law enforcement officer who asks to see it.

(g) Whoever violates division (a) of this section is guilty of a fourth degree misdemeanor.

Section 611.05 Operating a Gambling House

(a) No person, being the owner or lessee, or having custody, control, or supervision of premises, shall:

(1) Use or occupy such premises for gambling in violation of Section 611.02 or Section 2915.02 of the Revised Code;

(2) Recklessly permit such premises to be used or occupied for gambling in violation of Section 611.02 or Section 2915.02 of the Revised Code.

(b) Whoever violates this section is guilty of operating a gambling house, a misdemeanor of the first degree. This section shall not apply in any case in which the conduct constitutes a felony under the laws of the State of Ohio.

(c) Premises used or occupied in violation of this section constitute a nuisance subject to abatement under Sections 3767.01 to 3767.99 of the Revised Code.

Section 611.06 Public Gaming

(a) No person, while at a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall make a bet or play any game of chance or scheme of chance.

(b) No person, being the owner or lessee, or having custody, control, or supervision, of a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall recklessly permit those premises to be used or occupied in violation of division (a) of this section.

(c) Divisions (a) and (b) of this section do not prohibit conduct in connection with gambling expressly permitted by law.

(d) Whoever violates this section is guilty of public gaming. Except as otherwise provided in this division, public gaming is a minor misdemeanor. If the offender previously has been convicted of any gambling offense, public gaming is a misdemeanor of the fourth degree.

(e) Premises used or occupied in violation of division (b) of this section constitute a nuisance subject to abatement under Chapter 3767 of the Revised Code.

Section 611.07 Cheating

(a) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall engage in conduct designed to corrupt the outcome of any of the following:

(1) The subject of a bet;

(2) A contest of knowledge, skill, or endurance that is not an athletic or sporting event;

(3) A scheme or game of chance;

(b) Whoever violates division (a) of this section is guilty of cheating. Cheating is a misdemeanor of the first degree. This section shall not apply in any case in which the conduct constitutes a felony under the laws of the State of Ohio.

Section 611.08 Methods of Conducting a Licensed Bingo Game; Prohibitions

(a) No charitable organization that conducts bingo shall fail to do any of the following:

(1) Own all of the equipment used to conduct bingo or lease that equipment from a charitable organization that is licensed to conduct bingo for a rental rate that is not more than is customary and reasonable for that equipment;

(2) Except as otherwise provided in division (a)(3) of this section, use all of the gross receipts from bingo for paying prizes, for reimbursement of expenses for or for renting premises in which to conduct a bingo session, for reimbursement of expenses for or for purchasing or leasing bingo supplies used in conducting bingo, for reimbursement of expenses for or for hiring security personnel, for reimbursement of expenses for or for advertising bingo, or for reimbursement of other expenses or for other expenses listed in division (LL) of Section 2915.01 of the Revised Code, provided that the amount of the receipts so spent is not more than is customary and reasonable for a similar purchase, lease, hiring, advertising, or expense. If the building in which bingo is conducted is owned by the charitable organization conducting bingo and the bingo conducted includes a form of bingo described in division (S)(1) of Section 3915.01 of the Revised Code, the charitable organization may deduct from the total amount of the gross receipts from each session a sum equal to the lesser of six hundred dollars or forty-five per cent of the gross receipts from the bingo described in that division as consideration for the use of the premises.

(3) Use, or give, donate, or otherwise transfer, all of the net profit derived from bingo, other than instant bingo, for a charitable pur-

pose listed in its license application and described in division (Z) of Section 2915.01 of the Revised Code.

(b) No charitable organization that conducts a bingo game described in division (S)(1) of Section 611.01 of the Revised Code shall fail to do any of the following:

(1) Conduct the bingo game on premises that are owned by the charitable organization, on premises that are owned by another charitable organization and leased from that charitable organization for a rental rate not in excess of the lesser of six hundred dollars per bingo session or forty-five per cent of the gross receipts of the bingo session, on premises that are leased from a person other than a charitable organization for a rental rate that is not more than is customary and reasonable for premises that are similar in location, size, and quality but not in excess of four hundred fifty dollars per bingo session, or on premises that are owned by a person other than a charitable organization, that are leased from that person by another charitable organization, and that are subleased from that other charitable organization by the charitable organization for a rental rate not in excess of four hundred fifty dollars per bingo session. If the charitable organization leases from a person other than a charitable organization the premises on which it conducts bingo sessions, the lessor of the premises shall provide only the premises to the organization and shall not provide the organization with bingo game operators, security personnel, concessions or concession operators, bingo supplies, or any other type of service or equipment. A charitable organization shall not lease or sublease premises that it owns or leases to more than one other charitable organization per calendar week for the purpose of conducting bingo sessions on the premises. A person that is not a charitable organization shall not lease premises that it owns, leases, or otherwise is empowered to lease to more than one charitable organization per calendar week for conducting bingo sessions on the premises. In no case shall more than two bingo sessions be conducted on any premises in any calendar week.

(2) Display its license conspicuously at the premises where the bingo session is conducted;

(3) Conduct the bingo session in accordance with the definition of bingo set forth in division (S)(1) of Section 2915.01 of the Revised Code.

(c) No charitable organization that conducts a bingo game described in division (S)(1) of Section 2915.01 of the Revised Code shall do any of the following:

(1) Pay any compensation to a bingo game operator for operating a bingo session that is conducted by the charitable organization or for preparing, selling, or serving food or beverages at the site of the bingo session, permit any auxiliary unit or society of the charitable organization to pay compensation to any bingo game operator who prepares, sells, or serves food or beverages at a bingo session conducted by the charitable organization, or permit any auxiliary unit or society of the charitable organization to prepare,

sell, or serve food or beverages at a bingo session conducted by the charitable organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell, or serve the food or beverages;

(2) Pay consulting fees to any person for any services performed in relation to the bingo session;

(3) Pay concession fees to any person who provides refreshments to the participants in the bingo session;

(4) Except as otherwise provided in division (c)(4) of this section, conduct more than two bingo sessions in any seven-day period. A volunteer firefighter's organization or a volunteer rescue service organization that conducts not more than five bingo sessions in a calendar year may conduct more than two bingo sessions in a seven-day period after notifying the attorney general when it will conduct the sessions.

(5) Pay out more than three thousand five hundred dollars in prizes for bingo games described in division (s)(1) of Section 2915.01 of the Revised Code during any bingo session that is conducted by the charitable organization. "Prizes" does not include awards from the conduct of instant bingo.

(6) Conduct a bingo session at any time during the ten-hour period between midnight and ten a.m., at any time during, or within ten hours of, a bingo game conducted for amusement only under Section 2915.12 of the Revised Code, at any premises not specified on its license, or on any day of the week or during any time period not specified on its license. Division (a)(6) of this section does not prohibit the sale of instant bingo tickets beginning at nine a.m. for a bingo session that begins at ten a.m. If circumstances make it impractical for the charitable organization to conduct a bingo session at the premises, or on the day of the week or at the time, specified on its license or if a charitable organization wants to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license, the charitable organization may apply in writing to the attorney general for an amended license under division (F) of Section 2915.08 of the Revised Code. A charitable organization may apply twice in each calendar year for an amended license to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license. If the amended license is granted, the organization may conduct bingo sessions at the premises, on the day of the week, and at the time specified on its amended license.

(7) Permit any person whom the charitable organization knows, or should have known, is under the age of eighteen to work as a bingo game operator;

(8) Permit any person whom the charitable organization knows, or should have known, has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator;

(9) Permit the lessor of the premises on which the bingo session is conducted, if the lessor is not a charitable organization, to provide

the charitable organization with bingo game operators, security personnel, concessions, bingo supplies, or any other type of service or equipment;

(10) Purchase or lease bingo supplies from any person except a distributor issued a license under Section 2915.081 of the Revised Code;

(11) A. Use or permit the use of electronic bingo aids except under the following circumstances:

1. For any single participant, not more than ninety bingo faces can be played using an electronic bingo aid or aids.

2. The charitable organization shall provide a participant using an electronic bingo aid with corresponding paper bingo cards or sheets.

3. The total price of bingo faces played with an electronic bingo aid shall be equal to the total price of the same number of bingo faces played with a paper bingo card or sheet sold at the same bingo session but without an electronic bingo aid.

4. An electronic bingo aid cannot be part of an electronic network other than a network that includes only bingo aids and devices that are located on the premises at which the bingo is being conducted or be interactive with any device not located on the premises at which the bingo is being conducted.

5. An electronic bingo aid cannot be used to participate in bingo that is conducted at a location other than the location at which the bingo session is conducted and at which the electronic bingo aid is used.

6. An electronic bingo aid cannot be used to provide for the input of numbers and letters announced by a bingo caller other than the bingo caller who physically calls the numbers and letters at the location at which the bingo session is conducted and at which the electronic bingo aid is used.

(12) Permit any person the charitable organization knows, or should have known, to be under eighteen years of age to play bingo described in division (S)(1) of Section 2915.01 of the Revised Code.

(d) (1) Except as otherwise provided in division (d)(3) of this section, no charitable organization shall provide to a bingo game operator, and no bingo game operator shall receive or accept, any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting bingo or providing other work or labor at the site of bingo during a bingo session.

(e) Notwithstanding division (b)(1) of this section, a charitable organization that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to another charitable organization or other charitable organizations for the conducting of bingo sessions so that more than two bingo sessions are conducted per calendar week on the premises, and a person that is not a charitable organization and that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to charitable organizations for the conducting of more than two bingo sessions per calendar week on the premises, may con-

tinue to lease the premises to those charitable organizations, provided that no more than four sessions are conducted per calendar week, that the lessor organization or person has notified the attorney general in writing of the organizations that will conduct the sessions and the days of the week and the times of the day on which the sessions will be conducted, that the initial lease entered into with each organization that will conduct the sessions was filed with the attorney general prior to December 6, 1977, and that each organization that will conduct the sessions was issued a license to conduct bingo games by the attorney general prior to December 6, 1977.

(f) This section does not prohibit a bingo licensed charitable organization or a game operator from giving any person an instant bingo ticket as a prize.

(g) Except as otherwise provided in this division, whoever violates division (a)(1) or (3), (b)(1), (2), or (3), (c)(1) to (12), or (d) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of a violation of division (a)(1) or (3), (b)(1), (2), or (3), (c)(1) to (11), or (d) of this section, a violation of division (a)(1) or (3), (b)(1), (2), or (3), (c), or (d) of this section is a misdemeanor of the first degree. Whoever violates division (d)(12) of this section is guilty of a misdemeanor of the first degree. This section shall not apply in any case in which the conduct constitutes a felony under the laws of the State of Ohio.

Section 611.09 Records to be Maintained; Enforcement; Prohibitions

(a) No charitable organization that conducts bingo or a game of chance pursuant to division (D) of Section 2915.02 of the Revised Code shall fail to maintain the following records for at least three years from the date on which the bingo or game of chance is conducted:

(1) An itemized list of the gross receipts of each bingo session, each game of instant bingo by serial number, each raffle, each punch board game, and each game of chance, and an itemized list of the gross profits of each game of instant bingo by serial number;

(2) An itemized list of all expenses, other than prizes, that are incurred in conducting bingo or instant bingo, the name of each person to whom the expenses are paid, and a receipt for all of the expenses;

(3) A list of all prizes awarded during each bingo session, each raffle, each punch board game, and each game of chance conducted by the charitable organization, the total prizes awarded from each game of instant bingo by serial number, and the name, address, and social security number of all persons who are winners of prizes of six hundred dollars or more in value;

(4) An itemized list of the recipients of the net profit of the bingo or game of chance, including the name and address of each recipient to whom the money is distributed, and if the organization uses the net profit of bingo, or the money or assets received from a game of chance, for any charitable or other purpose set forth in division (Z) of

Section 2915.01, division (D) of Section 2915.02, or Section 2915.101 of the Revised Code, a list of each purpose and an itemized list of each expenditure for each purpose;

(5) The number of persons who participate in any bingo session or game of chance that is conducted by the charitable organization;

(6) A list of receipts from the sale of food and beverages by the charitable organization or one of its auxiliary units or societies, if the receipts were excluded from gross receipts under division (X) of Section 2915.01 of the Revised Code;

(7) An itemized list of all expenses incurred at each bingo session, each raffle, each punch board game, or each game of instant bingo conducted by the charitable organization in the sale of food and beverages by the charitable organization or by an auxiliary unit or society of the charitable organization, the name of each person to whom the expenses are paid, and a receipt for all of the expenses.

(b) A charitable organization shall keep the records that it is required to maintain pursuant to division (a) of this section at its principal place of business in this state or at its headquarters in this state and shall notify the attorney general of the location at which those records are kept.

(c) The gross profit from each bingo session or game described in division (S)(1) or (2) of Section 2915.01 of the Revised Code shall be deposited into a checking account devoted exclusively to the bingo session or game. Payments for allowable expenses incurred in conducting the bingo session or game and payments to recipients of some or all of the net profit of the bingo session or game shall be made only by checks drawn on the bingo session or game account.

(d) Each charitable organization shall conduct and record an inventory of all of its bingo supplies as of the first day of November of each year.

(e) The attorney general may adopt rules in accordance with Chapter 119 of the Revised Code that establish standards of accounting, record keeping, and reporting to ensure that gross receipts from bingo or games of chance are properly accounted for.

(f) A distributor shall maintain, for a period of three years after the date of its sale or other provision, a record of each instance of its selling or otherwise providing to another person bingo supplies for use in this state. The record shall include all of the following for each instance:

(1) The name of the manufacturer from which the distributor purchased the bingo supplies and the date of the purchase;

(2) The name and address of the charitable organization or other distributor to which the bingo supplies were sold or otherwise provided;

(3) A description that clearly identifies the bingo supplies;

(4) Invoices that include the non-repeating serial numbers of all paper bingo cards and sheets and all instant bingo deals sold or otherwise provided to each charitable organization.

(g) A manufacturer shall maintain, for a period of three years after the date of its sale or other provision, a record of each instance of its selling or otherwise providing bingo supplies for use in this state. The record shall include all of the following for each instance:

(1) The name and address of the distributor to whom the bingo supplies were sold or otherwise provided;

(2) A description that clearly identifies the bingo supplies, including serial numbers;

(3) Invoices that include the non-repeating serial numbers of all paper bingo cards and sheets and all instant bingo deals sold or otherwise provided to each distributor.

(h) The attorney general or any law enforcement agency may do all of the following:

(1) Investigate any charitable organization or any officer, agent, trustee, member, or employee of the organization;

(2) Examine the accounts and records of the organization;

(3) Conduct inspections, audits, and observations of bingo or games of chance;

(4) Conduct inspections of the premises where bingo or games of chance are conducted;

(5) Take any other necessary and reasonable action to determine if a violation of any provision of Sections 2915.01 to 2915.13 of the Revised Code has occurred and to determine whether Section 2915.11 of the Revised Code has been complied with.

If any law enforcement agency has reasonable grounds to believe that a charitable organization or an officer, agent, trustee, member, or employee of the organization has violated any provision of this chapter, the law enforcement agency may proceed by action in the proper court to enforce this chapter, provided that the law enforcement agency shall give written notice to the attorney general when commencing an action as described in this division.

(i) No person shall destroy, alter, conceal, withhold, or deny access to any accounts or records of a charitable organization that have been requested for examination, or obstruct, impede, or interfere with any inspection, audit, or observation of bingo or a game of chance or premises where bingo or a game of chance is conducted, or refuse to comply with any reasonable request of, or obstruct, impede, or interfere with any other reasonable action undertaken by, the attorney general or a law enforcement agency pursuant to division (h) of this section.

(j) Whoever violates this section is guilty of a misdemeanor of the first degree.

Section 611.10 Minor and Felon Not to Work at Bingo Session

(a) No person shall be a bingo game operator unless he is eighteen years of age or older.

(b) No person who has been convicted of a felony or a gambling offense in any jurisdiction shall be a bingo game operator.

(c) Whoever violates division (a) of this section is guilty of a misdemeanor of the third degree.

(d) Whoever violates division (b) of this section is guilty of a misdemeanor of the first degree.

Section 611.11 Game for Amusement Only Excepted; Conditions; Enforcement; Offense

(a) Sections 2915.07 to 2915.11 of the Revised Code do not apply to bingo games that are conducted for the purpose of amusement only. A bingo game is conducted for the purpose of amusement only if it complies with all of the requirements specified in either division (a)(1) or (2) of this section:

(1) A. The participants do not pay any money or any other thing of value including an admission fee, or any fee for bingo cards or sheets, objects to cover the spaces, or other devices used in playing bingo, for the privilege of participating in the bingo game, or to defray any costs of the game, or pay tips or make donations during or immediately before or after the bingo game.

B. All prizes awarded during the course of the game are nonmonetary, and in the form of merchandise, goods, or entitlements to goods or services only, and the total value of all prizes awarded during the game is less than one hundred dollars.

C. No commission, wages, salary, reward, tip, donation, gratuity, or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game.

D. The bingo game is not conducted either during or within ten hours of any of the following:

1. A bingo session during which a charitable bingo game is conducted under Sections 2915.07 to 2915.11 of the Revised Code;

2. A scheme or game of chance, or bingo described in division (S)(2) of Section 2915.01 of the Revised Code.

E. The number of players participating in the bingo game does not exceed fifty.

(2) A. The participants do not pay money or any other thing of value as an admission fee, and no participant is charged more than twenty-five cents to purchase a bingo card or sheet, objects to cover the spaces, or other devices used in playing bingo.

B. The total amount of money paid by all of the participants for bingo cards or sheets, objects to cover the spaces, or other devices used in playing bingo does not exceed one hundred dollars.

C. All of the money paid for bingo cards or sheets, objects to cover spaces, or other devices used in playing bingo is used only to pay winners monetary and nonmonetary prizes and to provide refreshments.

D. The total value of all prizes awarded during the game does not exceed one hundred dollars.

E. No commission, wages, salary, reward, tip, donation, gratuity, or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game.

F. The bingo game is not conducted during or within ten hours of either of the following:

1. A bingo session during which a charitable bingo game is conducted under Sections 2915.07 to 2915.11 of the Revised code;

2. A scheme of chance or game of chance, or bingo described in division (S)(2) of Section 2915.01 of the Revised Code.

G. All of the participants reside at the premises where the bingo game is conducted.

H. The bingo games are conducted on different days of the week and not more than twice in a calendar week.

(b) The attorney general or any local law enforcement agency may investigate the conduct of a bingo game that purportedly is conducted for purposes of amusement only if there is reason to believe that the purported amusement bingo game does not comply with the requirements of either division (a)(1) or (2) of this section. A local law enforcement agency may proceed by action in the proper court to enforce this section if the local law enforcement agency gives written notice to the attorney general when commencing the action.

Section 611.12 Permitting Unlawful Coin Machines

(a) No person shall exhibit, operate or permit the operation of any machine, device or instrument, whether or not it purports to vend or distribute merchandise or to furnish recreation or amusement, which is operated by the insertion of any token, slug or disc, or exhibit, operate or permit the operation of any machine, device or instrument which is operated by the insertion of any coin, whether such machine, device or instrument purports to vend or distribute merchandise or to furnish recreation or amusement, which as a result of such operation discharges one or more coins, tokens, slugs or discs, or other memorandum of the result of operation which makes it possible for one user to receive more value than another user inserting a similar coin.

(b) Whoever violates this section is guilty of permitting unlawful coin machines, a misdemeanor of the third degree.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 1467-04.
By Council Members Coats and Jackson (by departmental request).
An emergency ordinance authorizing the Director of Public Utilities to enter into one or more contracts with Datamatic, Ltd. for professional services necessary to provide maintenance and repair of meter reading, collections, investigations and meter maintenance systems, including hardware and software-support based, for the Division of Water, Department of Public Utilities.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Utilities is authorized to enter into one or more contracts with Datamatic, Ltd. for professional services necessary to provide maintenance and repair of meter reading, collections, investigations and meter maintenance systems, including hardware and software-support based, in the total sum of \$156,300.00 for a one-year period, for the Division of Water, Department of Public Utilities. The contracts or contracts shall be paid from Fund No. 52 SF 001, Request No. 148300.

Section 2. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 1468-04.
By Council Members Coats and Jackson (by departmental request).
An emergency ordinance authorizing the Director of Public Utilities to enter into one or more contracts with High Line Corporation dba CASNET for professional services necessary to provide maintenance and on-site support for various Bell & Howell flatbed scanners and one Panasonic color scanner, for a two year period.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Utilities is authorized to enter into one or more contracts with High Line Corporation dba CASNET for professional services necessary to provide maintenance and on-site support for various Bell & Howell flatbed scanners and one Panasonic color scanner, for a two year period, on the basis of its proposal dated May 26, 2004, in the total sum of \$39,000, for the Department of Public Utilities. The contracts or contracts shall be paid from Fund No. 52 SF 001, Request No. 148202.

Section 2. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 1469-04.
By Council Members Coats and Jackson (by departmental request).
An emergency ordinance authorizing the Director of Public Utilities to enter into one or more contracts with Kronos Incorporated for professional services necessary for installing, designing, training, implementing, testing, and providing technical support, necessary to upgrade the current time and attendance workforce system, including software, hardware, and maintenance, for a period of three years.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Utilities is authorized to enter into one or more contracts with Kronos Incorporated for professional services necessary for installing, designing, training, implementing, testing, and providing technical support, necessary to upgrade the current time and attendance workforce system, including hardware and software necessary for the upgrades, and maintenance for a period of three years, in an amount not to exceed \$396,369.00, on the basis of its proposal dated July 27, 2004, for the Department of Public Utilities. The contracts or contracts shall be paid from Fund No. 52 SF 001, Request No. 148325.

Section 2. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 1471-04.
By Council Members Coats and Jackson (by departmental request).
An emergency ordinance authorizing the purchase by one or more requirement contracts of labor and materials for maintenance of uninterruptable power supply systems, backup generators, components, appurtenances, and specialized batteries, for the Division of Water, Department of Public Utilities, for a period of two years.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Utilities is authorized to make one or more written requirement contracts under the Charter and the Codified Ordinances of Cleveland, Ohio, 1976, for the requirements for a two-year period of the necessary items of labor and materials for maintenance of uninterruptable power supply systems, backup generators, components, appurtenances, and specialized batteries, in the approximate amount as

purchased during the preceding term, to be purchased by the Commissioner of Purchases and Supplies on a unit basis for the Division of Water, Department of Public Utilities. Bids shall be taken in a manner that permits an award to be made for all items as a single contract, or by separate contract for each or any combination of the items as the Board of Control determines. Alternate bids for a period less than the specified term may be taken if desired by the Commissioner of Purchases and Supplies until provision is made for the requirements for the entire term.

Section 2. That the costs of the contract or contracts shall be charged against the proper appropriation accounts and the Director of Finance shall certify the amount of the initial purchase, which purchase, together with all later purchases, shall be made on order of the Commissioner of Purchases and Supplies under a requisition against the contract or contracts certified by the Director of Finance. (RL 148298)

Section 3. That under Section 108(b) of the Charter, the purchases authorized by this ordinance may be made through cooperative agreements using state procedures. The Director of Public Utilities may sign all documents with the State of Ohio or any of its political subdivisions that are necessary to make the purchases, and may enter into one or more contracts with the vendors selected through that cooperative process.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.

Effective October 27, 2004.

term, to be purchased by the Commissioner of Purchases and Supplies on a unit basis for the Division of Water, Department of Public Utilities. Bids shall be taken in a manner that permits an award to be made for all items as a single contract, or by separate contract for each or any combination of the items as the Board of Control determines. Alternate bids for a period less than the specified term may be taken if desired by the Commissioner of Purchases and Supplies until provision is made for the requirements for the entire term.

Section 2. That the costs of the contract or contracts shall be charged against the proper appropriation accounts and the Director of Finance shall certify the amount of the initial purchase, which purchase, together with all later purchases, shall be made on order of the Commissioner of Purchases and Supplies under a requisition against the contract or contracts certified by the Director of Finance. (RL 148207)

Section 3. That under Section 108(b) of the Charter, the purchases authorized by this ordinance may be made through cooperative agreements using state procedures. The Director of Public Utilities may sign all documents with the State of Ohio or any of its political subdivisions that are necessary to make the purchases, and may enter into one or more contracts with the vendors selected through that cooperative process.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.

Effective October 27, 2004.

Mulanax possess great wealth of knowledge and expertise and have proven invaluable in attaining the goals of the Division of Fire, Department of Public Safety; and

Whereas, the Director of Public Safety has approved the continuation on active duty for the above-named police or fire personnel; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That Officer Emil Cielec of the Division of Police, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on August 20, 2004, and that this continuation is approved by this Council.

Section 2. That Officer Thomas Smith of the Division of Police, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on August 14, 2004, and that this continuation is approved by this Council.

Section 3. That Officer James Resek of the Division of Police, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on September 19, 2004, and that this continuation is approved by this Council.

Section 4. That Lieutenant Edward Lentz of the Division of Police, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on August 14, 2004, and that this continuation is approved by this Council.

Section 5. That Sergeant Ollie Davis of the Division of Police, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on August 21, 2004, and that this continuation is approved by this Council.

Section 6. That Officer Earl Brown of the Division of Police, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on January 29, 2004, and that this continuation is approved by this Council.

Section 7. That Officer Clark Kellogg of the Division of Police, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on September 10, 2004, and that this continuation is approved by this Council.

Section 8. That Officer Bernard Ferris of the Division of Police, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on May 28, 2004, and that this continuation is approved by this Council.

Section 9. That Officer Timothy Ryan of the Division of Police, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on April 15, 2004, and that this continuation is approved by this Council.

Section 10. That Lieutenant Gary G. Ivins of the Division of Fire, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on April 1, 2004, and that this continuation is approved by Council.

Ord. No. 1489-04.
By Council Members Reed and Jackson (by departmental request).
An emergency ordinance to extend the retirement dates of various police personnel, for a one year period for the Divisions of Police and Fire, Department of Public Safety.

Whereas, Section 135.07 of the Codified Ordinances of Cleveland, Ohio, 1976, provides that members of the Divisions of Police and Fire in the Department of Public Safety, attaining the age of sixty-five years, on written request to the Police Chief or Fire Chief, shall continue on active duty on a year-to-year basis subject to the approval of the Department of Public Safety and this Council; and

Whereas, Officer Emil Cielec, Officer Thomas Smith, Officer James Resek, Lieutenant Edward Lentz, Sergeant Ollie Davis, Officer Earl Brown, Officer Clark Kellogg, Officer Bernard Ferris, and Officer Timothy Ryan possess great wealth of knowledge and expertise and have proven invaluable in attaining the goals of the Division of Police, Department of Public Safety; and

Whereas, Lieutenant Gary G. Ivins and Battalion Chief Frank

Ord. No. 1473-04.
By Council Members Coats and Jackson (by departmental request).
An emergency ordinance authorizing the purchase by one or more requirement contracts of labor and materials necessary to maintain and repair water pumps, including electric motors, controls and appurtenances, for the Division of Water, Department of Public Utilities, for a two-year period.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Utilities is authorized to make one or more written requirement contracts under the Charter and the Codified Ordinances of Cleveland, Ohio, 1976, for the requirements for a two-year period of the necessary items of labor and materials necessary to maintain and repair water pumps, including electric motors, controls and appurtenances, in the approximate amount as purchased during the preceding

Section 11. That Battalion Chief Frank Mulanax of the Division of Fire, Department of Public Safety, shall continue on active duty for a one (1) year period beginning on February 18, 2004, and that this continuance is approved by Council.

Section 12. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.

Effective October 27, 2004.

Ord. No. 1519-04.

By Council Members Coats and Jackson (by departmental request).

An ordinance authorizing the transfer of the franchise for the transmission and supply of steam and water for heating, cooling, and power purposes from Dominion Cleveland Thermal, Inc. to CT Acquisitions I Inc.

Whereas, the Charter of the City of Cleveland authorizes this Council by ordinance to grant a non-exclusive franchise to any person, firm, or corporation to construct, install, maintain, and operate a utility in, under, over, along, across, and upon any of the streets and public grounds of the City of Cleveland; and

Whereas, under Ordinance No. 2909-87, passed December 21, 1987, this Council granted Cleveland Thermal Energy Corporation, an Ohio Corporation and wholly-owned subsidiary of Catalyst Thermal Energy Corporation ("Catalyst"), a non-exclusive franchise to construct, install, maintain, and operate a system for the transmission and supply of steam and hot water in, under, over, along, across, and upon certain of the streets, public rights of way, and public grounds of the City of Cleveland; and

Whereas, under Ordinance No. 1595-89, passed June 19, 1989, this Council amended the franchise agreement authorized by Ordinance No. 2909-87, passed December 21, 1987, to authorize the supplying of chilled water in addition to steam and hot water; and

Whereas, under Ordinance No. 1490-91, passed July 24, 1991, this Council approved the transfer of Cleveland Thermal Energy Corporation, and control of the franchise, from Catalyst, which was then known as United Thermal Corporation, to Mid-America Energy Resources, Inc., a wholly-owned subsidiary of IPALCO Enterprises, Inc. ("Mid-America"); and

Whereas, under Ordinance No. 2121-00, passed March 12, 2001, this Council authorized the transfer of the franchise from Mid-America to Dominion Cleveland Thermal, LLC, and its operating affiliates: Dominion Cleveland Thermal Generation, LLC, Dominion Cleveland Thermal Steam Distribution, LLC, and Dominion Cleveland Thermal Chilled Water Distribution, LLC (collectively, "Dominion Cleveland Thermal, Inc."); and

Whereas, Dominion Energy, Inc., the parent corporation of Dominion Cleveland Thermal, Inc., has entered into an agreement with CT Acquisitions I Inc., an Ohio corporation ("CT Acquisitions") to sell all the outstanding stock of Dominion Cleveland Thermal, Inc. to CT Acquisitions; and

Whereas, CT Acquisitions was formed by Ancora Management LLC, the investment manager of Charon Capital LLC, a private institutional investment company, for the purpose of acquiring the stock of Dominion Cleveland Thermal, Inc.; and

Whereas, upon the consummation of the stock purchase, CT Acquisitions will become the owner of the companies now comprising Dominion Cleveland Thermal, Inc.; and

Whereas, the stock sale and transfer of assets is a transfer of the franchise requiring the approval of this Council; and

Whereas, the Charter of the City of Cleveland and the terms of the franchise agreement allow this Council to authorize by ordinance an amendment and transfer of the franchise; and

Whereas, Dominion Cleveland Thermal, Inc. and Dominion Energy, Inc., as seller, and CT Acquisitions, as buyer, have requested this Council to approve the stock sale and transfer of assets described above; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That under Chapter 35 of the Charter of the City of Cleveland and Section 6 of the franchise granted by Ordinance No. 2909-87, passed December 21, 1987, as amended by Ordinance No. 1595-89, passed June 19, 1989, Ordinance No. 1490-91, passed July 24, 1991, and Ordinance No. 2121-00, passed March 12, 2001 (collectively, the "Franchise Ordinances"), this Council approves the stock sale described above and the transfer of the franchise and the Steam System, as described in this ordinance, from Dominion Cleveland Thermal, Inc. to CT Acquisitions I Inc.

Section 2. That the franchise agreement granted to Dominion Cleveland Thermal, Inc. by the Franchise Ordinances described in Section 1 is amended, and the entirety of the franchise agreement as contained in the Franchise Ordinances as amended by this ordinance is as follows:

Section 1. Grant of Franchise.

Under the Charter of the City of Cleveland ("City"), and subject to the terms and conditions set forth in this franchise, CT Acquisitions I Inc. ("Grantee"), is granted a non-exclusive franchise, until December 31, 2029, unless sooner terminated as provided in this franchise, to construct, install, maintain and operate a system for the transmission and supplying of steam and water for heating, cooling and power purposes (the "Steam System") in the area of the City identified in the map contained in File No. 1519-04-A and incorporated by reference and as expanded or extended within the boundaries of the City (the "Service Area") in, under, over, along, across and upon the streets and public grounds (including but not limited to the streets, lanes, alleys, avenues, easements and other public thor-

oughfares and public rights of way of the City in the Service Area) in that Service Area, with the full and necessary privileges for the use of the streets and public grounds in the Service Area for the purpose of digging a trench or trenches, and constructing, installing, maintaining and operating pipes and conduits for steam and water lines, together with the right to maintain such pipes and conduits, for the purpose of transmitting steam and water for heating, cooling and power purposes ("Steam Service"), and to construct, install and maintain all necessary insulators, valves, safety appliances, connections, manholes and other appurtenances necessary or appropriate to the operation of the Steam System. The Steam System of Grantee extends from and includes the existing and future steam generation and heating or cooling water plants of Grantee and the existing and future transmission and distribution system extending to the property line of each customer, except where otherwise defined by agreement between Grantee and a particular customer. The grant of this franchise does not establish priority or lack of priority for use of the streets and public grounds to Grantee over other present or future permit holders or franchises, or over the City's own use. Any extension or expansion of the Steam System shall be subject to all of the obligations and reserved rights in favor of the City set forth in this franchise, and shall be subject to all of the conditions of this franchise.

Section 1A. Transfer Fee.

Grantee shall pay to the City fifty thousand dollars (\$50,000.00) no later than seventy-five (75) days after the effective date of this ordinance. Failure to pay this amount in full by the date specified shall cause Grantee to be deemed to have rejected this franchise, and the rights and privileges granted shall cease and terminate, unless such period is extended by Council by ordinance passed for that purpose and before the expiration of the period of seventy-five (75) days. This amount, together with any payments or contributions made by Dominion Cleveland Thermal, Inc. and not yet expended, shall be deposited in the City's general fund and expended only through legislation passed by City Council.

Section 1B. Payments.

Grantee shall, by January 30 of each calendar year, make the following annual payments, which shall be deposited in the City's general fund and expended only through legislation passed by City Council:

| | |
|-----------|--------------------|
| 2005 | \$ 75,000 |
| 2006-2010 | \$100,000 per year |
| 2011-2015 | \$125,000 per year |
| 2016-2029 | \$150,000 per year |

Grantee shall discount the City of Cleveland's steam and chilled water bill monthly according to the following schedule, with a maximum discount to the City by Grantee of \$75,000 per year:

| | |
|-----------|-----------|
| 2004-2005 | 1% credit |
| 2006-2010 | 2% credit |
| 2011-2015 | 3% credit |
| 2016-2029 | 4% credit |

Section 2. Work on the Streets and Public Grounds.

The Grantee, in the construction, installation, maintenance, or operation of the Steam System, shall not endanger or unnecessarily interfere with the lives of persons, shall not unnecessarily interfere with any installations of the City or any public utility or other person serving the City or using the streets and public grounds of the City, and shall not unnecessarily interrupt or obstruct the use of any streets and public grounds and, in connection with any work, shall obtain any permits and approvals required by the regulations and ordinances of the City. Prior to performing any work which would affect or alter the City's water mains, sewage or drainage system or any other property of the City, Grantee shall provide written notice to the appropriate affected City agency or office. When any streets and public grounds are entered upon by the Grantee, or facilities removed by the Grantee, the Grantee shall at its cost restore the same to their original condition. Grantee shall clear all streets and public grounds of obstructions or anything that might constitute a nuisance or prevent such streets and public grounds from being open and in repair, if such obstruction or nuisance was caused by the Grantee or related to the operation of the Steam System. If the Grantee fails to complete such work within a reasonable period of time, the appropriate officer of the City may, in writing, notify the Grantee that the City will complete such work if not completed by the Grantee as soon as practicable as determined by the City after receipt of notice by Grantee. Any work not completed as determined by the City's officer may be completed by the City and the actual out-of-pocket cost of such work shall be charged to the Grantee. Upon the doing of such work, the City shall furnish the Grantee with itemized bills of the actual out-of-pocket cost of the work, and Grantee shall pay the bills within thirty (30) days after its receipt.

Section 3. Applicable Regulations.

The Grantee shall at all times be subject to the regulations imposed by the laws of the United States of America, the laws of the State of Ohio and the Charter and ordinances of the City as may exist at the effective date of this franchise or later be adopted, including the continuing right of the Council to require such reconstruction, relocation, repair, change or discontinuance of the appliances used by the Steam System in the streets and public grounds of the Service Area, all at the cost of the Grantee, as shall, in the opinion of the Council, be necessary in the public interest. The Council shall at all times control the distribution of space in, under, over, along, across or upon all streets and public grounds occupied by fixtures of the Steam System. In the construction, installation, maintenance or repair of its properties, the Grantee shall comply with all laws and regulations existing at the effective date of this franchise or that may thereafter be made by the City applicable to the Grantee and the Grantee shall be liable for damages caused by its failure or neglect to comply with such laws and reg-

ulations and shall save the City harmless from any and all claims for damages by reason of such failure or neglect.

Section 4. Indemnification and Insurance.

The Grantee shall fully indemnify and save harmless the City and its respective officers, agents and employees from and against all damages, judgments, decrees, costs, and expenses for bodily injury or death to persons, including employees of the City and other persons, for losses and physical damages to property of the City or other persons, and for debts incurred or taxes owed by Grantee or its agents, employees or contractors, caused by or as a result of the construction, installation, maintenance and operation of, or the failure to properly construct, install, maintain and operate, the Steam System by the Grantee. The Grantee shall carry insurance to cover and protect itself and the City as an additional insured from and against all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of loss, injury or damage to the City, its property or employees, or to other persons or their property, which may arise from the operations of Grantee or its Steam System. Grantee's insurance company shall, at its own expense, defend the City, if requested by the City, in all litigation or claims alleged to result from or arise out of such activities or failure to act of Grantee. The City shall duly notify the insurance company of any claims and shall deal directly with such insurance carrier to seek defense by such insurance company; provided, however, the City shall not be required to institute legal proceedings against such insurance company if the insurance company fails to defend. In the event Grantee's insurance company fails to defend the City, then Grantee, at its own expense, shall defend the City, if requested by the City, in all litigation or claims alleged to result from or arise out of such activities or failure to act of Grantee. Copies of the Grantee's currently effective insurance policy and its currently effective certificate of insurance showing the City as an additional insured shall be maintained on file with the Clerk of Council of the City in the above mentioned file, with a copy provided to the Director of Law of the City, beginning with the effective date of the franchise transfer. The amounts of such insurance against liability due to physical damages to property shall not be less than Twenty Million Dollars (\$20,000,000) per occurrence and aggregate; and against liability due to bodily injury or to death of persons not less than Twenty Million Dollars (\$20,000,000) per occurrence and aggregate. Grantee shall not reduce, cancel, or fail to promptly replace the insurance described herein, and should the insurer cancel such insurance the Grantee shall immediately notify the City. The City shall notify the Grantee and its insurance carrier in writing, within fifteen (15) business days after the presentation of any claim or demand, either by suit or otherwise, made against the City, or not less

than five (5) business days prior to the date upon which an answer to such legal action is due, when the City determined that the suit, claim or demand may involve the Grantee or the operation of the Steam System.

Section 5. Operation, Service and Rates of the Steam System.

A. Service Connections and Delivery of Steam Service. Grantee shall, so far as the capacity of its plant will allow, deliver steam or water to any person or entity requesting Steam Service who complies with its reasonable regulations and whose property abuts upon its service lines ("Customer"). At the point of delivery, the steam will be dry and saturated in accordance with the steam table established by American Society of Mechanical Engineers ("ASME"). The Grantee shall be responsible to maintain, at its expense, all mains and lines up to the property line of the Customer's facility, except where otherwise set forth in an agreement between Grantee and a particular Customer, and shall keep such lines in sound operating condition and free of undue leakage.

B. Abandonment of Services. In the event Grantee makes an application to the Public Utilities Commission of Ohio ("PUCO"), to abandon service to any part or all of its Service Area, Grantee shall send a copy of any such application to each of its then existing customers.

C. Existing Rates. All valid contracts or agreements establishing rates, charges or billing arrangements between Customers and Grantee (including but not limited to agreements combining billings for one or more premises owned or operated by a Customer) in effect as of the effective date of this ordinance, shall remain in effect until the expiration of the contract or agreement as set forth in such contract or agreement (or as may have been extended by PUCO order), except as may be allowed or required by any Court or arbitration panel, or as agreed by Customer and Grantee. All tariff and contract rates for Steam Service in effect as of the effective date of this ordinance, shall, except for fuel adjustment clause increases and authorized by the PUCO or in accordance with Ohio law, remain in effect through the term of the franchise.

D. Rates and Charges. If the Grantee and any Customer cannot agree on a contract which sets rates for Steam Service to that Customer, the rates and charges for Steam Service rendered by Grantee for such Customer or Customers shall be set by the PUCO, by Council, or as otherwise may be provided by law. During the term of this franchise, Grantee shall, upon the request of the City or Council, provide such data and information as the City reasonably requires to review the rates, charges, terms and conditions of Steam Service provided by Grantee. Nothing contained in the subparagraph shall be deemed a waiver of the Grantee to appeal to or seek review of PUCO in connection with any rates.

E. Contract Rates. Grantee may enter into contracts for the provision of Steam Service to one or more of its Customers provided that the con-

tracts are entered into under the requirements of the Revised Code or filed with the PUCO under the terms of Section 4905.31 of the Revised Code and provided that copies of all contracts for Steam Service are provided to the Clerk of Council of the City to be maintained in the Council file mentioned above, with copies provided to the Director of Law of the City.

F. Quality of Service. The Grantee shall at all times provide safe, adequate and reliable service to its Customers and shall, except as may otherwise be permitted by law, provide same without discrimination. In so doing, Grantee shall maintain the Steam System in a manner to ensure such service and to ensure the efficient and safe operation of the Steam System. Grantee shall maintain the Steam System so as to avoid substantial leakage, and shall promptly repair material leaks in the Steam System. Grantee shall also promptly repair any pavement, tree lawn, curb or other portion of the street or public ground which is damaged by Grantee or due to defects in or leaks in or emanating from the Steam System. If there is any dispute between Grantee and a Customer as to whether the Grantee or Customer is responsible to repair damage in the streets or public grounds caused by Grantee or due to defects or leaks in the Steam System, Grantee shall promptly make any necessary repairs pending resolution of such dispute. The cost of such repairs may be part of any such resolution, and may be charged to the Customer if it is determined that the repairs were the responsibility of the Customer. The Grantee acknowledges its obligation to operate and maintain the Steam System so that it is not in such condition as to be a hazard to the health, safety or welfare of the public, and acknowledges the right of the City to reasonably require the Grantee to make necessary repairs or improvements to abate said condition. Grantee shall promptly comply with an order of the Director of the appropriate department of the City having custody and control of the particular property or the responsibility to ensure the health, safety or welfare of the public in the particular situation to make any such repairs or improvements.

G. Minority Business Enterprise and Female Business Enterprise Participation and Affirmative Action. Grantee shall use its best efforts to meet the goals of the City in effect on the effective date of this ordinance with respect to minority enterprise participation and female business enterprise participation, i.e., thirty percent (30%) and ten percent (10%), respectively, in Grantee's proposed construction for the improvement and expansion of the Steam System; provided, that in evaluating Grantee's efforts to meet such goals, the City shall give consideration to the availability of certain specialty items of equipment for the Steam System that are not readily available from minority and female vendors.

Grantee shall adhere to the standards set forth in division (a) of Section 187.04 of the Codified Ordinances of the City, as presently in effect with respect to nondiscrimi-

nation in employment, and shall use its best efforts to improve the percentage of minority and female employment in the various occupations involved in the performance of the Grantee's business.

Section 6. Transfers and Assignments.

The franchise granted to the Grantee herein shall not be transferable either directly or indirectly except with the consent of Council. Additionally, grantee shall not, without consent of Council, either directly or indirectly consolidate, merge or in any other way give or permit control of the management of its business to or by any other heating, cooling or power company now operating or that may in the future operate in the City, including any company which would by such action by Grantee first enter into the business of providing heating, cooling or power, nor shall Grantee assign or transfer so much of the assets of the Steam System so as to render Grantee unable to continue providing adequate service as required herein. Notwithstanding the provisions of this Sections 6, the capital stock or all or substantially all of the assets and business of Grantee may, without the prior approval of Council, be (i) transferred to any corporation or other entity which is affiliated with Grantee or Ancora Management LLC or (ii) consolidated or merged with, or the control of Grantee's management may be transferred to, any corporation or other entity which is affiliated with Grantee or Ancora Management LLC. For purposes of this section the term "affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with another person or entity.

Section 7. Right of Purchase by the City.

Under Section 183 of the Charter of the City of Cleveland, there is reserved to the City the right to terminate this franchise and to purchase all of the property of the Grantee in the streets and highways in the City and elsewhere used in or useful for the operation of the utility at a price to be fixed in the manner provided in the following sentence. If the City and Grantee cannot agree on the price to be paid by the City for such property, the value shall be determined by three appraisers, one each selected by the City and Grantee, and the other selected by the two appraisers appointed. If the three appraisers cannot agree upon a value for such property, the average of the three separate appraisals of the appraisers shall be the value of such property. The standard to be used by the appraisers shall be the fair market value of such property as a going concern. Further, to the extent provided in Section 184 of the Charter of the City, the price to be paid by the City for the property that may be acquired by the City from the Grantee, by purchase, condemnation, or otherwise, shall exclude all additional value of the grant or renewal of this franchise.

Section 8. Renewal of Franchise.

Council may, by ordinance, renew the franchise at the expiration of this franchise upon terms conducive to the public interest.

Section 9. Non-Exclusivity of Franchise.

No rights herein granted to the Grantee to construct, maintain, install or operate the Steam System shall be construed as exclusive or as preventing the City from granting a franchise or privilege to any other person, firm or corporation.

Section 10. Acceptance of Franchise.

After the effective date of this ordinance and within seventy-five (75) after such date, this ordinance shall be accepted by the Grantee by, (a) both its filing with the Clerk of Council an unconditional written acceptance hereof, and (b) an affidavit of an officer of Grantee with supporting documentation evidencing that Dominion Cleveland Thermal, Inc. has transferred to CT Acquisitions I Inc. the franchise and the Steam System and all material rights, title, and interests necessary for the operation of the system to CT Acquisitions I Inc. and that Grantee has obtained PUCO approval for the transfer, which shall be included in File No. 1519-04-A. The franchise granted to Dominion Cleveland Thermal, Inc. shall terminate upon such acceptance by the Grantee. A failure of the Grantee to accept this ordinance in the manner described above within such period of time shall be deemed a rejection of the franchise by the Grantee, and the rights and privileges granted shall, after the expiration of the period of seventy-five (75), if not so accepted, absolutely cease and terminate, unless the period of time is extended by Council by ordinance passed for that purpose and before the expiration of the period of seventy-five (75).

Section 11. Permits.

The Director of Public Service and other appropriate City officials are hereby authorized to issue such permits to the Grantee and any of its construction contractors or subcontractors for construction, installation and operation of the Steam System as may be required by law without further action of the Council. Permits shall be issued upon Grantee's compliance with the applicable procedures for obtaining permits and in accordance with the requirements of law. Grantee shall comply with all existing City and State air pollution permits to operate which are applicable to the Steam System.

Section 12. PUCO.

Grantee shall provide to the City's Director of Law timely copies of all notices, filings, applications and all other documents submitted to the PUCO concerning or affecting the Steam System, including copies received by Grantee of any complaints or correspondence submitted to the PUCO concerning the Grantee or Steam System, but not including such documents which solely relate to any other Steam System. Grantee shall not object to or contest the right of the City to intervene in any proceeding initiated by Grantee, the PUCO or a third party concerning Grantee or the Steam System.

Section 13. Notices and Reports.

Grantee shall provide notice to a designated representative of each customer of any work by Grantee on the Steam System, or of any change in its operation, which could mate-

rially and adversely affect service to such Customer. Grantee shall also respond to any reasonable requests of a Customer for information, including available Steam System efficiency measurements and studies. In addition, Grantee shall provide a copy of an audited balance sheet and a schedule of major capital improvements annually, at the end of each full fiscal year following the transfer of the franchise, to the Clerk of Council, for filing in the Council file mentioned above and shall provide copies of such submittals to the Director of Law of the City.

Section 14. Revocation and Amendment.

The Council hereby reserves the right at any time to repeal for cause or to properly amend this ordinance or to revoke for cause the privileges granted in whole or in part.

Section 15. Default.

Grantee shall be in default of its franchise if Council finds, after providing notice and an opportunity to be heard, that Grantee has abandoned or discontinued Steam Service or has materially failed to comply with the terms of this franchise.

Upon Council determination of default by Grantee, the City may, at its option, exercise, concurrently or successively, any one or more of the following rights and remedies: to seek a court order to enjoin any abandonment or discontinuance of Steam Service or any failure to comply with the terms of this franchise; to bring suit or complaint at the PUCO or elsewhere for the performance of Grantee's obligation to provide Steam Service and to comply with the terms of this franchise; to terminate the franchise; or in the event of an actual or effective abandonment or discontinuance of Steam Service, to seek Court appointment of a receiver to continue operation of the Steam System until the Steam System can be sold or transferred to an entity approved by the City and Council. These rights and remedies are in addition to any other rights and remedies permitted to the City by the terms of this franchise or by law.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.

Effective December 4, 2004.

Ord. No. 1659-04.

By Council Member Jackson (by departmental request).

An emergency ordinance to amend the title and Section 1 of Ordinance No. 1923-02, passed December 16, 2002, relating to employing one or more professional consultants to develop and conduct functional and technical training on the PeopleSoft Financial Management System and to develop and conduct other IT functional and technical training for a term not to exceed five years.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the title and Section 1 of Ordinance No. 1923-02, passed December 16, 2002, are amended to read as follows:

An emergency ordinance authorizing the Director of Finance to employ one or more professional consultants to develop and conduct functional training and technical training on the PeopleSoft Financial Management System and to develop and conduct other IT functional and technical training for a term not to exceed five years.

Section 1. That the Director of Finance is authorized to employ by contract or contracts one or more consultants or one or more firms of consultants for the purpose of supplementing the regularly employed staff of the several departments of the City of Cleveland in order to provide professional services necessary to develop functional training and technical training on the PeopleSoft Financial Management System, to conduct such functional training and technical training for all City employees using PeopleSoft Financial Management System in the performance of their job to a level of proficiency required to perform their jobs, and to develop and conduct other IT functional and technical training for a term not to exceed five years.

The selection of the consultants for the services shall be made by the Board of Control on the nomination of the Director of Finance from a list of qualified consultants available for employment as may be determined after a full and complete canvass by the Director of Finance for the purpose of compiling a list. The compensation to be paid for the services shall be fixed by the Board of Control. The contract or contracts authorized shall be prepared by the Director of Law, approved by the Director of Finance, and certified by the Director of Finance.

Section 2. That the title and Section 1 of Ordinance No. 1923-02, passed December 16, 2002, are repealed.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.

Effective October 27, 2004.

Ord. No. 1667-04.

By Council Members Dolan, Sweeney, Cimperman and Jackson (by departmental request).

An emergency ordinance authorizing the Director of Public Service to enter into an amendment to Contract No. 62167 with E. G. & G. Inc. to provide the detail design of the Kamm's Corner streetscape improvement project.

Whereas, under Ordinance No. 2457-02, passed March 10, 2003, the Director of Public Service entered into Contract No. 62167 with E.G. & G. Inc. to provide the preliminary design of

the Kamm's Corner streetscape improvement project; and

Whereas, additional design services are needed in order to provide the detail design in order to complete the project; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Service is authorized to enter into an amendment to Contract No. 62167 with E. G. & G. Inc. to provide the detail design services which are needed in order to complete the Kamm's Corner streetscape improvement project. The amendment will increase the amount of the contract by \$310,656 and shall be paid from Fund No. 10 SF 166, Request No. 113865.

Section 2. That the amendment shall be prepared by the Director of Law and shall contain any necessary terms and conditions that the Director deems necessary to protect and benefit the public interest.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.

Effective October 27, 2004.

Ord. No. 1671-04.

By Council Members Johnson, Cimperman and Jackson (by departmental request).

An emergency ordinance authorizing the Director of Parks, Recreation and Properties to enter into an amendment to the lease with the Ohio Department of Natural Resources for the use of the former Civilian Conservation Corps facility located within Kirtland Park.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Parks, Recreation and Properties is authorized to enter into an amendment to the lease with the Ohio Department of Natural Resources ("ODNR") to allow for multiple uses of the former Civilian Conservation Corps facility located within Kirtland Park.

Section 2. That this Council acknowledges that the term of the lease is for a period of twenty-five years, commencing October 1, 1997, and Council authorizes one option to renew for an additional twenty-five year period.

Section 3. That the Director of Parks, Recreation and Properties may authorize ODNR to make improvements to the leased premises subject to the approval of appropriate City agencies and officials.

Section 4. That the amendment shall be prepared by the Director of

Law and shall contain any terms and conditions as he deems necessary to protect and benefit the public interest.

Section 5. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.

Effective October 27, 2004.

Ord. No. 1673-04.

By Council Members Coats and Jackson (by departmental request).

An emergency ordinance authorizing the Director of Public Utilities to enter into one or more contracts with ACELA for professional services necessary to provide maintenance, including all software upgrades, documentation, and technical support, for licensed ACELA products, for a period of five years, for the Division of Water, Department of Public Utilities.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Utilities is authorized to enter into one or more contracts with ACELA for professional services necessary to provide maintenance, including all software upgrades, documentation, and technical support, for licensed ACELA products on the basis of its proposal dated September 2, 2004, in the total sum of \$725,000, for the Division of Water, Department of Public Utilities, for a period of five years. The contracts or contracts shall be paid from Fund No. 52 SF 001, Request No. 148736.

Section 2. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.

Effective October 27, 2004.

Ord. No. 1675-04.

By Council Member Jackson.

An emergency ordinance authorizing the sale of real property as part of the Land Reutilization Program and located on Central Avenue and East 39th and 40th Streets to Burten, Bell, Carr Development, Inc. or designee.

Whereas, the City of Cleveland has elected to adopt and implement the procedures under Chapter 5722 of the Ohio Revised Code to facilitate reutilization of nonproductive lands situated within the City of Cleveland; and

Whereas, real property acquired under the City's Land Reutilization Program is acquired, held, administered and disposed by the City of Cleveland through its Department of Community Development under the terms of Chapter 5722 of the Ohio Revised Code and Section 183.021 of Codified Ordinances of the City of Cleveland, 1976; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That pursuant to Section 183.021 of the Codified Ordinances of Cleveland, Ohio 1976, the Commissioner of Purchases and Supplies is hereby authorized to sell Permanent Parcel No(s). 103-31-001, 103-31-002, 103-31-088 and 103-31-025, as more fully described below, to Burten, Bell, Carr Development, Inc. or designee.

Section 2. That the real property to be sold pursuant to this ordinance is more fully described as follows:

P. P. No. 103-31-001

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublot No. 113 on Charles N. Norton's Allotment of part of Original Ten Acre Lot No. 44. Said Sublot No. 113 is 30 feet on the Southerly side of Central Avenue, 118-6-1/2/12 feet deep along the Easterly line and 109.96 feet deep on the Westerly line, which is also the Easterly line of Putnam Street (now known as East 38th Street) and 54-1/12 feet in the rear. Said Subdivision is recorded in Volume 3 of Maps, Page 24 of Cuyahoga County Records, be the same more or less, but subject to all legal highways.

Also subject to zoning ordinances, if any.

P. P. No. 103-31-002

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublot No. 114 in Charles E. Norton's Allotment of part of Original Ten Acre Lot No. 44. Said Sublot No. 114 is 30 feet on the Southerly side of Central Avenue, 118-6-1/2/12 feet deep on the Westerly line, 124-11/12 feet deep on the Easterly line, and 30-8/12 feet in the rear, all as per plat of said Allotment Records in Volume 3 of Maps, Page 24, of Cuyahoga County Records, be the same more or less, but subject to all legal highways.

P. P. No. 103-31-088

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio and known as being Sublot No. 295 in Leonard Case's Subdivision of part of Original Ten Acre Lot Nos. 44, 45, 46 and 47 as shown by the recorded plat of said Subdivision in Volume 8 of Maps, Page 36 of Cuyahoga County Records. Said Sublot No. 295 has a frontage of 50 feet on the Easterly side of East 39th Street (formerly Osborn Street) and extends back 125 feet 3-1/2 inches on the Northerly line, 125 4 -1/2 inches on the Southerly line and has a rear line of 50 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

P. P. No. 103-31-025

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublot No. 253 in Leonard Case Subdivision of part of Original Ten Acre Lot Nos. 44, 45, 46 and 47, as shown by the recorded plat in Volume 8 of Maps, Page 36 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.

Section 3. That all documents necessary to complete the conveyance authorized by this ordinance shall be executed within six (6) months of the effective date of this ordinance. If all of the documents are not executed within six (6) months of the effective date of this ordinance, or such additional time as may be granted by the Director of Community Development, this ordinance shall be repealed and shall be of no further force or effect.

Section 4. That the consideration for the subject parcel shall be established by the Board of Control and shall be not less than Fair Market Value taking into account such terms and conditions, restrictions and covenants as are deemed necessary or appropriate.

Section 5. That the conveyance authorized hereby shall be made by official deed prepared by the Director of Law and executed by the Mayor on behalf of the City of Cleveland. The deed shall contain such provisions as may be necessary to protect and benefit the public interest including such restrictive covenants and reversionary interests as may be specified by the Board of Control, the Director of Community Development or the Director of Law.

Section 6. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.

Effective October 27, 2004.

Ord. No. 1769-04.

By Council Member Jackson (by departmental request).

An emergency ordinance providing for the issuance and sale of bonds in the maximum principal amount of \$15,000,000 for the purpose of refunding the City's Nontax Revenue Bonds, Series 1999 (Cleveland Stadium Project).

Whereas, the City issued nontax revenue obligations in 1999 to pay a portion of the costs of constructing the sports facility now known as Cleveland Browns Stadium, consisting of a \$5,000,957.05 Nontax Revenue Bond, Series 1999A (Cleveland Stadium Project) delivered on April 8, 1999, and a \$4,998,680.50 Nontax Revenue Bond, Series 1999B (Cleveland Stadium Project) delivered on June 8, 1999 (together referred to in this ordinance as the "Prior Bonds"); and

Whereas, the City seeks to obtain debt service savings by refunding the Prior Bonds by the obligations

authorized in this Ordinance (the "Bonds"); and

Whereas, the Director of Finance, as fiscal officer of the City, has certified to this Council that the estimated life or usefulness of the improvements to be refinanced with the proceeds of the Bonds is at least five (5) years and the maximum maturity of the Bonds is August 1, 2029; and

Whereas, the issuance of the Bonds is necessary to provide funds to refund the Prior Bonds and obtain debt service savings at the earliest possible time, and as a result, this Ordinance constitutes an emergency measure providing for the immediate preservation of the public peace, property, health and safety, and for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. Purpose. It is necessary to issue the Bonds in an aggregate principal amount not to exceed \$15,000,000 for the purpose of refunding the Prior Bonds, including payment of financing costs within the meaning of Section 133.01(K) of the Revised Code. The City shall obtain aggregate net present value savings of not less than three percent (3%) as a result of refunding the Prior Bonds by the Bonds authorized by this Ordinance.

Section 2. Authority and Terms. The Bonds shall be issued pursuant to the provisions of Article XVIII of the Constitution of Ohio, Sections 133.01 to 133.70, inclusive, and other applicable provisions of the Revised Code, the Charter of the City and this Ordinance in the principal amount and for the purpose stated in Section 1. The Bonds shall be designated "Nontax Revenue Refunding Bonds, Series 2004." The Bonds shall be issued in one lot as fully registered Bonds in denominations of \$5,000 or any integral multiple thereof. The Bonds shall be numbered as determined by the Director of Finance.

The Bonds shall be dated as of December 1, 2004, or such other date specified in the certificate of the Director of Finance providing for the final terms of the Bonds and the sale of the Bonds in accordance with this Ordinance (the "Certificate of Award"). The Bonds shall bear interest at the rate or rates per year specified in the Certificate of Award; provided that if all the Bonds bear interest at the same rate per year, then such rate shall not exceed six percent (6%) per year, and if the Bonds bear interest at more than one rate per year, then the weighted average of such rates (taking into account the principal amount and maturity of each Bond to which a rate applies) shall not exceed six percent (6%) per year. Interest on the Bonds shall be payable, until the principal amount is paid, semi-annually on June 1 and December 1 of each year or on the days specified in the Certificate of Award as the dates on which interest on the Bonds shall be payable (the "Interest Payment Dates"), beginning June 1, 2005 or on such other Interest Payment Date specified in the Certificate of Award as the first Interest Payment Date.

The Bonds shall mature on December 1 in the years and amounts set forth in the Certificate of Award, provided that (i) each principal payment shall occur on an Interest Payment Date, (ii) the final maturity date of the Bonds shall be no later than August 1, 2029, and (iii) the principal amount payable in any fiscal year shall not exceed \$2,000,000.

The Bonds stated to mature in any year may be issued as term bonds (the "Term Bonds"), payable pursuant to Mandatory Sinking Fund Redemption Requirements as defined and further described below. The Director of Finance shall determine in the Certificate of Award whether any of the Bonds shall be issued as Term Bonds, any dates (the "Mandatory Redemption Dates") on which the principal amount of the Term Bonds shall be payable pursuant to mandatory sinking fund installments rather than at stated maturity and the amount of principal to be paid on each Mandatory Redemption Date (the "Mandatory Sinking Fund Redemption Requirements").

Section 3. Redemption. The Bonds shall be subject to redemption prior to stated maturity as follows:

(a) **Mandatory Sinking Fund Redemption.** If any of the Bonds are issued as Term Bonds, the Term Bonds shall be subject to mandatory sinking fund redemption and be redeemed pursuant to Mandatory Sinking Fund Redemption Requirements, at a redemption price of 100 percent of the principal amount redeemed, plus interest accrued to the redemption date, on the Mandatory Redemption Dates. The aggregate of the moneys to be deposited in the Debt Service Fund for payment of principal of and interest on any Term Bonds shall include amounts sufficient to redeem on the Mandatory Redemption Dates the principal amount of Term Bonds payable on those dates pursuant to the Mandatory Sinking Fund Redemption Requirements (less the amount of any credit as provided below).

The City shall have the option to deliver to the Registrar (as defined in Section 4) for cancellation Term Bonds in any aggregate principal amount and to receive a credit against the then current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) of the City for any Term Bonds. That option shall be exercised by the City on or before the forty-fifth (45th) day preceding the applicable Mandatory Redemption Date, by furnishing a certificate to the Registrar, signed by the Director of Finance, setting forth the extent of the credit to be applied with respect to the then current Mandatory Sinking Fund Redemption Requirement. If the certificate is not timely furnished to the Registrar, the Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) shall not be reduced. A credit against the then current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) also shall be received by the City for any Term Bonds which prior thereto have been redeemed (other than through the operation of

the Mandatory Sinking Fund Redemption Requirements) or purchased for cancellation and canceled by the Registrar, to the extent not applied theretofore as a credit against any mandatory redemption obligation.

Each Term Bond so delivered, or previously redeemed, or purchased and canceled, shall be credited by the Escrow Agent at 100 percent of the principal amount thereof against the then current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation). Any excess of that amount over the then current Mandatory Sinking Fund Redemption Requirement shall be credited against subsequent Mandatory Sinking Fund Redemption Requirements (and corresponding mandatory redemption obligations) in the order directed by the Director of Finance.

(b) **Optional Redemption.** The Bonds may be subject to redemption prior to maturity by and at the option of the City, in whole or in part on any date, in integral multiples of \$5,000, on the optional redemption dates and at the redemption prices (expressed as a percentage of the principal amount redeemed) specified in the Certificate of Award, plus, in each case, accrued interest to the redemption date, provided the first optional redemption date shall not be later than December 1, 2014 and the highest redemption price shall not be greater than 102%. The Director of Finance may determine in the Certificate of Award that it is in the best interests of the City for the Bonds not to be callable prior to their stated maturity.

If optional redemption at a price exceeding 100% of the principal amount to be redeemed is to take place as of any applicable Mandatory Redemption Date, the Bonds, or portions thereof, to be redeemed optionally shall be selected by lot prior to the selection by lot of the Bonds to be redeemed on the same date by operation of the Mandatory Sinking Fund Redemption Requirements of paragraph (a). The Bonds shall be redeemed pursuant to this paragraph only upon written notice from the Director of Finance to the Registrar. That notice shall specify the redemption date and the principal amount of each maturity of Bonds to be redeemed, and shall be given at least forty-five (45) days prior to the redemption date or such shorter period as shall be acceptable to the Registrar. There shall be deposited with the Registrar on or prior to the redemption date funds sufficient to redeem at the redemption price all of the redeemable Bonds for which notice of redemption has been given.

(c) **Partial Redemption.** If fewer than all of the outstanding Bonds are called for redemption at one time, they shall be called in the order of maturities directed by the Director of Finance. If fewer than all Bonds of a single maturity are to be redeemed, the selection of Bonds to be redeemed, or portions thereof in amounts of \$5,000 or any integral multiple thereof, shall be made by the Registrar by lot in a manner determined by the Registrar. In the case of a partial redemption of Bonds by lot when Bonds of

denominations greater than \$5,000 are then outstanding, each \$5,000 unit of principal thereof shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of principal amount represented by a Bond are to be called for redemption, then upon notice of redemption of a \$5,000 unit or units, the registered owner of that Bond shall surrender the Bond to the Registrar (i) for payment of the redemption price of the \$5,000 unit or units called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (ii) for issuance, without charge to the registered owner thereof, of a new Bond or Bonds of any authorized denomination or denominations in an aggregate principal amount equal to the unmaturing and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

(d) Notice of Redemption. The notice of the call for redemption of Bonds shall identify (i) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (ii) the redemption price to be paid, (iii) the date fixed for redemption, and (iv) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Registrar on behalf of the City by mailing a copy of the redemption notice by first class mail, postage prepaid, at least thirty (30) days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption in whole or in part at the registered owner's address shown on the Bond Register maintained by the Registrar at the close of business on the fifteenth day preceding that mailing and to any municipal bond insurance company that has issued a policy insuring some or all of the Bonds. Failure to receive notice by mail or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

(e) Payment of Redeemed Bonds. Notice having been mailed in the manner provided in the preceding paragraph, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and, upon presentation and surrender at the place or places specified in that notice, shall be paid. If money for the redemption of all of the Bonds and portions thereof to be redeemed, including interest accrued to the redemption date, is held by the Registrar on the redemption date, and, if notice of redemption has been deposited in the mail, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If that money shall not be so available on the redemption date, or that notice shall not have been deposited in the mail, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption. All money

held by the Registrar for the redemption of particular Bonds shall be held in trust for the account of the registered owners and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Registrar as paying agent. Principal shall be payable when due upon presentation and surrender of the Bonds at the principal corporate trust office of the Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register (as defined in Section 4) at the close of business on the date provided in the Agreement authorized in Section 4 (the "Record Date").

Section 4. Execution, Authentication, Approval and Recording of the Bonds; Exchange and Transfer of the Bonds; Paying Agent. The Bonds shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this Ordinance. The Bonds shall be signed by the Mayor and by the Director of Finance. Either or both of those signatures may be a facsimile. The Bonds shall bear the seal of the City, which may be a facsimile. The Director of Law shall prepare the Bonds and shall evidence approval of the form and correctness of the Bonds by his or her manual or facsimile signature.

U.S. Bank National Association is appointed to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the "Registrar"). The Director of Finance shall sign and deliver, in the name and on behalf of the City, the Registrar Agreement between the City and the Registrar (the "Agreement") in substantially the form as is now on file with the Clerk of Council in File No. 1769-04-A. The Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Agreement or amendments to the Agreement by the Director of Finance. The Director of Law shall determine and approve the form and correctness of the Agreement. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Agreement from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

So long as any of the Bonds remain outstanding, the City will cause the Registrar to maintain and keep at its designated corporate trust office all books and records necessary for the registration, exchange and transfer of Bonds as provided in this Section (the "Bond Register"). Subject to the provisions of Section 5 with respect to beneficial owners, the person in whose

name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of this Ordinance. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the principal corporate trust office of the Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the principal corporate trust office of the Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Registrar. Upon exchange or transfer the Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmaturing principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. The exchange or transfer shall be without charge to the owner, except that the City and Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under this Ordinance, as the Bonds surrendered upon that exchange or transfer.

Notwithstanding any other provisions of this Ordinance, if it is determined by the Director of Finance to be advantageous to the City, the Bonds may be issued in book entry form in accordance with the provisions of this Section. As used in this Section and this Ordinance:

"Book entry form" or "book entry system" means a form or system under which (i) the ownership of beneficial interests in Bonds and the principal of and interest on the Bonds may be transferred only through a book entry, and (ii) physical Bond certificates in fully regis-

tered form are issued by the City only to a Depository or its nominee as registered owner, with the Bonds "immobilized" in the custody of the Depository. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in those Bonds and that principal and interest.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in Bonds or the principal and interest, and to effect transfers of Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"Participant" means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Bonds may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized: (i) the Bonds may be issued in the form of a single, fully registered Bond representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (ii) the beneficial owners in book entry form shall have no right to receive Bonds in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Bonds for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Registrar, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Bonds from the Depository, and the Registrar shall authenticate and deliver bond certificates in registered form to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is also authorized and directed to the extent necessary or required to enter into any agreements determined necessary in connection with the book entry system for the Bonds, after determining that the signing thereof will not endanger the funds or securities of the City and after the approval of the form

of any such agreement by the Director of Law.

Section 5. Sale of Bonds. The Bonds shall first be offered for purchase to the Trustees of the Sinking Fund and, if not purchased by them, shall be offered to the Treasury Investment Account for purchase and, if not purchased for that Account, shall be sold to A.G. Edwards & Sons, Inc. and SBK-Brooks Investment Corp. (together, the "Original Purchaser").

The Certificate of Award shall specify the final terms of the Bonds in accordance with law, the provisions of this Ordinance, the written advice of either Government Capital Management, LLC or Columbia Equity Financial Corporation or both (the "Financial Advisor"), and the Original Purchaser's offer to purchase the Bonds, including: the principal amount of the Bonds, the purchase price (which shall be not less than 97% of the principal amount plus accrued interest to their date of delivery), the interest rate or rates, the amounts and years in which principal is payable (at stated maturity or pursuant to Mandatory Sinking Fund Redemption Requirements), the Interest Payment Dates and the date of the Bonds (if different from those set forth in Section 2) and any other matters required in this Ordinance to be set forth in that Certificate. The Mayor, the Director of Finance, and the Director of Law, as appropriate, and other appropriate City officials are, and each of them is, authorized and directed to take such actions as are necessary, appropriate and in the best interest of the City to establish the terms and requirements for delivery of the Bonds and to make such arrangements as are necessary with the Original Purchaser in order to establish the date, location, and procedure, and conditions for the delivery of the Bonds to the Original Purchaser, to give all appropriate notices and certificates, to cause a true transcript of proceedings with reference to the issuance of the Bonds to be delivered to the Original Purchaser, to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance and to take all steps necessary to effect the due execution, authentication and delivery of the Bonds. The Director of Finance is further authorized and directed to sign and deliver on behalf of the City a bond purchase agreement (the "Bond Purchase Agreement"), approved as to form and correctness by the Director of Law, between the City and the Original Purchaser setting forth the terms and conditions on which the City agrees to sell the Bonds and the Original Purchaser agrees to buy the Bonds on terms consistent with this Ordinance. The Bond Purchase Agreement is approved substantially in the form now on the file with the Clerk of Council in the File referenced in Section 4, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Direc-

tor of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Bond Purchase Agreement or amendments to the Bond Purchase Agreement by the Director of Finance. It is determined that the terms of the Bonds, as provided in this Ordinance and as may be provided in or pursuant to the Certificate of Award, are in the best interest of the City and in compliance with all legal requirements.

If, in the judgment of the Mayor and the Director of Finance, a disclosure document in the form of an Official Statement is appropriate or necessary in connection with the original issuance of the Bonds, those officers in their official capacities are authorized to prepare or cause to be prepared on behalf of the City an Official Statement and any necessary supplements and to authorize the use and distribution of that Official Statement and any supplements. Each of those officers is authorized to sign on behalf of the City and in his or her official capacity that Official Statement and any supplements approved by that officer. Those officers are, and each of them is, authorized to sign and deliver, on behalf of the City and in their official capacities, such certificates in connection with the accuracy of the Official Statement and any supplements as may, in their judgment, be necessary or appropriate. Those officers are also authorized to determine and certify on behalf of the City that such disclosure document is "deemed final" by the City within the meaning of Securities and Exchange Commission Rule 15c2-12 (the "SEC Rule"). The Director of Finance is authorized to contract for services for the production and distribution of preliminary and final official statements, including by printed and electronic means.

For the benefit of the holders and beneficial owners from time to time of the Bonds, the City agrees, in accordance with, and as the only obligated person with respect to the Bonds under, the SEC Rule, to provide or cause to be provided such financial information and operating data and notices, in such manner, as may be required for purposes of the SEC Rule. In order to describe and specify certain terms of the City's continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination, the Mayor and the Director of Finance are authorized and directed to prepare, or cause to be prepared, and to sign and deliver, in the name and on behalf of the City, a continuing disclosure agreement or certificate, which shall constitute the continuing disclosure agreement made by the City for the benefit of the holders and beneficial owners of the Bonds in accordance with the SEC Rule. The performance of that Agreement shall be subject to the availability of funds and their annual appropriation to meet costs the City would be required to incur to perform it.

The Director of Finance is further authorized and directed to establish procedures in order to ensure compliance by the City with its continuing disclosure agreement, including the timely provision of informa-

tion and notices. Prior to making any filing in accordance with that agreement or providing notice of the occurrence of any other events, the Director of Finance shall consult with, as appropriate, the Financial Advisor and legal counsel.

Section 6. Source of Payment of the Bonds. The Bonds shall be special obligations of the City, and the debt charges on the Bonds shall be payable solely from moneys of the City which are not moneys raised by taxation, to the extent available for the purpose of paying debt charges on the Bonds, including, but not limited to the following: (a) grants from the United States of America and the State; (b) payments in lieu of taxes now or hereafter authorized by State statute; (c) fines and forfeitures which are deposited in the City's General Fund; (d) fees deposited in the City's General Fund for services provided and from properly imposed licenses and permits; (e) investment earnings on the City's General Fund; (f) investment earnings on other funds of the City that are credited to the City's General Fund; (g) proceeds from the sale of assets which are deposited in the City's General Fund; (h) gifts and donations; and (i) all rental payments which are deposited in the City's General Fund (collectively, the "Nontax Revenues"). The Bonds are not and shall not be secured by an obligation or pledge of any money raised by taxation. The Bonds do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and the owners thereof have and shall have no right to have taxes levied by the City for the payment of debt charges thereon. The Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the Nontax Revenues and are not secured by an obligation or pledge of any money raised by taxation.

The City covenants and agrees that while the Bonds are outstanding, it will appropriate and maintain Nontax Revenues at such times and in such amounts as will be sufficient, together with any other funds available for the purpose, to pay the debt charges on the Bonds and will so restrict other obligations payable from Nontax Revenues prior to or on a parity with the Bonds as will ensure the continuing availability for appropriation of sufficient Nontax Revenues to pay debt charges when due.

Section 7. Debt Service Fund; Payment of Debt Charges on the Bonds. There is created by the City a separate fund or account designated as the "Series 2004 Nontax Revenue Refunding Bonds (Cleveland Stadium Project) Debt Service Fund" (referred to in this Ordinance as the "Debt Service Fund"). There shall be deposited in the Debt Service Fund, on or prior to the date debt charges on the Bonds are due, Nontax Revenues in an amount sufficient to pay those debt charges. Money in the Debt Service Fund shall be invested in accordance with the City's investment policies then in effect. The payment of debt service on the Bonds is secured by a pledge of and lien on the Debt Service Fund. The City shall not be required to use or apply to the payment of debt

charges on the Bonds any funds or revenues from any source other than the Nontax Revenues. However, the City, of its own volition, is not prohibited from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or of the Bonds.

The City will, solely from the proceeds of the Bonds or from the Nontax Revenues, pay or cause to be paid the debt charges on the Bonds on the dates, at the places and in the manner provided in this Ordinance and in the Bonds. For that purpose, in each year while the Bonds are outstanding, this Council, after providing for the payment of debt charges payable on the City's general obligation securities in that year from sources available for that purpose, will appropriate Nontax Revenues required to pay, and for the purpose of paying, the debt charges due in that year on the Bonds (less other money available for the purpose) and any outstanding parity obligations payable from Nontax Revenues. Further, this Council will give effect to such appropriations in all ordinances it passes thereafter in that year appropriating money for expenditure and encumbrance and limit the other appropriations of Nontax Revenues in that year to the amount available after deducting the amount required for the payment of debt charges payable on the City's general obligation securities and to pay those debt charges. The City covenants that, so long as any of the Bonds are outstanding, it shall not issue any additional obligations payable from the Nontax Revenues on a parity with the Bonds and any outstanding parity obligations payable from Nontax Revenues, unless, prior to passage of the ordinance authorizing such parity obligations, the Director of Finance shall have certified to this Council that the Nontax Revenues during the preceding calendar year, adjusted to reflect, if necessary, changes in the rates or charges resulting in the Nontax Revenues, aggregate in amount not less than 100% of the highest amount of (a) debt charges on the Bonds and (b) required payments on such proposed parity obligations and any outstanding parity obligations due in any succeeding calendar year.

Each obligation of the City required to be undertaken pursuant to this Ordinance and the Bonds is binding upon the City, and upon each officer or employee of the City as may from time to time have the authority under law to take any action on behalf of the City as may be necessary to perform all or any part of such obligation, as a duty of the City and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01 of the Revised Code, providing for enforcement by writ of mandamus.

Section 8. Refunding of Prior Bonds. The Prior Bonds are subject to prepayment by the City in whole or in part on any date, without penalty or premium, upon three business days' notice to the registered owner, together with interest accrued but unpaid on the amount

prepaid (the compound accreted amount) to the date of prepayment. Upon the sale of the Bonds, the Director of Finance is authorized and directed to give notice of prepayment of the Prior Bonds on the date determined by the Director of Finance to be the earliest practicable date for that prepayment. The Director of Finance is authorized and directed to take such other actions as may be necessary or appropriate to accomplish the prepayment of the Prior Bonds.

Section 9. Application of Proceeds of Bonds. The proceeds of the Bonds shall be applied as follows: (i) any amount received as accrued interest or premium on the Bonds shall be deposited in the Debt Service Fund created in Section 7 of this Ordinance, (ii) an amount determined by the calculation agent for the Prior Bonds to be sufficient to prepay the compound accreted amount of the Prior Bonds on the prepayment date determined by the Director of Finance pursuant to Section 8 of this Ordinance shall be applied to that prepayment, and (iii) the balance of the proceeds shall be used to pay financing costs within the meaning of Section 133.01(K) of the Revised Code, including the cost of any bond insurance or other credit support with respect to the Bonds.

Section 10. Defeasance of the Bonds.

(a) Release of Ordinance. If the City shall pay or make provision for payment of the principal, any premium and interest on all the outstanding Bonds, this Ordinance (except for Sections 3 and 10(b)) shall cease to be of further effect, and the covenants, agreements and other obligations of the City under this Ordinance shall be discharged and satisfied.

(b) Payment and Discharge of Bonds. Outstanding Bonds shall be deemed to have been paid and discharged within the meaning of this Ordinance, including without limitation, Section 10(a), if:

(i) the Paying Agent shall hold in trust for and irrevocably committed solely thereto, sufficient moneys; or

(ii) the Paying Agent shall hold in trust for, and irrevocably committed solely thereto, direct obligations of the United States certified by an independent firm of national reputation to be of such maturities and interest payment dates and to bear such interest, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (likewise to be held in trust and committed, except as hereinafter provided), as will be sufficient, together with moneys referred to in (i) above, for the payment, at their maturities or redemption dates, of all debt charges on the Bonds to their date of maturity or redemption, as the case may be, or if default in such payment shall have occurred on such date then to the date of the tender of such payment; provided, that if any Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or irrevocable provision satisfactory to the Trustee shall have been duly made for the giving of such notice. Any moneys held by the Paying Agent in accordance with the provisions of this Section may be invested in

direct obligations of the United States of America maturing, or redeemable at the option of the holder, at times and in amounts sufficient to meet payment of debt charges on the Bonds, as directed by the Director of Finance.

Section 11. Ratings, Insurance, and Other Credit Enhancement. If, in the judgment of the Director of Finance, based on written advice of a Financial Advisor, the filing of an application for a rating on the Bonds by one or more nationally recognized rating agencies, or the obtaining of an insurance policy or other credit support instrument is in the best interest of, and financially advantageous to, the City, the Director of Finance is authorized to prepare and submit those applications and to obtain that credit support instrument. The cost of obtaining each rating and any credit support instrument, except to the extent paid by the Original Purchaser in accordance with the Purchase Agreement, shall be paid from the proceeds of the Bonds. The Director of Finance may enter into any written agreements he determines are necessary to obtain a credit support instrument, consistent with this Ordinance. The form and correctness of any such agreement shall be determined and approved by the Director of Law.

Section 12. Federal Tax Covenants. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon will not be treated as an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

Each covenant made in this section with respect to the Bonds is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Bonds (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the

Bonds from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Bonds.

The Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Bonds is authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds.

Section 13. Interest Rate Hedges and Other Arrangements. For the purpose of achieving the optimal available debt structure for the Bonds, the Director of Finance may, based on the written advice of a financial advisor (which may be the Financial Advisor identified in Section 5 or may be another firm experienced in advising municipalities concerning hedging arrangements), enter into one or more agreements in anticipation of, in connection with or subsequent to the issuance of the Bonds for an interest rate swap, an interest rate cap or other arrangements to lower the effective interest rate on the obligations of the City or to hedge the exposure of the City against fluctuations in prevailing interest rates or to optimize the City's cash flow, provided, however, that: (i) the counterparty to any such agreement or arrangement shall have a rating of at least "A" by either Moody's Investors Service, Inc., or Standard & Poor's Corporation; (ii) no such agreement or arrangement shall purport to entitle the counterparty or provider to payment by the City from any source other than the sources of payment for the Bonds as described in this

Ordinance; (iii) the terms of the agreements or arrangements shall have been determined by the Director of Finance, based on the written advice of a financial advisor, to be justified by the corresponding benefit to the City and to be commercially reasonable based on then current market conditions. The form and correctness of any agreement entered into under authority of this Section shall be approved by the Director of Law.

Section 14. Open Meeting Determination. It is found and determined that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken, and that all deliberations of this Council and any of its committees that resulted in those formal actions were held, in meetings open to the public in compliance with all legal requirements, including, without limitation, Section 121.22 of the Revised Code.

Section 15. Findings and Recitals of Validity. It is hereby determined, represented and recited that all acts, conditions and things necessary to be done precedent to and in the issuing of the Bonds in order to make then legal, valid and binding obligations of the City have happened, been done and been performed in regular and due form as required by law; and that no limitation of indebtedness or taxation, either statutory or constitutional, will have been exceeded in the issuance of the Bonds. It is further found and determined, and is represented and recited, that the provisions of Sections 28, 29, 32, 33 (including the provisions of Section 33 with respect to readings on three separate days or dispensing with such readings by a two-thirds vote of all members of the Council), 36, 37, 48 and all other applicable provisions of the City's Charter and the rules of this Council have been fully complied with and this Ordinance was passed in conformity therewith.

Section 16. Delivery to County Auditor. The Director of Finance is authorized and directed to forward a certified copy of this Ordinance and of the Certificate of Award for the Bonds to the County Auditor of Cuyahoga County.

Section 17. Severability. Each section and each part of each section of this Ordinance is declared to be an independent section or part of a section and, notwithstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any such section or part of a section or any provision thereof, or the application thereof to any person or circumstance, is held to be invalid, the remaining sections or parts of sections and the application of such provisions to any other person or circumstance, other than those as to which it is held invalid, shall not be affected thereby, and it is declared to be the legislative intent that the other provisions of this Ordinance would have been passed independently of such section, or parts of a section, so held to be invalid.

Section 18. Legislative Intent. All terms, conditions, pledges, covenants or agreements on the part of the City provided for in this Ordinance are made by the voluntary act of the City under its lawful author-

ity, including its authority under its Charter and Article XVIII of the Constitution of Ohio.

Nothing in this Ordinance is intended to, and no provision hereof shall be applied in any manner as would, impair the obligation of contract of the City with respect to any outstanding bonds, notes, certificates of indebtedness, other obligations, trust indentures, trust agreements, or other agreements or contracts made or entered into by the City and for which consideration was duly received by the City prior to the passage of this Ordinance.

Section 19. Emergency Measure. This Ordinance is declared to be an emergency measure for the immediate preservation of the public peace, property, health and safety of the City by providing funds to refund the Prior Bonds and obtain debt service savings, and for the usual daily operation of a municipal department, and, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest date allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 1853-04.
By Council Members Gordon and Jackson (by departmental request).
An emergency ordinance accepting the recommendation of the Tax Incentive Review Council regarding enterprise zone tax exemption agreements.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That this Council accepts the recommendation of the Tax Incentive Review Council ("TIRC") dated August 31, 2004 regarding enterprise zone tax exemption agreements in effect as of December 31, 2003. A copy of the report is contained in File No. 1853-04-A.

Section 2. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 1963-04.
By Council Members Cimperman, Gordon and Jackson (by departmental request).

An emergency ordinance authorizing the Director of Economic Development to enter into an amendment to Contract No. 53381 originally with Flats Realty, LTD, a holding company for Cleveland Granite & Marble to change certain terms of the agreement.

Whereas, in August 1998, the Director of Economic Development entered into Contract No. 53381 with Flats Realty, LTD, a holding company for Cleveland Granite & Marble, for the acquisition of new machinery and equipment, including improvements to their existing facility at 955 West Street; and

Whereas, in 2002, Cleveland Granite & Marble outgrew their location and grew from 25 to 38 employees; and

Whereas, in 2003, Kim & Jose Lisboa, the owners of Cleveland Granite & Marble, purchased and renovated a vacant building at 4400 Carnegie Avenue under the name of JKJ Realty, LLC in order to accommodate its growing business; and

Whereas, the owners have an agreement to sell their old building in the Flats which will net for approximately \$50,000; and

Whereas, the owners will convey the \$50,000 to the City of Cleveland, although these proceeds will be insufficient to pay off the City's loan balance in its entirety, which currently is \$212,439 and which will mature in 2008; and

Whereas, the promissory note and the remaining mortgage, approximately \$162,439, will be transferred to the new property at 4400 Carnegie Avenue; and

Whereas, by doing so, the City will receive a third position mortgage on the 4400 Carnegie Avenue property which improves its loan-to-value ratio over the Flats property; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Economic Development is authorized to enter into an amendment to Contract No. 53381 with Flats Realty, LTD, a holding company for Cleveland Granite & Marble, to (1) change the name of the borrower from Flats Realty, LTD to JKJ Realty, LLC; (2) to change the location of the project site from 955 West Street, Cleveland, Ohio 44113, to 4400 Carnegie Avenue, Cleveland, Ohio 44103; and (3) to transfer the promissory note and mortgage to JKJ Realty, LLC.

Section 2. That all other terms and conditions of the original contract shall remain the same.

Section 3. That the amendment shall be prepared by the Director of Law and shall contain terms and provisions as the Director deems necessary to protect and benefit the public interest.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 2066-04.
By Council Members Sweeney, Cimperman, and Jackson (by departmental request).

An emergency ordinance authorizing the Director of Public Service to enter into an agreement with the Cuyahoga County Commissioners to accept funds for the purpose of installing a sprinkler system at Aviation High School; determining the method of making the public improvement of installing the sprinkler system; and authorizing the Director of Public Service to enter into one or more public improvement contracts for the making of the improvement.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Service is authorized to enter into an agreement with the Cuyahoga County Commissioners to accept funds in the amount of \$25,000 for the purpose of installing a sprinkler system at Aviation High School. The agreement shall be prepared by the Director of Law and shall contain additional terms and conditions as he deems necessary to protect and benefit the public interest.

Section 2. That, under Section 167 of the Charter of the City of Cleveland, this Council determines to make the public improvement of installing a sprinkler system at Aviation High School, for the Division of Architecture, Department of Public Service, by one or more contracts duly let to the lowest responsible bidder or bidders after competitive bidding for a gross price for the improvement.

Section 3. That the Director of Public Service is authorized to enter into one or more contracts for the making of the public improvement with the lowest responsible bidder or bidders after competitive bidding for a gross price for the improvement, provided, however, that each separate trade and each distinct component part of the improvement may be treated as a separate improvement, and each, or any combination, of the trades or components may be the subject of a separate contract for a gross price. On request of the director the contractor shall furnish a correct schedule of unit prices, including profit and overhead, for all items constituting units of the improvement.

Section 4. That the cost of the improvement authorized shall be paid from Fund Nos. 20 SF 183, 20 SF 191, 20 SF 300, 20 SF 310, 20 SF 320, 20 SF 331, 20 SF 340, 20 SF 351, 20 SF 362, 20 SF 371, 20 SF 381, 11 SF 006, 01-400100-693000, additional funding sources to be determined by the Director of Finance, and from the fund or funds which are deposited the cash contribution from the Cuyahoga County Commissioners under the agreement authorized by this ordinance and which funds are appropriated for this purpose, Request No. 115271.

Section 5. That this ordinance is declared to be an emergency measure and, provided it receives the

affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 2067-04.

By Council Member Brady.

An emergency ordinance authorizing certain persons to engage in peddling in Ward 19. (Irene Sakellis)

Whereas, pursuant to Section 675.07 of the Codified Ordinances of Cleveland, Ohio, 1976, (the "Codified Ordinances") the consent of Council expressed by ordinance is a prerequisite to peddling upon public rights of way outside of the Central Business District; and

Whereas, this Council has considered the requests of certain persons to engage in peddling outside of the Central Business District, and has determined that it is in the public interest to allow each of said persons to peddle in Ward 19; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That this Council consents, as required by, Section 675.07 of the Codified Ordinances to allow each persons named: Irene Sakellis on the corner of West 117th Street and Western Avenue.

Section 2. That all of the requirements of Chapter 675 of the Codified Ordinances shall apply to the persons named in Section 1 of this ordinance.

Section 3. That the privilege granted may be revoked at any time by this Council.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 2069-04.

By Council Member Jackson

An emergency ordinance authorizing the Clerk of Council to cause payment of registration fees, travel expenses, and hotel expenses necessary for members and employee's of Cleveland City Council to attend National League of Cities.

Whereas, National League of Cities coordinates an annual convention to assist municipal legislators in serving their constituents; and

Whereas, this convention includes educational sessions on issues and concerns affecting local governments; and

Whereas, members and employees of Cleveland City Council have traditionally attended this annual convention; and

Whereas, Cleveland City Council hosted the National League of Cities 2004 National Black Caucus of Local Elected Officials summer meeting in August of this year; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Clerk of Council is hereby authorized to cause payment of registration fees, travel expenses, and hotel expenses necessary for members and employees of Cleveland City Council to attend National League of Cities.

Section 2. That the payments hereby authorized shall be paid from Fund No. 01 SF 001.

Section 3. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 2071-04.

By Council Members Conwell and Pierce Scott.

An emergency ordinance amending the Title and Section 1 of Ordinance No. 1971-04 passed October 11, 2004 as it pertains to the Ashbury Senior Computer Community Center through the use of Ward 8 and 9 Neighborhood Equity Funds.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Title and Section 1 of Ordinance No. 1971-04 passed October 11, 2004 are hereby amended to read as follow:

An emergency ordinance authorizing the Director of Community Development to enter into an agreement with the Northeast Neighborhood Development Corporation for the Ashbury Senior Computer Community Center Program for the public purpose of providing computer training classes to City of Cleveland residents through the use of Wards 8 and 9 Neighborhood Equity Funds.

Section 1. That the Director of Community Development is authorized to enter into an agreement with the Northeast Neighborhood Development Corporation for the Ashbury Senior Computer Community Center Program for the public purpose of providing computer training classes to City of Cleveland residents through the use of Wards 8 and 9 Neighborhood Equity Funds.

Section 2. That the Title and Section 1 of Ordinance No. 1971-04 passed October 11, 2004 are hereby repealed.

Section 3. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

Ord. No. 2072-04.

By Council Member Johnson.

An emergency ordinance authorizing and directing the Director of Public Service to issue a permit to The Coral Company to stretch banners in Shaker Square on the east and west corner of Shaker Blvd., for the period from November 10, 2004 to November 22, 2004, inclusive, publicizing the 75th Birthday Celebration of Shaker Square.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That notwithstanding the provision of Section 623.13 of the Codified Ordinances, of Cleveland, Ohio, 1976, the Director of the Department of Public Service is hereby authorized and directed to issue a permit to The Coral Company to install, maintain and remove banners in Shaker Square on the east and west corner of Shaker Blvd., for the period from November 10, 2004 to November 22, 2004, inclusive. Said banner shall be approved by the Director of Public Service, in consultation with the Director of Public Safety, as to type, method of affixing and location so as not to interfere with any sign erected and maintained under the requirements of law or ordinance. The permission of the owner of any pole from which a banner will be hung must be obtained prior to issuance of the permit. No commercial advertising shall be printed or permitted on said banner and said banner shall be removed promptly upon the expiration of said permit.

Section 2. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed October 25, 2004.
Effective October 27, 2004.

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