# Memorandum

**To:** Mayor & Members of Council **From:** Monica Irelan, City Manager

Subject: General Information

Date: November 2, 2015

#### **CALENDAR**

AGENDA: City Council @7:00 pm

#### C. APPROVAL OF MINUTES

- 1. October 15, 2015 Special Council Meeting Minutes
- 2. October 19, 2015 Council Meeting Minutes
- 3. October 20, 2015 Council/Water & Sewer Committee Meeting Minutes

#### G. Introduction of New Ordinances And Resolutions

- **1. RESOLUTION No. 058-15**; a Resolution Authorizing the City Manager to Negotiate Vacation Benefits, Different from that which is stated in the Personnel Code, for the Position of Wastewater Superintendent for the City of Napoleon, Ohio; and Declaring an Emergency. (Suspension Requested)
- **2. Resolution No. 059-15**; a Resolution Authorizing the City Manager to Execute all Documents Necessary to Apply for and Accept a Fiscal Year 2016 Multi-Agency Communications System (MARCS) Grant from the Ohio Department of Commerce; and Declaring an Emergency. (Suspension Requested)

#### H. Second Readings of Ordinances and Resolutions

- 1. **Ordinance No. 053-15**; an Ordinance to Adopt Chapter 194 of the Codified Ordinances of the City of Napoleon Regarding Municipal Income Tax
- 2. **Ordinance No. 055-15**; an Ordinance Amending Chapter 913 of the Codified Ordinances of the City of Napoleon, Ohio regarding City Sidewalk Policy by Adding Section "913.06 Appeals" to Allow for an Appeal Process Related to the Installation of City Sidewalks
- 3. **Resolution No. 056-15**; a Resolution Authorizing the City Finance Director to Upgrade Finance Accounting Software with CMI from Finance Client Server to Finance Authority Software; Authorizing Expenditures of Funds in Excess of \$25,000.000 and Eliminating the Necessity of Competitive Bidding
- 4. **Ordinance No. 057-15**; an Ordinance Amending the Allocation of Funds as found in Sections 193.11 and 193.013 of the Codified Ordinances of the City of Napoleon, Ohio.

#### I. THIRD READINGS OF ORDINANCES AND RESOLUTIONS

- I. **Ordinance No. 051-15**, an Ordinance to Approve Current September 2015 Replacement Pages to the Napoleon Codified Ordinances
- J. GOOD OF THE CITY (Discussion/Action)
  - 1. Acceptance of Donation from Henry County Community Foundation to the Parks & Recreation Department for Kidz Kingdom: \$1,229.00
  - 2. Approval of Recommendation to Charge Dock Storage Fees

#### L. APPROVE PAYMENT OF BILLS AND APPROVE FINANCIAL REPORTS

#### **INFORMATIONAL ITEMS**

- 1. **CANCELLATION** Technology Committee Meeting
- 2. FYI from Greg Heath
  - a. Enclosed are copies of the October 8, 2012 Municipal Properties/ED Committee Meeting Minutes and also August 20, 2012 Council Meeting Minutes; Item: Review of 2012 and 2013 Projects.
  - b. Letter on MVPO meeting.

MI:rd Records Retention - CM-11 - 2 Years

October 2015						
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#### Calendar

Calendar Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
	7:00 PM City COUNCIL Meeting					
8	9	10	11	12	13	14
	6:30 PM ELECTRIC	4:30 PM Board of Zoning			8:00 AM 2016 Budget Review	8:00 AM 2016 Budget Review
	Committee Board of Public Affairs (BOPA) Mtg. 7:00 PM WATER & SEWER Committee Mtg. 7:30 PM Municipal Properties/ED Committee Meeting	Anneals			Meeting	Meeting
15	16	17	18	19	20	21
	6:00 PM Tree Commission Meeting 6:15 PM Parks & Recreation Committee Meeting 7:00 PM City COUNCIL Meeting					
22	6:30 PM FINANCE & BUDGET Committee Meeting 7:30 PM SAFETY & HUMAN RESOURCES Committee Meeting	24	25 6:30 PM Parks & Rec Board Meeting	26 HOLIDAY - Thanksgiving	27	28
29	30	1	2	3	4	5
23	5th Monday/No Scheduled Mee	1		3	7	3

#### City of Napoleon, Ohio

## **City Council**

LOCATION: City Hall Offices, 255 West Riverview Avenue, Napoleon, Ohio

### **Meeting Agenda**

Monday, November 2, 2015 at 7:00pm

- **A.** Attendance (Noted by the Clerk)
- B. Prayer & Pledge of Allegiance
- **C. Approval of Minutes:** (In the absence of any objections or corrections, the minutes shall stand approved.)

  October 15 Special Meeting, October 19 Regular Meeting, October 20 Special Meeting
- **D.** Citizen Communication
- E. Reports from Council Committees
  - 1. **Technology & Communication Committee** did not meet tonight due to lack of agenda items.
  - 2. Finance & Budget Committee (Majority Report) met on Monday, October 26 and:
    - a. Discussed 2016 Budget Review
    - **b.** Tabled Discussion regarding City Purchasing Limit to match the State Limit
  - 3. Safety & Human Resources Committee (Majority Report) met on Monday, October 26 and recommended:
    - **a.** Keeping the language in the Personnel Code regarding Vacation Time as is
- F. Reports from Other Committees, Commissions and Boards (Informational Only-Not Read)
  - **1. Civil Service Commission** met on Tuesday, October 27 with the following agenda items:
    - a. Approval of eligible applicant list for the Police Lieutenant Promotional Exam
  - 2. Parks & Recreation Board met on Wednesday, October 28 with the following agenda items:
    - **a.** Discussion and/or Action: Loose Field (Tabled)
    - **b.** Discussion and/or Action: Proposed Dock Storage Fees (Tabled)
    - c. Discussion and/or Action: Budget Review

#### G. Introduction of New Ordinances and Resolutions

- 1. **Resolution No. 058-15**, a Resolution authorizing the City Manager to negotiate vacation benefits, different from that which is stated in the Personnel Code, for the position of Wastewater Superintendent for the City of Napoleon, Ohio; and declaring an Emergency (Suspension Requested)
- **2. Resolution No. 059-15,** a Resolution authorizing the City Manager to execute all documents necessary to apply for and accept a Fiscal Year 2016 Multi-Agency Communications System (MARCS) Grant from the Ohio Department of Commerce; and declaring an Emergency (Suspension Requested)

#### H. Second Readings of Ordinances and Resolutions

- Ordinance No. 053-15, an Ordinance to adopt Chapter 194 of the Codified Ordinances of the City of Napoleon regarding Municipal Income Tax
- **2. Ordinance No. 055-15,** an Ordinance amending Chapter 913 of the Codified Ordinances of the City of Napoleon, Ohio regarding City Sidewalk Policy by adding Section "913.06 Appeals" to allow for an appeal process related to the installation of City sidewalks
- **3. Resolution No. 056-15,** a Resolution authorizing the City Finance Director to upgrade finance accounting software with CMI from Finance Client Server to Finance Authority Software; authorizing expenditure of funds in excess of \$25,000 and eliminating the necessity of competitive bidding
- **4. Ordinance No. 057-15,** an Ordinance amending the allocation of funds as found in Sections 193.11 and 194.013 of the Codified Ordinances of the City of Napoleon, Ohio

#### I. Third Readings of Ordinances and Resolutions

- 1. **Ordinance No. 051-15,** an Ordinance to approve current September 2015 replacement pages to the Napoleon Codified Ordinances
- J. Good of the City Any other business as may properly come before Council, including but not limited to:
  - **1. Discussion/Action:** Acceptance of donation from Henry County Community Foundation to the Parks & Recreation Department for Kids Kingdom: \$1,229.00
  - **2. Discussion/Action:** Approval of recommendation to charge dock storage fees
- K. Executive Session: Imminent Litigation, Compensation of Personnel, and Economic Development
- L. Approve Payment of Bills and Approve Financial Reports (In the absence of any objections or corrections, the payment of bills and financial reports shall stand approved.)
- M. Adjournment

#### A. Items Referred or Pending in Committees of Council

#### 1. Technology & Communication Committee (1st Monday)

(Next Regular Meeting: Monday, December 7 @, 6:15 pm)

#### 2. Electric Committee (2<sup>nd</sup> Monday)

(Next Regular Meeting: Monday, November 9 @ 6:30 pm)

- a. Review of Power Supply Cost Adjustment Factor
- **b.** Electric Department Report
- **c.** Rate Levelization Program Review (Tabled)

#### 3. Water, Sewer, Refuse, Recycling & Litter Committee (2nd Monday)

(Next Regular Meeting: Monday, November 9 @ 7:00 pm)

#### 4. Municipal Properties, Buildings, Land Use & Economic Development Committee (2nd Monday)

(Next Regular Meeting: Monday, November 9 @, 7:30 pm)

- a. Updated Info from Staff on Economic Development (as needed)
- **b.** Zoning changes regarding poultry within City limits
- c. Project Specification Review Process

### 5. Parks & Recreation Committee (3rd Monday)

(Next Regular Meeting: Monday, November 16 @, 6:15 pm)

#### 6. Finance & Budget Committee (4th Monday)

(Next Regular Meeting: Monday, November 23 @ 6:30 pm)

**a.** City Purchasing Limit to match the State Limit (Tabled)

#### 7. Safety & Human Resources Committee (4th Monday)

(Next Meeting: Monday, November 23 @ 7:30 pm)

2015 Regular Meetings with Townships scheduled for February and November

**8. Personnel Committee** (As needed)

#### B. Items Referred or Pending In Other City Committees, Commissions & Boards

#### 1. Board of Public Affairs (2nd Monday)

(Next Regular Meeting: Monday, November 9@ 6:30 pm)

- a. Review of Power Supply Cost Adjustment Factor
- **b.** Electric Department Report
- **c.** Rate Levelization Program Review (Tabled)

#### 2. Board of Zoning Appeals (2<sup>nd</sup> Tuesday)

(Next Regular Meeting: Tuesday, November 10 @ 4:30 pm)

#### 3. Planning Commission (2<sup>nd</sup> Tuesday)

(Next Regular Meeting: Tuesday, November 10 @, 5:00 pm)

#### 4. Tree Commission (3rd Monday)

(Next Regular Meeting: Monday, November 16 @, 6:00 pm)

#### 5. Civil Service Commission (4th Tuesday)

(Next Regular Meeting: Tuesday, November 24 @ 4:30 pm)

#### 6. Parks & Recreation Board (Last Wednesday)

(Next Regular Meeting: Wednesday, November 25 @ 6:30 pm)

#### 7. Privacy Committee (2nd Tuesday in May & November)

(Next Regular Meeting: Tuesday, November 10 @ 10:30 am)

#### 8. Records Commission (2nd Tuesday in June & December)

(Next Regular Meeting: Tuesday, December 8 @ 4:00 pm)

#### **9.** Housing Council (1st Monday of the month after the TIRC meeting)

- 10. Health Care Cost Committee (As needed)
- 11. Preservation Commission (As needed)
- 12. Infrastructure/Economic Development Fund Review Committee (As needed)
- 13. Tax Incentive Review Council (As needed)
- 14. Volunteer Firefighters' Dependents Fund Board (As needed)
- 15. Lodge Tax Advisory & Control Board (As needed)
- **16. Board of Building Appeals** (As needed)
- 17. ADA Compliance Board (As needed)
- **18.** NCTV Advisory Board (As needed)

### **Special Meeting Minutes**

### Thursday, October 15, 2015 at 7:30am

#### **PRESENT**

Council

Travis Sheaffer – President, Jason Maassel – President Pro Tem, Jeff Comadoll, John Helberg, Jeffrey Marihugh, Patrick McColley, Chris Ridley

**City Staff** 

Monica S. Irelan, City Manager

Gregory J. Heath, Finance Director/Clerk of Council

Lisa L. Nagel, Law Director

Scott Hoover, Water Treatment Plant Superintendent

Recorder Others Tammy Fein

**Absent** 

Call To Order

Extend To Florida A 30 Day Extension On The Water Treatment Plant Deadline, And Give City Manager Irelan The Authority To Allow An Extension To Any Satellite Customer That Begins Negotiations With The City Before The End Of Business On Thursday, October 15 President Sheaffer called the meeting to order at 7:30am.

Irelan reported that negotiations have begun with Florida regarding remaining a water satellite customer with the City, adding that Florida is requesting an extension to the water treatment plant decision deadline while negotiations are in progress. Ridley stated that he is not in favor of an indefinite extension. Heath reported that the First Read of Legislation regarding rolling the current bond must occur in December to fulfill the three (3) read thirty (30) day rule; Irelan added that the project will go out to bid in July. Heath believes that the answer from Florida would be needed when it is time to finalize the official statement which must include full disclosure. Helberg asked if thirty (30) days is enough time for Heath to have the appropriate notice; Heath believes that when the note is rolled in March, the full \$14 million will be included. Irelan reported that she sat in on a Henry County Water Sewer District (HCWSD) meeting last Wednesday which included a straw poll regarding which satellite customers would be entering negotiations with the City; Liberty Center replied no, Florida replied yes, and Malinta replied that it would depend on the decision of their Council.

Irelan stated that she has been approached by all entities individually along with the Henry County Water Sewer District (HCWSD) regarding negotiations; meetings will take place both individually and as a group next week. Irelan does not believe that the thirty (30) day extension is too long; Heath stated he is meeting with financial advisor regarding the note tomorrow morning. Irelan believes she will get an answer within the thirty (30) day timeframe, adding that Florida has a proposal completed and is taking this before their Council. Irelan believes all satellites are interested in negotiations. Helberg commended Florida for being a team player through the entire process. Marihugh asked if Malinta's Council directed them to negotiate; Irelan stated that Malinta reported that they

are willing to negotiate. Helberg stated that he would like to consider adding Hamler as a satellite water customer; Irelan stated that Hamler is not interested at all. Sheaffer added that there are currently indirect talks with Whitehouse as well. Irelan added that there is cost to adding Whitehouse on a satellite customer, but believes that to be workable; the net difference would still be an increase in revenue leading to a decrease in rates. Behm reminded Council that ownership is a negotiating issue; Irelan stated that she has made this clear as well as that there would be financial liability regarding the revenue bonds. McColley asked if a separate Water Sewer District should be created if this is the case; Irelan stated that this would have to be created with a percentage of ownership to each entity based on proportion. Irelan stated this issue is being discussed in many entities that own water plants. Irelan reminded Council that the negotiations must be accomplished in thirty (30) days, adding that the entities must buy out the revenue bonds associated with the Water Treatment Plant. Marihugh asked if Irelan knew what Wauseon thinks of this, Irelan stated that the original offer from Bisher was for the City to continue to own the raw water intake; Marihugh believes that pumping costs may be increased; Irelan replied that this will be negotiated at the table.

Motion To Approve WSRRL
Committee
Recommendation
To Extend To Florida A 30
Day Extension On The Water
Treatment Plant Deadline,
And Give City Manager
Irelan The Authority To
Allow An Extension To Any
Satellite Customer That
Begins Negotiations With
The City Before The End Of
Business On Thursday,
October 15

Motion: McColley Second: Ridley
To approve the WSRRL Committee recommendation to extend to
Florida a thirty (30) day extension on the Water Treatment Plant
deadline, and give City Manager Irelan the authority to allow an
extension to any satellite customer that begins negotiations with the City
before the end of business on Thursday, October 15

Passed Yea- 7

Nay- 0

#### **Motion To Adjourn**

Passed Yea- 7 Nay- 0 Roll call vote on above motion:

Yea- McColley, Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh Nay-

Motion: Marihugh Second: McColley

To adjourn the meeting at 7:41am

Roll call vote on above motion:

Yea- McColley, Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh Nay-

**Approved** 

Travis B. Sheaffer, Council President

Ronald A. Behm, Mayor

Gregory J. Heath, Finance Director/Clerk of Council



#### City of Napoleon, Ohio

## **City Council**

### **Meeting Minutes**

Monday, October 19, 2015 at 7:00pm

**PRESENT** 

Council

Mayor City Manager Law Director

Finance Director/ Clerk Of Council

Recorder City Staff

**Others** 

**ABSENT** 

Council Others

Call To Order

**Approval Of Minutes** 

**Citizen Communication** 

Sheaffer Referred This Issue To The Municipal Properties, Buildings, Land Use & Economic Development Committee Travis Sheaffer – President, Jason Maassel – President Pro Tem, Jeff Comadoll, John Helberg, Jeffrey Marihugh, Patrick McColley, Christopher Ridley

Ronald A. Behm Monica S. Irelan Lisa L. Nagel Gregory J. Heath

Tammy Fein

Robert Weitzel, Police Chief

Chad Lulfs, Director of Public Works Chris Peddicord, Assistant Finance Director Dan Wachtman, MIS Administrator

News Media; NCTV; Mike DeWit; Megan Flanagan

President Sheaffer called the meeting to order at 7:00pm with the Lord's Prayer followed by the Pledge of Allegiance.

Minutes of the October 5 Council meeting stand approved as read with no objections or corrections.

Megan Flanagan, 80 Vincennes Drive, requested changing a current Zoning Ordinance to allow backyard chickens within City limits; Flanagan distributed a packet to Council; see attached. Flanagan believes that urban chickens are a new trend and she would like the new zoning to allow four (4) chickens to farm eggs and to have as pets. Flanagan believes that roosters should not be allowed due to the potential for noise. Marihugh agreed that many people have chickens in town, adding that he knows a resident on West Washington Street that currently keeps chickens under his back porch. McColley believes that this request goes in hand with the farm to table trend, thanking Flanagan. Helberg asked if Flanagan had any information regarding the current Avian Flu that did not allow the poultry division to be shown at the local fairs; Flanagan does not believe that the Avian Flu affected backyard chickens. Helberg asked how the feces would be cleaned from the property; Flanagan stated that this must be shoveled but can also be used in compost. Ridley added that he believes in the farm to table movement.

Sheaffer referred this issue to Municipal Properties, Buildings, Land Use & Economic Development Committee at the request of Irelan.

The Parks & Recreation Committee did not meet on October 19 due to lack of

**Reports From** 

#### **Committees**

agenda items.

Chairman Sheaffer reported that the Electric Committee met on October 12 and recommended:

- 1. Approval of Power Supply Cost Adjustment Factor
- 2. Tabling the Rate Levelization Program Review

Chairman Ridley reported that the Water, Sewer, Refuse, Recycling and Litter Committee met on October 12 and recommended:

- 1. Tabling the upgrades to the MIEX Building
- 2. Calling a Special Council meeting on Thursday, October 15 at 7:30am with the following agenda item:
- a. To extend to Florida a thirty (30) day extension on the Water Treatment Plant deadline, and give City Manager Irelan the authority to allow an extension to any satellite customer that begins negotiations with the City before the end of business on Thursday, October 15.

Chairman Helberg reported that the Municipal Properties, Buildings, Land Use and Economic Development Committee met on October 12 and recommended:

1. Approval of the City Sidewalk Policy Legislation as presented

#### Introduction Of Ordinance No. 052-15

President Sheaffer read by title Ordinance No. 052-15, an Ordinance supplementing the Annual Appropriation Measure (Supplement No. 4) for the year 2015; and declaring an Emergency (Suspension Requested)

#### Motion To Approve First Read

Motion: Maassel Second: Ridley To approve First Read of Ordinance No. 052-15

Discussion

Heath reported that the proposed Third Quarter Budget Adjustments unanimously approved by the Finance & Budget Committee include:

Hospitalization Costs increase totaling \$7,010;

Fire & Safety Services overtime totaling \$6,500;

Cemetery Operations overtime totaling \$3,000;

Direct works in the Storm Drainage Cost Center totaling \$10,900;

Heath stated that salaries are directly charged to off funds when working in a different department.

Fire & Safety Services EMS run charges totaling \$4,000;

Additional supplies and materials due to golf course flooding totaling \$10,000; Additional Pool Operating natural gas, utilities, water and sewer totaling \$6,100;

Heath reminded the Committee that internal departments are now charged the same rate as customers for the utilities.

Sewer Treatment Plants operations for retirement payout totaling \$31,700; and,

Sanitation seasonal pickup truck rental totaling \$4,000; the total proposed Third Quarter Budget Adjustments total \$83,210.

#### Motion To Suspend The Rules

Motion: Helberg Second: Ridley To suspend the Rules requiring three Readings

Passed Yea- 7 Nay- 0

Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley

Nay-

Roll call vote on above motion:

Passed Yea- 7 Nav- 0

Introduction Of Ordinance No. 053-15

Motion To Approve First Read

**Discussion** 

Roll call vote to pass Ordinance No. 052-15 under Suspension of the Rules Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley Nay-

President Sheaffer read by title Ordinance No. 053-15, an Ordinance to adopt Chapter 194 of the Codified Ordinances of the City of Napoleon regarding Municipal Income Tax

Motion: Marihugh Second: Maassel To approve First Read of Ordinance No. 053-15

Heath reported that House Bill 5 has mandated unfunded changes to the current Municipal Income Tax Law requiring the proposed Ordinance to adopt Chapter 194 of the Codified Ordinances of the City of Napoleon regarding Municipal Income Tax; this Ordinance is based on Strawman Legislation written by the Ohio Municipal League. Heath explained that timing is a key element in the adoption of this Ordinance; the Ordinance must be adopted no later than January 1, 2016, meaning that the three (3) reads, thirty (30) day rule would require that Council approve the First Read tonight. Heath reported that some items in the Ordinance may be adopted now but will not be implemented until April 2017.

Heath reported that the City's allowed credit to those working outside the City was listed out at one hundred percent (100%) in the Ordinance; adding that this credit is one of the aspects that Council has control over. Heath reported that this Ordinance adds Section 194 to the Code and the credit language currently remains the same. Irelan asked Council to discuss the credit language issue. Sheaffer explained the credit language to Marihugh; McColley believes this to be a separate issue. Sheaffer asked Council members to decide if they want to keep the City credit at one hundred percent (100%); Ridley stated that he is not in favor of changing the language without comparisons to other cities. Sheaffer believes that the City is a bedroom community and changing this language may cause residents to move. Helberg believes this to be a cost savings and should be considered over cutting services; McColley believes that services should be prioritized. Sheaffer believes the Priority Based Budgeting (PBB) process will help to research if this language should be changed; Marihugh stated that PBB will not begin until 2017 and cuts will be made that are unpopular in the upcoming budget. Heath stated that the State has taken away most control of General Fund revenue and this is one that Council actually controls, adding that the effect on revenues would not be felt until a year and a half after its implemented, and timing must be kept in mind. Marihugh stated that he is in favor of leaving the language as is; Sheaffer believes Council as a body needs to pressure the State Representatives to change the language at the State level. Maassel believes that obtaining more residents is a priority at this point. McColley stated that Council has control over expenses.

Roll call vote to approve First Read of Ordinance No. 053-15 Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley Nay-

President Sheaffer read by title Resolution No. 054-15, a Resolution authorizing the City Manager to enter into a Contract with Weltman, Weinberg & Reis Co., L.P.A. for collection of delinquent utility, refuse, income tax, EMS, and

Passed Yea- 7 Nay- 0

Introduction Of Resolution No. 054-15

other miscellaneous accounts owed to the City of Napoleon

**Motion To Approve** First Read

Motion: McColley Second: Comadoll

To approve First Read of Resolution No. 054-15

**Discussion** 

Heath distributed the Collection Attorney Agreement regarding this Resolution; see attached. Heath reported that this firm has a lower collection rate with a lower fee for collection; Heath recommends them, adding that there were logistical issues with the previous firm leading to this Resolution.

**Motion To Amend Resolution Title To Match The Body** 

Motion: McCollev Second: Comadoll To amend the Resolution Title to match the Body, changing from City Manager to Finance Director

**Passed** Yea-7 Nav-0

Roll call vote on above motion: Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley Nay-

**Motion To Suspend The** Rules

Motion: Helberg Second: Comadoll To suspend the Rules requiring three Readings

**Passed** Yea-7 Nay-0

Roll call vote on above motion: Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley

**Passed** Yea-7 Nay-0

Roll call vote to pass Resolution No. 054-15 under Suspension of the Rules Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley Nay-

**Introduction Of** Ordinance No. 055-15 President Sheaffer read by title Ordinance No. 055-15, an Ordinance amending Chapter 913 of the Codified Ordinances of the City of Napoleon, Ohio regarding City Sidewalk Policy by adding Section "913.06 Appeals" to allow for an appeal process related to the installation of City Sidewalks

**Motion To Approve** First Read

Motion: McColley Second: Comadoll To approve First Read of Ordinance No. 055-15

Sheaffer - "We've got a Motion and a Second. Discussion."

Discussion

Irelan – "We're trying to figure out who's going to do this. This was something that went out to Municipal Properties Committee, they discussed it, it was

passed two to one under Committee and brought back to Council for discussion and approval. What it does is it sets in a place a little leniency for the Engineer to set the boundaries where the sidewalk ends, it also puts in place the appeals process which sets dates and times of when the appeal needs to start, it goes to the Engineer first if they don't like it it goes to the City Manager second if they don't like it then there is an appeal to the City using the same rate structure as every other appeal that comes before the City Council. And that's pretty much the summary on that."

Marihugh – "Yeah but the, the appeal to City Council is only whether you've been arbitrary and capricious."

Irelan - "That is correct."

Helberg – "Does it address the rule itself being arbitrary and capricious?"

Sheaffer, Marihugh, Irelan - "No."

Sheaffer - "In fact . . ."

# Ordinance No. 055-15 (Continued)

Marihugh (at the same time as Sheaffer) – "That's why I declined to vote yes on it."

Sheaffer – "And in my, if I understand right from a legal opinion, that's all that we can do."

McColley – "We're the City Council, we can determine what's arbitrary and capricious at any time."

Sheaffer – "But then you open yourself up to lawsuit. Isn't that right Lisa?" Nagel – "Well the reason why we wanted to go that way is because if it's arbitrary and capricious, that standard, I mean the City Engineer and the City Manager are the ones that are dealing with the appeals process and making the decision. So that's, that's really the standard and I believe that's the way it's been with the utilities as well."

Helberg – "One of the things we talked about in the meeting was is that if you don't allow another step when like the rule doesn't apply anymore, you're putting a lot of pressure on Lisa to write Legislation that predicts what the future changes are going to be if you don't ever allow Council to look back and say 'yeah they followed the rule, everything was exactly, they did exactly what they should do, they followed every rule' but you don't leave Council any chance to say okay. . ."

Marihugh (at the same time as Helberg) – "To overrule."

Helberg – "Yeah, you know, to say okay it was, when that was written everything was fine, everything was perfect, and they did exactly what is written in the law, but I don't know how Lisa predicts what's going to change, sorry, Counselor Nagel is going to predict, how is she going to predict the future? And we don't give ourselves any wiggle room. I have it in this Ordinance and I have it in other Ordinances where it makes me nervous that we don't allow for that. No offense to Greg, no offense to Monica, no offense to Lisa."

McColley - "And this issue came up a few years ago."

Helberg – "Oh with the sewer thing."

McColley – "With the sewer thing. And that was, and technically we did the same thing. We basically said 'well the policy is arbitrary' and we, we overruled the City Manager."

Helberg – "Right. But the way it came down is we ruled against the City Manager that he didn't follow the rules, but he did but it should have been appealed to Council at that point. There should have been another step in there."

Nagel – "Well, that allows for this final appeal. I mean that's, that's why the legal, that's why we wanted to do the policy . . ."

Marihugh (at the same time as Nagel) – "Yeah, but this, this . . ."

Helberg (at the same time as Nagel) – "The appeal though stops . . ."

Nagel – "We have to have a policy to follow. And that's . . . "

McColley (at the same time as Nagel) – "And this, this is my argument, was, you know, originally I presented something that was very specific. I presented something that could be followed easily and could accommodate for this and if you look at, you know, we're going to do Park Street and there's a cul de sac on that street, and there's nobody that lives on the cul de sac pretty much. You're going to force one property owner to put, according to the policy, a sidewalk completely around the cul de sac."

Marihugh - "That nobody lives on."

McColley - "That nobody lives on."

Irelan – "Two property owners."

Helberg (at the same time as McColley) – "It just happens to be the same . . ." McColley (at the same time as Helberg) – " . . .with that enforcing it so it would be two property owners but one pretty much has the . . ."

Helberg (at the same time as McColley) – "But, but the purpose, the reason they own around there, there's, they have intent for that and there's a cost in that intent. They're trying to limit access to the cul de sac and that's why they're keeping that separation so that's their problem."

Marihugh (at the same time as Helberg) – "Well the sewers running through there John."

Helberg - "But that, that's an easement."

McColley (at the same time as Helberg) — "Yeah but there, there's again . . . ." Helberg — "But they retained ownership of the property to control who uses the cul de sac therefore okay, we're beyond. . ."

McColley (at the same time as Helberg) – "I know about some of that but, but my point is, you know, I, I came up with a specific policy and then we were micromanaging, and we go to do an appeal and now we're saying it's arbitrary and capricious. I have no problem with this because honestly in the end, it's what Council says. You can sit there and say 'I'm going to make a Motion that the City Manager acted arbitrary and capriciously because she followed a policy that is arbitrary and capricious."

Irelan – "If you guys honestly feel that way, if four of you honestly feel that way, then get rid of the sidewalk policy. There's no point in having a policy if you're not going to follow it. Now public policy does not cover absolutely every single situation and sometimes it sucks and sometimes it hurts peoples' feelings and sometimes it makes people mad, but you don't write specific policy. You write a general policy that allows us to do our job and sometimes we upset people. That's public policy. If you write good policy it covers 99% of things and you piss one person off. It's just, that is public policy, if you don't like it then stop making policy, get rid of it."

Behm – "That's assuming that you don't like the sidewalk policy altogether. And all I think that Council is saying is that in certain situations you have to use some common sense and common sense will tell you that you don't force somebody to put sidewalk that will never be used. That's good policy, that's common sense and I don't think that this as it's written allows that unless, you know, the Engineer wants to go against what is completely written in that policy. And there's no leeway written in the policy."

McColley – "I mean, again, I think, I'm not, I agree with you but I, I can tell you if it comes up to here I'll be the first person to make a Motion that the City Manager operated arbitrary and capriciously based on a policy that was arbitrary and capricious. It, there's nowhere in there that doesn't say that I can't do that."

Helberg - "You're right."

Sheaffer – "But then . . ."

McColley (at the same time as Sheaffer) – "And, and then it's up to three other people to agree with me and if they do they do and if they don't they don't. I mean that's the end of that."

Sheaffer – "At that point then, then you've got potentially 8,000 plus citizens that could sue the City for not following their own policy."

McColley – "We followed our policy. They were operating arbitrary and capricious just like it said."

Sheaffer – "No. Because you're saying because the policy is arbitrary well then you change the policy. So then you say . . ."

McColley (at the same time as Sheaffer) – "I tried to change the policy. Not enough people agreed with me."

Sheaffer – "...Okay we're going to get rid of the thing. Any time that we take and override what we have in the Codified Ordinances is dangerous because, you talk about risk management, you're . . ."

McColley (at the same time as Sheaffer) — "But Travis, we already did that a few years ago and I, I can tell you and John was one of them too, completely agreed it was, the City Manager didn't operate arbitrary and capricious against the policy but it was ridiculous to have them put in a sewer line to a house, to a lot, that already had a sewer line in it. I mean, it was the same situation, it was the exact same situation."

Helberg (at the same time as McColley) – "The City already approved on, based on policy at the time."

McColley - Yeah. Exactly. So, I mean . . . "

Helberg (at the same time as McColley) – "But how it came down, I thought we should of ruled that Bisher did exactly what he was supposed to do, however we had an issue with the policy. Yeah."

Sheaffer - "My, my thing, I guess . . ."

Helberg (at the same time as Sheaffer) – "I mean in the end . . ."

Sheaffer – "My thought is, is that when we go to review the projects and we approve the specifications and that, that's where we take and we say 'you know what, we don't, you know, we don't think that we, you know, like this or whatever', you know, so then, you know, we can take and approve the specifications based on that."

McColley – "In the end, in the end we have seven people on Council and all you need is three people to agree with the first person who makes the Motion. That's what it comes down to."

Sheaffer – "I will never be in favor of overriding a piece of our Legislation. I mean, that's just like . . ."

McColley (at the same time as Sheaffer) – "Yeah but we did it already three years ago."

Sheaffer – "I didn't vote for it. That's just like saying that the speed limit out here is thirty miles an hour and Chief says you know what, thirty miles an hour is stupid, it should be seventy so he decides to not write anybody going between thirty and seventy. Why have a policy if you're not going to follow it?"

Marihugh – "Well..."

Sheaffer - "I mean . . ."

McColley - "Well first off, we create those speed limits."

Marihugh – "No we don't. Not, well, now we do but before that would have been dictated by . . ."

McColley - "by the State."

Marihugh – "By the State."

McColley – "But we, we create those speed limits. This policy is somewhat created by us, somewhat created by City, by the, the Administrative Department, this quasi thing and that's why. In the end, Council has the final say on stuff like this."

Irelan – "It's never . . ."

Heath – "If what you just said is correct, you, however it's presented, but you do adopt it as a body. Maybe you specifically didn't adopt that policy, maybe you weren't on, I don't know, but it's part of the Codifieds as some point, this body did adopt it so I disagree with that."

McColley - "Well I apologize but . . ."

Helberg (at the same time as McColley) – "It's two separate issues I guess. I'd like to support this but as a separate issue later, how can we keep everybody happy on that, what we're talking about . . ."

Irelan - "You can't."

Helberg – "The side issue. Okay, if we can't, we can't but . . ."

Irelan – "You can't. You cannot write a public policy that covers 100% of the situation and makes 100% of the people happy."

Helberg - "No."

Irelan - "You will upset somebody."

Helberg - "Right."

Irelan - "It's, that's just the fact of the situation."

Helberg - "That's okay."

McColley – "In the end, it takes four Council people to, to, to do an appeal. Whether everybody here likes it or not, or whether it makes everybody feel warm and fuzzy inside in the end or not doesn't really matter, four Council people."

Sheaffer – "Just remember that the first time we get sued. Jeff . . . "

McColley – "That's always a threat though Travis. I mean you hear, we've heard that, we hear that all the time 'oh you're going to get sued'."

Marihugh - "Not so much since David's gone, but."

McColley - "Yeah, right. You used to hear it a lot more but."

Sheaffer – "Jeff, you wanted to talk?"

Marihugh — "Yeah. The point I wanted to make was after it, you know, I, when it came out of Committee I didn't approve of it once I heard that and, and the reason it got sent back to Committee I believe, was not the intent that it, this piece of Legislation came back with. And, you know, there's no way in the world that I'm ever going to support this. I think it's as worthless as the paper it's written on. It adds, it adds the appeals process but to me the appeals process is nothing but a joke."

Sheaffer – "It does give the Engineer more latitude than, as far as making decisions, I mean, you know, Chad could be out there saying 'you know what, you know, I think it's stupid to put a sidewalk here', and then you know . . ." McColley (at the same time as Sheaffer) – "Well then . . ."

Sheaffer – "Then we'll get it taken care of."

McColley – "The good thing with that too is, like right now, I mean technically, and Monica and I have spoke about this before, she doesn't have the authority to tell, to stop it short of the creek. She really doesn't. I mean, it, she, to the property line that's what it says. Now don't get me wrong, she'll probably take that risk because who's going to, who's going to be mad about that 'oh she stopped it short of the creek', but technically she does not have that authority and that's, that's exactly what this piece of Legislation does."

Helberg – "Why can't limit it to the length of the contract, to the length of the project instead of across the property?"

Irelan – "That opens up a whole new can of situations and problems." Helberg – "Why?"

Irelan – "If we did a project on one street and ended here, so we have sidewalks all the way up to here, we come back through and do a project to here, and then the sidewalk's here, you have a like block gap of sidewalks . . ."

Helberg (at the same time as Irelan) – "No we always have. . ."

Irelan – "How do we force them to put sidewalks in until we do a project to fill that center?"

Helberg – "Well we've got the right to . . ."

Irelan – "Unless you guys want to do a . . ."

Helberg - "Right."

Irelan – "But who here would do that? Who here would vote yes we will force them to put a block of sidewalk in?"

Helberg (at the same time as Irelan) – "I would."

McColley – "I would. I would too. I mean, you can always find it necessary. I tell you a perfect place where there should be sidewalks, and I'm sure I'm going to get a phone call from this if it's in the paper, but Jahns Road. Jahns Road should have a sidewalk on it. There's no sidewalk on Jahns Road. And you

have a new school going out there and . . . "

Irelan – "You as a Council will have a right to set a list of sidewalks that need to be put in. And that's part of the original policy."

McColley (at the same time as Irelan) – "And we can determine where it is and everything else. That's still in our policy."

Helberg – "Well we've done that, we've done that through town in the past." Irelan – "Yes. We just finished the last one on the list."

Marihugh – "Actually there was a list that . . ."

Helberg (at the same time as Marihugh) – "The only thing that's not done is . .

Marihugh – "That we don't adhere to."

Helberg - "Yeah we do."

Ridley – "So, so one of the questions I have in, you know, we've mentioned other appeals processes before, and I think one of those is, is, I don't know, I've had like two separate appeals come to Water/Sewer Subcommittee, and so I'm just wondering why we're having these particular appeals come to the full body of Council when, at least in the other one that I'm familiar with, it goes to the Subcommittee that over, so, so Water/Sewer is, reviews, is the appeal body for whatever it is, water/sewer issues."

McColley – "I mean, I could tell you the basic reason is that Monica presented it that way and I made a Motion to approve it that way."

Ridley - "Is that it?"

McColley – "That's how, that's how it really came to be about."

Helberg – "Do you really want it to go to Municipal Properties?"

Ridley – "I, well I guess I'm just thinking is there a reason, not, I'm not, you know, I'm operating under the rules as they've been."

Helberg (at the same time as Ridley) – "I don't disagree with you. That's a good point."

Ridley - "And so, you know, I don't know, was there a reason why when those rules were created it went to a Subcommittee instead of the full body?"

McColley – "I think, in the end, however you do it, if you want to do it that way, I still think the final appeal should be the full board of Council. You could put that as an intermediate appeal."

Ridley – "Yeah. I don't know that we need an intermediate appeal."

McColley – "I'm fine with how it's presented."

Sheaffer - "Alright, Mike."

DeWit - "Yeah. Basically the Charter sets up. . ."

Sheaffer (as the same time as DeWit) – "Mike DeWit."

DeWit – "The appeal as the final authority. The person that voted for you gets to talk to you guys."

Ridley - "Right."

DeWit – "And then for them to meet, the only way you get to make a decision, you've to say that Chad is arbitrary and capricious, that makes it sound like he's a bad guy. Which he is, but, it might be that you just disagree for one particular purpose and saying that the only reason you're going to take an action is whether it's arbitrary and capricious, I don't think that's a great idea. But basically the people that voted for Council have the right to be able to talk to Council about almost anything that they want to. And, and, I mean, you don't need, and to have a thing that the only way you get to make a Motion is if it's arbitrary and capricious is, is setting things in front of your authority as Council. Your authority as Council, you have the right to be arbitrary and capricious." McColley - "You know, he's exactly right."

Marihugh – "We are, that's exactly right."

DeWit – "That came in and said 'yes Martha, we want these seven people and

the Mayor, but the Mayor doesn't get to vote, only in ties and shit so what's that. I mean for sure, whenever you set steps in front of there, I'm all in favor of, of making a way for, you know, that Chad has a way to be reasonable which he does, but you still can't get to the point where, where Council abdicates it's responsibility to Staff, you know."

Marihugh - "To Staff."

DeWit - "I mean it just doesn't make sense."

McColley - "I agree."

Sheaffer – "The only fear I have of that is, is that, this body over the years that I've been here associated with it, somebody comes in and states their case, this body right, wrong or indifferent always take in and . . ."

DeWit (at the same time as Sheaffer) – "They cave a lot because it's . . ." Helberg (at the same time as DeWit) – "No they don't, they followed Staff's recommendation."

McColley – "You know the other part is, is that you could change it to say reasonable, you know, instead of arbitrary and capricious, is it reasonable. I know, I know I'm going to get a bunch of head shaking from City Staff, I know that, but you could, you, we're Council okay, we set, we are the ones that pass things. People talk to us okay, they elect us. I mean, yeah we can put whatever we want in there and, and it might not be under the recommendation of City Staff but I mean we're the ones that report to the people, I mean they elect us to run this place, so."

Marihugh – "Yeah, I think this whole discussion shows that, I might go out on a limb here, is that common sense isn't nearly as common as I thought it was." Sheaffer – "Now, I don't know if I'd go that far, but, well . . ."

McColley (at the same time as Sheaffer) – "So I mean if you want to make a change . . ."

Marihugh (at the same time as McColley) – "I mean, I'm open for discussion." Behm – "For the property that we've started this discussion for, I mean, I think, the point was made that we have the sidewalk go up to her driveway and then in the future if the sidewalk needs to be expanded out past the creek into the next property if there's expansion, then you have her, she has to have the understanding or a written agreement that shows that she has to put in that sidewalk at that point and time on the other side. Otherwise you're forcing her to put a sidewalk on the other side of the driveway which literally goes to the ditch, and I, I just, anybody goes out there in that area you know there's hardly anybody that walks or uses the sidewalks that far out and I think you'll find that case in most of your areas on the outskirts of town. Most of the sidewalks are going to be used from point A to point B in a busier section trying to get to downtown or schools or wherever they want to walk to, trying to walk out of town on a sidewalk just isn't something that's a high traffic area."

Sheaffer – "Well I just disagree that it's a sidewalk to nowhere because you turn around and it's a sidewalk to everywhere."

McColley - "You've got to go nowhere to get to everywhere though."

Behm – "I mean, you've got to go nowhere first, right?"

Marihugh – "I guess it all depends on which way, which way you go Travis."

McColley - "You've got to go to nowhere first."

Sheaffer – "Not if you live out there. Alright so . . . "

Helberg (at the same time as Sheaffer) – "That just proves my point about the limit of the project, and you know, I disagree with what Monica is saying about that gap, we will make them fill that gap."

McColley – "I mean, I think Council has a couple options, if you want to rewrite you rewrite it, if you want something more specific then you write, do something more specific, if you want to change the wording here from arbitrary

and capricious you can change it from arbitrary and capricious. I can tell you right now this issue might make it up here and if it does I'll be making that Motion, I mean it's nothing against Monica I think the policy is still arbitrary and capricious so, and her decision is based on an arbitrary and capricious policy. Now some people say 'you shouldn't do it that way', it doesn't matter, I can do whatever I want and I can make whatever Motion I want, I'm a Council person so."

Sheaffer – "Is that, is there any desire, does anybody have any desire to make any amendments . . . "

Marihugh (at the same time as Sheaffer) – "Travis, I, I do have one quick question."

Sheaffer - "Sure."

Marihugh – "This is not going to affect anything to do with the current rules in our subdivision rules, correct? On development. So it's like . . . "

Sheaffer - "No. No. No."

Marihugh – "Okay well, I was approached by a, a builder and he wanted that clarified."

Sheaffer – "No. My understanding is, is that developers when they want to bring that in has to be . . ."

Marihugh (at the same time as Sheaffer) – "Yeah like if he, he developed let's say Gerken Hoeffel for instance, they only put the sidewalks in as the houses are being developed. That is going to stay exactly the same. Say yes."

Sheaffer – "Yes. I mean there's nothing in here to change that." Marihugh – "Okay."

Helberg – "Can I, can I make a Motion so we can start into trying to get this pieced together?"

Marihugh – "I think Pat already did, didn't he?"

Sheaffer - "Well."

Helberg - "No, an amendment." A Motion for an amendment."

Sheaffer - "Yeah."

Helberg - "I, on your Section 1, Item B, 'said new sidewalk installation must encompass the entire length of the project' instead of saying 'entire length of the parcel of property', unless otherwise determined or decided by the City Engineer. That way if your project only, if your lot's 100 feet wide and your project only covers the first 10 feet of the property, they aren't putting the sidewalk another 90 feet across their property when you're going to come back and change that, those characteristics, those features, later and you don't know that that last 90 feet is put in the right place. And then it would be the City's expense to replace that 90 feet because they already put it in, in the wrong place and we directed them to do so."

McColley – "Okay wait, wait, go, go back to the City, it's the City's expense for what?"

Helberg – "If we, the way it's written, if we force them, okay, the project in question only goes across the first 10 feet of their property."

McColley - "Okay."

Helberg – "The way it's written right now, they have to go all the way across the 100 feet. Okay?"

McColley - "Right."

Helberg - "Now, the next project comes along and, and changes that last 90 feet changes the features, now the sidewalk's in the wrong spot and we forced them to do it so now we've got to pay for it, they've already done it." Sheaffer – "They paid for it once."

Helberg – "They paid for it once. So now, so that's why I'm saying go the length of the project so only that first 10 feet would come in. It may be a

Ordinance No. 055-15

sidewalk to nowhere, I'm sorry."

Sheaffer – "But it would also, but it would also take and give the Engineer the leeway to be able to . . . "

Helberg – "And also in this case it's only going to take the driveway, or the sidewalk 20 feet past her driveway, it's not going to take it to the center of the ditch in mid-air."

Irelan – "What if the project ended and it was two squares onto her property and it didn't end anywhere, it didn't go to her driveway, it didn't go to another sidewalk?"

Helberg – "I'm sorry. We can, we can make her do that. Connect it at least to the driveway. But then, when we do that next piece of the project, if it's wrong, it's our expense for that 20 feet."

Sheaffer – "If we had a cul de sac in the front of her yard or whatever . . ." Irelan – "How about on every single project that we bring specs and documentation to Council, that you guys actually look at where the sidewalks are and if you don't like them, we fix it then?"

Helberg – "Bring it to Municipal Properties and we'll be happy to do that Monica, I'm glad you said that. I've been asking for you to bring them to Municipal Properties, so that we can address it and review it but, but you guys keep jumping right by it."

Irelan – "I don't do the Agenda. If you guys want it on your Agenda, put it on your Agenda."

Helberg - "It's been requested."

Marihugh – "Multiple times."

Sheaffer – "Okay, well, I haven't heard it so . . ."

Marihugh (at the same time as Sheaffer) – "I'm going to comment on one of the other items..."

McColley (at the same time as Marihugh) – "Really quick, actually at that point John, you actually could just have it be reasonable, whatever Council deems reasonable. Then you don't have a sidewalk policy."

Helberg - "Well, that's kind of defining reasonable already."

Irelan – "We need to have some policy to at least do the specifications and documents to even bring it to you. If we don't have any policy, we're going to bring absolutely nothing to you. We have to have some kind of guidelines to do our job."

Helberg – "We did. We said, and we agreed on it, we said at about the 25% of the development of the plans to bring them, and about 2/3 bring them, and at 90% bring them, quick discussions every time. And then that way the whole project is all, everybody's all on the same wavelength rather than getting it at 100% complete and then saying 'oh jeez we can't change anything now, it's too late."

Sheaffer – "Well, if I remember correctly, I think that was under, that was originally brought up under the previous City Manager. So that may have not gotten translated all the way down."

Helberg – "It didn't."

Sheaffer – "But, what we can do from now on is when we have those we can make sure that they get assigned to the Committee for that. I like your amendment to do that but then also adding it, that, you know, before we bring specs to Council that they come to the Committee."

Irelan – "Can you put that in a Resolution so that I have a reason to force projects to be done at a certain time to make sure I can take it to Committee first? Just, so I know that the entire board is on board with this so that if projects are falling behind because we're doing an extra step I can say this is why we're falling behind and we'll do our best to catch up. Can I please get a

Resolution for that?"

Marihugh - "So moved."

McColley - "Well, we already have a . . ."

Marihugh – "Oh sorry. We'll take that under the Good of the City."

McColley - "We have open Motions right now."

Marihugh - "Yeah, sorry about that."

Sheaffer – "What, we got the original Motion to, for the Ordinance and then we've got a Second, or an amendment."

Heath - "An amendment but not a Second."

Fein – "Councilman Helberg made the Motion to amend Section 1(B) 'entire length of parcel' changed to 'entire length of project'.

Heath - "Yeah."

Sheaffer – "And then do you want to add about having it sent to Committee?"

Helberg - "Not at this point, that would be something separate."

Irelan – "Does someone want to Second his Motion?"

Sheaffer – "Oh you mean in the specifications."

Helberg – "That's kind of outside this."

Heath - "I think she's requesting that that be a separate piece of Legislation."

Sheaffer – "Okay. Okay."

Ridley - "Second."

Sheaffer - "We have a Second on the amendment."

McColley – "Quick discussion on that. I think even if, you know, one issue was 'well what about if it ends before the driveway', remember Council still has the ability to determine where it's necessary so we could still say, you know, in Municipal Properties which goes to Council, you know, we could still say it needs to go to the driveway. If Council determines that's the plans, they found it necessary to go to the driveway. You still always have that ability." Sheaffer – "Well I think that's part of the thing of if, if we send those, those specs go to Committee and the Committee can look at it and then the Committee can say, you know 'we make the recommendation' because the specifications will ultimately be approved by Council so we say the Committee makes the recommendation that, you know, whatever goes to here, you know, and then the full body can look at it before the specifications are approved." McColley – "If that's what they determined are necessary."

Sheaffer – "That's the problem that happened in the past, with this property in question is that, we had already approved the specifications and, so that's why, you know, Staff had preceded forward with this, you know, I under no circumstances fault Staff at all on this because, you know, they were following what we were doing, but, you know, if we take and make this what we want then, then if does come back to an appeal for us we can take and say we approved those specifications with full knowledge and this is why we wanted to do it and then our, you know, likelihood of having to overturn it would be minimized. Any more comments? Did we vote on the amendment yet?" Irelan – "No."

Marihugh - "No."

Sheaffer – "Okay. So, let's do it, Tammy call the roll on the amendment."

Motion: Helberg Second: Ridley
Motion to Amend Section 1(B) 'entire length of parcel' changed to 'entire length
of project'

Fein - "Jeff."

Motion To Amend Section 1(B) Changing Language From "Entire Length Of Parcel" To "Entire Length Of Project" Ordinance No. 055-15

Comadoll – "Yes."
Fein – "Chris."
Ridley – "Yes."
Fein – "Jason."
Maassel – "Yes."
Fein – "Travis."
Sheaffer – "Yes."
Fein – "John."
Helberg – "Yes."
Fein – "Jeffrey."
Marihugh – "No."
Fein – "Patrick."
McColley – "Yes."

Passed Yea- 6 Nay- 1 Roll call vote on above motion:

Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, McColley Nav- Marihugh

Sheaffer – "Okay. So, we have the Ordinance as amended."

Helberg – "Chris, are you steadfast on your point about going to Municipal Properties rather than full body?"

Ridley – "I think that we should either send it to a Subcommittee or we should change the appeals process in Water/Sewer so that comes to the full body, I think we should be consistent."

McColley – "I agree with being consistent but I think in the end these are your constituents coming to you and this is a big issue for them, I think it should be to the full body."

Helberg – "Well I mean, in the, in the end I mean it's still going to, if Municipal Properties agrees with it or disagrees with it, what their recommendation then is going to come to Council."

Ridley - "I think in Water/Sewer we're the final review."

Sheaffer – "And I think the reason it was done that way is because there's an assumption that those that are on Water/Sewer are more up to speed than the rest of us."

McColley - "That is an assumption."

Marihugh - "And you know what that is."

Sheaffer—"Yes. Okay. So the assumption is that the Water/Sewer, the people on a Committee are more versed in those issues than, you know, just the average person, so."

Helberg – "We can't all know 100% about everything, as much as we want to think we can, we can't."

McColley – "In the end, again, I think these are important issues, I think it needs to go to the people that. . . "

Sheaffer - "As it says right now, it goes back to Council."

Helberg – "Alright."

McColley - "That's good. I think that should be talked about."

Sheaffer – "We can take and, we're obviously bringing it up again and we can talk about kicking it to Committee."

Helberg - "Okay."

Sheaffer – "Alright. So we have the Ordinance as amended, any more discussion? Alright. Tammy call the roll on the Ordinance as amended."

Fein – "Jeff." Comadoll – "Yes." Fein – "Chris."
Ridley – "Yes."
Fein – "Jason."
Maassel – "Yes."
Fein – "Travis."
Sheaffer – "Yes."
Fein – "John."
Helberg – "Yes."
Fein – "Jeffrey."
Marihugh – "No."
Fein – "Patrick."
McColley – "Yes."

Sheaffer – "Alright, that has been approved, so we'll get two more cracks at that baby."

Passed Yea- 6 Nay- 1 Roll call vote to approve First Read of Ordinance No. 055-15 Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, McColley Nay- Marihugh

# Introduction Of Resolution No. 056-15

President Sheaffer read by title Resolution No. 056-15, a Resolution authorizing the City Finance Director to upgrade finance accounting software with CMI from Finance Client Server to Finance Authority software; authorizing expenditure of funds in excess of \$25,000 and eliminating the necessity of competitive bidding

# Motion To Approve First Read

Motion: McColley Second: Maassel To approve First Read of Resolution No. 056-15

## Discussion

Heath distributed the Napoleon Authority Finance Contract and Cost Summary regarding the software; see attached. Heath stated this was approved in the 2015 budget along with other upgrades.

Passed Yea- 7 Nay- 0 Roll call vote to approve First Read of Resolution No. 056-15 Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley Nay-

#### Introduction Of Ordinance No. 057-15

President Sheaffer read by title Ordinance No. 057-15, an Ordinance amending the allocation of funds as found in Sections 193.11 and 194.013 of the Codified Ordinances of the City of Napoleon, Ohio

#### Motion To Approve First Read

Motion: Marihugh Second: Ridley To approve First Read of Ordinance No. 057-15

#### Discussion

Heath reported that Council can change the allocation at any time from 62/38 back to the original 50/50. Behm added that the income tax credit discussed earlier could be used to add funds and change this allocation back. Sheaffer suggested that Council lobby for this together at the State level.

Passed Yea- 7 Nay- 0 Roll call vote to approve First Read of Ordinance No. 057-15 Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley Nay-

#### Second Read Of Ordinance No. 051-15

President Sheaffer read by title Ordinance No. 051-15, an Ordinance to approve current September 2015 Replacement Pages to the Napoleon Codified

Ordinances

Motion To Approve Second Read Motion: Comadoll Second: Ridley To approve Second Read of Ordinance No. 051-15

**Discussion** 

Heath reported that there are no changes to the Ordinance since the First

Read.

Passed Yea- 7 Nay- 0 Roll call vote to approve Second Read of Ordinance No. 051-15 Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley

Nay-

Third Read Of Ordinances And Resolutions There are no Third Readings of Ordinances and Resolutions.

**GOOD OF THE CITY** 

<u>Discussion/Action</u> Motion To Approve Power Supply Cost Adjustment Factor

Motion: McColley Second: Comadoll

To accept the recommendation for approval of the Power Cost Adjustment

Factor for October as follows:

PSCAF three (3) month averaged factor: -0.00761

JV2: 0.040095 JV5: 0.040095

Passed Yea- 7

Nay- 0

Roll call vote on above motion:

Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley

Nay-

Approval of Plans,
Specifications,
Documentation And
Contracts For The
Oberhaus I/I
Reduction Project (LTCP
Project No. 21A)

Irelan reported that the City Department of Public Works is requesting approval of the plans and specifications for the Oberhaus I/I Reduction Project; this project consists of lining/pipe bursting/replacing the existing Oberhaus Interceptor Sewer from Woodlawn Avenue to Scott Street and reinstating all sanitary services. Irelan reported that Engineer's estimate of construction to total approximately\$465,000; the budgeted amount for this project including the Engineering Design totals \$675,000, adding that there is an Ohio Public Works Commission Grant attached to this project, with a maximum amount for the grant of forty eight percent (48%) or \$325,000, whichever is less.

Marihugh stated that he was told he was 'micromanaging' when he had issues with projects, adding that he agrees with Helberg that the plans and specifications should be going to the Municipal Properties, Buildings, Land Use & Economic Development Committee. Marihugh requested that this project be reviewed before it is approved. Lulfs reported that this project is in the 2015 budget and the grant money will not be available if the project is awarded in 2016; Irelan added that there is a LTCP deadline of 2016 for this to be completed. Behm believes the City Engineer to be the expert related to the plans and Council should not undermine that authority. Irelan stated that creek crossing was eliminated and restructured to cut cost. Lulfs stated that the specifications involve two (2) available options, adding that the specifications were on file in Fein's office since Friday for review. Helberg added this is not controversial project.

**Motion To Approve** 

Motion: McColley Second: Comadoll

Council 10/19/15 page 16 of 21

Plans, Specifications, Documentation And Contracts For The Oberhaus I/I Reduction Project To approve the Plans, Specifications, Documentation and Contracts for the Oberhaus I/I Reduction Project (LTCP Project No. 21A)

Passed Yea- 6 Nay- 1 Roll call vote on above motion: Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, McColley Nay- Marihugh

Approval of Change Order No. 11 (Final) For Scott Street Improvements (PID No. 86846) Project; Miller Bros. Construction Inc. Irelan reported that the Scott Street Improvements Project has been completed and final quantities have been tabulated; Change Order No. 11 (Final) total is \$217,939.62, adding that the large decrease is due to non-performed items with an actual price difference of -\$25,914.90 and a final project cost of \$2,999,834.48. Irelan is requesting Council approval of Change Order No. 11 (Final) to allow this project to be closed.

Marihugh asked if this was open cut; Lulfs believes it was. Marihugh asked if there was a discrepancy in aggregate; Irelan does not believe that this was a discrepancy, though all the undercutting was taken out.

Motion To Approve Change Order No. 11 (Final) For Scott Street Improvements (PID No. 86846) Project; Miller Bros. Construction Inc. Motion: Comadoll Second: McColley To motion to approve Change Order No. 11 (Final) for Scott Street Improvements (PID No. 86846) Project; Miller Bros. Construction Inc.

Passed Yea- 6 Nay- 0 Abstain - 1 Roll call vote on above motion: Yea- Comadoll, Ridley, Maassel, Sheaffer, Marihugh, McColley Nay-Abstain – Helberg

Approval Of Change Order No. 6 (Final) For Southside Interceptor I/I Reduction Project (L.T.C.P. Project No. 20A); Vernon Nagel, Inc.

Sheaffer asked the percentage of this Change Order as compared to the final project cost; Maassel stated approximately three and a half percent (3.5%); Sheaffer thanked Lulfs for a good job. Marihugh asked if the manholes were sealed; Lulfs stated that the manufactured was required to repair these.

Irelan reported that the Southside Interceptor I/I Reduction Project has been

totals \$29,642.22, with a final project cost of \$869,946.05. Irelan is requesting

that Council approve Change Order No. 6 (Final) to allow the project to be

completed and final quantities have been tabulated; Change Order No. 6 (Final)

Motion To Approve Change Order No. 6 (Final) For Southside Interceptor I/I Reduction Project (L.T.C.P. Project No. 20A); Vernon Nagel, Inc. Motion: Comadoll Second: Ridley
To approve Change Order No. 6 (Final) for Southside Interceptor I/I
Reduction Project (L.T.C.P. Project No. 20A); Vernon Nagel, Inc.

Roll call vote on above motion:

closed.

**Passed** 

Yea- 6 Nay- 0 Abstain -1

Nay-Abstain - Helberg

Approval of Healthcare Cost Committee Recommendation Regarding Proposed Healthcare Plans For 2016 Sheaffer commended the Health Care Cost Committee, Staff and Employees for saving money to the City while increasing their own out of pocket expenses.

Yea- Comadoll, Ridley, Maassel, Sheaffer, Marihugh, McColley

Irelan reported that the healthcare cost premium total cost would decrease in 2016 by \$76,018.40, (or -5.0895%) from 2015 if the new plan is approved, and there would be a small increase of 5.35% in the HSA plan with the employer contribution; adding that there are currently only three (3) employees in the HSA plan. Irelan reported that she communicated to the Finance & Budget Committee that the current recommendations would be used during budget discussions, however this could be changed on Council recommendation.

Motion To Approve Proposed Healthcare Plans For 2016 Motion: Comadoll Second: Maassel To approve the proposed Healthcare Plans for 2016

Passed Yea- 6 Nay- 0 Abstain - 1 Roll call vote on above motion:

Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, McColley

Nay-

Abstain - Marihugh

BOPA Recommendation To Add Information On Certain Billboards Regarding The City Being A Public Not For Profit Utility Company Irelan reported that AMP suggested that the City must communicate their status as a not for profit public utility company; the Board of Public Affairs had a majority vote to recommend that Council add this information to certain billboards. DeWit believes that advertising this information to be a good idea, especially during the water discussions. DeWit suggested placing a billboard on 24 stating the same information. McColley asked if there was a dollar amount attached to the request; Irelan will research this to be discussed as an additional request of the Electric Department during budget discussions. Maassel asked if the City could ask AMP to pay the cost of the billboard; Irelan stated that she could ask to add a public billboard at the next AMP meeting.

Sheaffer Moved The Agenda; No Objections Sheaffer moved the agenda; this item will be discussed during the budget discussions; there were no objections.

Good Of The City (Cont.) Heath

Heath included a memo regarding Legislation that will be required to be passed related to the budget process; Legislation regarding debt on the water plant will require an Emergency Clause and Suspension of the Rules.

Heath reported that he and the City Manager met with the financial advisor regarding the water plant debt; the plan is to roll the current \$2.5 million note for a maturity for less than six (6) months and immediately start the process of issuing the debt on the construction as a revenue note rolling into the \$2.5 million note. Marihugh asked if the \$2.5 million could be recouped from other collaborators; Heath believes this to be a question for the Law Director. Marihugh asked if Heath has researched the effect of selling assets on the City bonding, asking if this is feasible; Heath stated that there are covenants currently on the revenue debt; annual audit and certain ratios, and gives ownership of property to bondholders, as long as those are satisfied then there could be shared ownership; Heath believes it to be feasible, adding that

**Good Of The City (Cont.)** 

covenants must be reopened and trust agreements must be rewritten before the final bonds after final construction is completed.

Comadoll

Ridley

None

None

Maassel

None

**Sheaffer** 

Sheaffer reported that he drove down Appian Avenue and it looks beautiful.

Sheaffer referred the consideration of raising purchasing authority to match the State limits to the Finance & Budget Committee.

Sheaffer requested an Executive Session to discuss the compensation of personnel.

Behm

None

Helberg

Helberg explained that the intent of the specifications review process through the Municipal Properties, Land Use, Buildings & Economic Development Committee is to help alleviate potential issues, adding that it should be a positive thing regarding each project adding openness and discussion during the conceptual stage through the ninety percent (90%) complete stage. Lulfs stated that contractors have expressed to him that this will add time to the projects.

Sheaffer Referred The Specification Review Process Discussion To The Municipal Properties, Buildings, Land Use & Economic Development Committee

Irelan suggested that Fein find the previous Minutes and these be brought before the Municipal Properties, Buildings, Land Use & Economic Development Committee for discussion; Sheaffer referred this issue to the Committee.

#### Marihugh

Marihugh reminded Council that information was received regarding nonemergency EMS transfers; Marihugh did not realize that these runs were going to begin. Marihugh stated that residents have asked why the City ambulances are running to different locations. Marihugh requested this discussion be referred to the Safety & HR Committee; Irelan clarified that on a regular EMS basis the City makes runs outside the City limits to other hospitals based on the safety and security of the patient. Irelan suggested that if Marihugh received any further question regarding these runs, to explain to the resident that the City is trying to find ways to use equipment and personnel as efficiently and effectively as possible, adding that this is a trial run of the program to see if it is worthy of becoming a full service for the City; Irelan added there will be a full presentation in 2016 in an open meeting before the full body of Council regarding the findings of this trial run including such specifics as gas mileage, tire wear, the use of equipment among other details as to how this may be a revenue source to the City.

Sheaffer Referred NonEmergency EMS Transfers To The Safety & HR Committee January Agenda

Sheaffer referred the discussion regarding nonemergency EMS transfers to the Safety & HR Committee on their January agenda.

Irelan reminded Council that a three (3) month trial period for nonemergency EMS transfers was requested to which she received no objections.

McColley

McColley asked if the plans and specifications for projects are available for viewing before they are approved at Council; Irelan reported that they are available in Fein's office.

Nagel

None

Irelan

Irelan previously reported that public assistance was applied for through FEMA for the flooding that occurred on June 27 and 28; this assistance was denied due to the damage not equaling one half of one percent of the total City budget. Irelan reported that she had resubmitted the request as a dedicated request, however FEMA will not split this from the total budget. Sheaffer suggested speaking with Senators Brown and Portman and Representative Latta regarding this issue.

Motion To Go Into Executive Session: Compensation Of Personnel Motion: Maassel Second: McColley

To go into Executive Session to discuss the compensation of personnel

Passed Yea- 7 Roll call vote on above motion:

Nay- 0

Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley

Nay-

**Into Executive Session** 

Council went into Executive Session at 8:48pm.

Motion To Come Out Of Executive Session

Motion: McColley Second: Ridley

To come out of Executive Session.

**Passed** 

Yea-7

Nay-0

Roll call vote on above motion:

Yea- Comadoll, Ridley, Massel, Sheaffer, Helberg, Marihugh, McColley

Nay-

**Out Of Executive Session** 

Council came out of Executive Session at 9:07pm. President Sheaffer reported that the discussion was regarding the compensation of personnel; no action was

taken.

Motion To Authorize
The City Manager To
Negotiate Benefits And
A Compensation
Package For The Waste
Water Treatment Plant
Superintendent

Motion: McColley Second: Ridley

To authorize the City Manager to negotiate benefits and a compensation

package for the Waste Water Plant Superintendent

Passed

Yea-6

Nay-1

Roll call vote on above motion:

Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, McColley

Nay- Marihugh

Sheaffer Referred Review
Of The Personnel Code
Regarding Vacation
Accruals To The Safety &
HR Committee

Sheaffer referred review of the Personnel Code regarding vacation accurals to the Safety & HR Committee

**Approval Of Bills** 

Bills and financial reports stand approved as presented with no objections.

**Motion To Adjourn** 

Motion: Ridley Second: Marihugh

To adjourn the meeting.

**Passed** 

Roll call vote on above motion:

Yea- 7 Nay- 0 Yea- Comadoll, Ridley, Maassel, Sheaffer, Helberg, Marihugh, McColley

Nav-

Adjournment

Meeting adjourned at 9:12pm.

Approved:

Travis B. Sheaffer, Council President

Ronald A. Behm, Mayor

Gregory J. Heath, Finance Director/Clerk of Council

#### City of Napoleon, Ohio

#### **City Council**

in Joint Session with

#### Water, Sewer, Refuse, Recycling & Litter Committee

#### **Meeting Minutes**

Tuesday, October 20, 2015 at 4:00pm

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Water & Sewer Committee

Council

Chris Ridley - Chair, John Helberg, Jeff Comadoll

Jason Maassel – President Pro Tem, , John Helberg, Jeffrey Marihugh, Jeff Comadoll, Patrick McColley, Chris Ridley

**City Staff** 

Monica S. Irelan, City Manager

Gregory J. Heath, Finance Director/Clerk of Council

Lisa L. Nagel, Law Director

Scott Hoover, Water Treatment Plant Superintendent Jeff Weis, Water Treatment Plant Chief Operator

Tammy Fein

News Media; NCTV; Rob Shoaf, AECom; Mike DeWit

Recorder Others

**Absent** 

Travis Sheaffer – Council President

Call To Order

Chairman Ridley called the Committee meeting to order at 4:00pm. President Pro Tem Maassel called the Council meeting to order at 4:00pm.

**Water Treatment Plant Update** 

Irelan introduced Rob Shoaf to the Committee and Council; Shoaf and his team are doing the design work for the Water Treatment Plant rehabilitation.

Shoaf distributed a presentation regarding the Water Treatment Plant rehabilitation; see attached. Shoaf reported that Irelan was adamant that all of the satellite customers receive the best quality of water at all times when researching the filtration processes available.

Shoaf explained the water treatment process, adding that the MIEX system does an adequate job but is fairly expensive to operate.

Shoaf reported that the chlorine gas will be replaced with a safer alternative, adding that the current equipment was in place for the two (2) phase process.

Shoaf reported that the reverse osmosis softening process cost is approximately \$300,000 less than lime softening and should also decrease annual costs by approximately \$125,000.

Shoaf reported that jar testing was completed for turbidity and organics reduction, adding that the aluminum chlorohydrate (ACH) did a great job as a coagulant for the process. Marihugh asked if the building would be required to be rewired for things such as contacts and conduits; Shoaf stated that ACH has a lower pH balance and no rewiring would be needed. Comadoll asked if the Waste Water Treatment Plant would need to switch to ACH as well; Irelan stated that the Waste Water Treatment

# Water Treatment Plant Update (Continued)

Plant is testing a different chemical however this chemical does not work well in the Water Treatment Plant process. Maassel asked if one system is favored by the EPA over the others; Shoaf replied that the reverse osmosis process is flexible and is based on pressure and is the highest level of treatment that is possible; the reverse osmosis process removes all chemicals necessary. Shoaf reported that the filters will soften and remove the organics from the water, eliminating the need for the MIEX system. Marihugh stated that currently the lime soda is allowed to be land applied and asked if this would still be the case; Shoaf stated he has seen no problems in taking the solids from the sludge and moving it to the Waste Water Treatment Plant with no issues, while the reverse osmosis waste stream is being proposed to be put back in the river.

Shoaf reported that ACH will be added in the first stage of the process, then proceed to second stage, then to the settling basin; sixty eight percent (68%) rejection of turbidity is sufficient. Marihugh asked if granulated carbon and permanganate will be added; Shoaf stated that the ability to add this is available but these may not need to be used as often.

Shoaf reported that the membranes will eliminate the need for lime softening as well as the MIEX process, and will remove other constituents of concern from the river water; the next step is ultraviolet (UV) disinfection which is located downstream of the clear well, which provides additional disinfection and eliminates the need for a second clear well.

Shoaf demonstrated architectural drafts of the proposed Water Treatment Plan building, adding that the UV system may be built first to meet the EPA deadlines, starting in the Summer for the overall construction project.

Marihugh asked if the MIEX building must remain operational at the beginning of the project; Shoaf stated that once the membranes are operating correctly the MIEX will be taken offline with one mobilization; the Operators are aware that they may have to run for twenty four (24) hours for some time to make up for the loss of some of the processes at first

Shoaf restated that Irelan and Staff required that the water be of the best quality for the residents and the satellite customers.

Shoaf reported that the reverse osmosis process has a higher electric cost but lower chemical cost; saving approximately \$100,000 annually.

Shoaf reported that the extra UV protection is available at less than five (5) facilities in Ohio, costing less than \$10,000 annually in power costs.

Heath asked how the plant will operate in conjunction with the current process during the construction; Shoaf replied there will be at least monthly meetings with the contractor, and only certain parts of the plant will be rehabbed at a time, such as one filter at a time, adding that the Operators are highly capable of running the plant as necessary. Heath asked if the new building will be constructed first; Shoaf stated that the

new building construction will be independent of the work on the filters and the basins and the new electric service installation. Shoaf proposed installing a new tank instead of upgrading the current tank which is approximately one hundred (100) years old. Maassel asked how long the membranes last; Shoaf replied approximately five (5) years on average, however Tipp City is still using membranes from eight (8) years ago. Marihugh asked when conceptual footprints will be developed; Shoaf believes in approximately one (1) month, after some undecided details are completed. Shoaf stated the current plan is to have the front side of the building facing Riverview Avenue. Comadoll asked if the water tower is in this project; Irelan stated that the water tower is a separate project and not added into this project; the idea was to have that included but that discussion is ongoing. Marihugh asked who this is being discussed with; Irelan stated that research is being done with various companies. Marihugh noted that at one point there was a fund to paint the water tower, however there was no discipline and that fund was depleted.

	Irelan stated that research is being done with various companies.  Marihugh noted that at one point there was a fund to paint the water tower, however there was no discipline and that fund was depleted.
Any Other Matters To Come Before The Committee	None
Any Other Matters That May Properly Come Before Council	None
WSRRL Motion To Adjourn	Motion: Comadoll Second: Helberg To adjourn the WSRRL Committee meeting
Passed Yea- 3 Nay- 0	Roll call vote on above motion: Yea- Helberg, Ridley, Comadoll Nay- WSRRL meeting adjourned at 4:45pm.
Council Motion To Adjourn	Motion: Marihugh Second: Ridley To adjourn the Council meeting
Passed Yea- 6 Nay- 0	Roll call vote on above motion: Yea- Ridley, Maassel, Helberg, Marihugh, McColley Nay- Council Meeting adjourned at 4:45pm.
Approved	Jason P. Maassel, Council President Pro Tem
	Ronald A. Behm, Mayor
	Gregory J. Heath, Finance Director/Clerk of Council

#### **RESOLUTION NO. 058-15**

A RESOLUTIONAUTHORIZING THE CITY MANAGER TO NEGOTIATE VACATION BENEFITS, DIFFERENT FROM THAT WHICH IS STATED IN THE PERSONNEL CODE, FOR THE POSITION OF WASTEWATER SUPERINTENDENT FOR THE CITY OF NAPOLEON, OHIO; AND, DECLARING AN EMERGENCY

**WHEREAS,** the City Manager is in the process of negotiating vacation benefits with David Pike, a candidate for the position of Wastewater Superintendent for the City of Napoleon, Ohio; and

**WHEREAS,** Section 197.18 of the Personnel Code (also contained in Chapter 197 of the Codified Ordinances of the City of Napoleon) addresses vacation benefits for certain City of Napoleon employees; and

WHEREAS, Council for the City of Napoleon desires to provide the City Manager with authority to negotiate vacation benefits, different from that which is stated in Section 197.18 of the Personnel Code, for the position of Wastewater Superintendent; Now Therefore:

# BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

- Section 1. That, the City Manager has authority to negotiate vacation benefits for the position of Wastewater Superintendent which may differ from that which is stated in Section 197.18 of the Personnel Code;
- Section 2. That, the City Manager has the authority to offer 160 annual hours of vacation to David Pike, candidate for the position of Wastewater Superintendent for the City of Napoleon.
- Section 3. That, said 160 hours of annual vacation is available for use in 2016 beginning on January 1, 2016, and for each annual year thereafter.
- Section 4. That, this Resolution is intended to address only the negotiation of vacation benefits.
- Section 5. That, all other benefits for the position of Wastewater Superintendent shall accrue and be in accordance with the Personnel Code (Chapter 197 of the Codified Ordinances) and the applicable provisions of the City's Employment Policy Manual for full-time regular employees, both as may be amended from time to time.
- Section 6. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.

Section 7. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

Section 8. That, this Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants; therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law.

Passed:	
	Travis B. Sheaffer, Council President
Approved:	
	Ronald A. Behm, Mayor
VOTE ON PASSAGE Yea Nay _	Abstain
Attest:	
Gregory J. Heath, Clerk/Finance Director	
that the foregoing Resolution No. 058-15 was duly pewspaper of general circulation in said City, on the; & I further certify the compliance with r	ne day of, rules established in Chapter 103 of the
Codified Ordinances Of Napoleon Ohio and the law Meetings.	ws of the State of Ohio pertaining to Public
	Gregory J. Heath, Clerk/Finance Director



# City of Napoleon, Ohio

#### **DEPARTMENT OF MANAGEMENT**

255 West Riverview Avenue, P.O. Box 151 Napoleon, OH 43545 Telephone: (419) 592-4010 Fax: (419) 599-8393 www.napoleonohio.com

# Memorandum

To: Mayor and City Council

From: Monica Irelan Date: 10/30/15

**RE:** MARCS Grant

#### History:

The Ohio Department of Commerce, Division of State Fire Marshal offers a Multi-Agency Radio Communication System (MARCS) grant. This allows public agencies within the State of Ohio to apply for systems, equipment, and/or services that are part of, integrated into, or otherwise interoperable to MARCS operations.

The City of Napoleon Fire & Safety Services is working with a regional group to plan for an upgrade in the radio system. This grant will help the City upgrade its radios and be prepared for the new installation of technology that will take place in three-five years. The Department plans to apply for this grant every year for three years in order to upgrade the entire fleet of radios.

Newly purchased radio equipment will have to be activated within three (3) months of delivery and remain on the system for a minimum of twelve (12) months.

#### Financial Implications:

There is a MARCS service fee which is \$10 per month per radio.

#### Recommendation:

To allow the City Manager to apply for and accept the MARCS grant in 2016.

# City of Napoleon Parks and Recreation Department

255 West Riverview Avenue Napoleon, Ohio 43545 (419) 592-4010 (419) 592-8955 (fax) tcotter@napoleonohio.com

# Memorandum

To: *Monica Irelan, City Manager* 

From: Tony Cotter, Director of Parks and Recreation

Date: Monday, November 02, 2015

Subject: Private Boat Dock Storage Fees Recommendation

At its October meeting, the Parks and Recreation Board passed a unanimous motion to recommend that a fee be charged for individuals storing their private boat dock at the boat ramp parking area in Ritter Park. (see attached policy)

Currently, dock storage is permitted at the area at no charge but must be registered with the City. The parking areas are divided into four (4) zones with a removal deadline date assigned to each zone. Docks that are not registered or removed by the posted deadline are removed at the owner's expense.

The proposed policy would keep all of the current regulations in place with the addition of a \$50.00 per year storage fee. Boat owners would be required to register their dock each year and receive a new tag that must be attached to their dock.

I would ask that this issue be brought to City Council for their review and approval. If approved, we are recommending this policy take effect in 2016.

Please let me know if you have any questions or would like additional information.

# Private Boat Dock Storage Rules and Regulations (Proposed)

- 1. Privately owned docks may be stored at the City of Napoleon owned Ritter Park boat ramp area parking lot as space permits.
- 2. Dock storage fees are \$50.00 annually.
- 3. Any privately owned dock stored at Ritter Park shall have a valid permit tag issued annually by the City of Napoleon. Docks shall visibly display a permit tag on the dock while it is being stored at the site. Any dock not displaying a valid permit tag shall be removed from the site at the owner's expense.
- 4. Private docks may only occupy one parking stall per owner. Dock equipment shall not extend beyond the length of the parking spaces. Additional space may require additional storage fees.
- 5. Docks shall be stored in a safe, secure manner and are to be raised off of the parking surface with concrete or wooden blocks, clean barrels, or similar objects.
- 6. Private docks shall be stored at the owner's risk. The City is not responsible for any lost or stolen docks and/or equipment associated with it being stored at this location.
- 7. Docks may not be stored before the Tuesday after Labor Day
- 8. Docks must be removed from the storage area no later than the date posted in the area where the dock is stored (see below). Docks not removed by the posted date shall incur additional fees and/or removal from the site at the owner's expense. Exceptions may be made only at the discretion of the City of Napoleon.

BLUE ZONE				
Docks stored in this zone must be removed by May 1 <sup>st</sup>				
GREEN ZONE				
Docks stored in this zone must be removed by May 15 <sup>th</sup>				
RED ZONE				
Docks stored in this zone must be removed by June 1 <sup>st</sup>				
YELLOW ZONE				
Docks stored in this zone must be removed by June 15th				

#### **RESOLUTION NO. 059-15**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO APPLY FOR AND ACCEPT A FISCAL YEAR 2016 MULTI-AGENCY RADIO COMMUNICATIONS SYSTEM (MARCS) GRANT FROM THE OHIO DEPARTMENT OF COMMERCE; AND DELCARING AN EMERGENCY

**WHEREAS**, the Ohio Department of Commerce provides opportunities for financial assistance to local governments by means of offering grants which may be applied for and accepted by various entities; and,

**WHEREAS**, the Ohio Department of Commerce is sponsoring a grant for fiscal year 2016 for financial assistance with the purchase of a Multi-Agency Radio Communications System (MARCS);

**WHEREAS**, the City of Napoleon desires to participate, by means of application and acceptance, in the Ohio Department of Commerce's MARCS grant program to receive financial assistance for the purchase of a radio communications system for the City; Now Therefore,

#### BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

- Section 1. That, the City Manager is authorized to execute all documents necessary to apply for and accept a fiscal year 2016 Multi-Agency Radio Communications System (MARCS) grant offered by the Ohio Department of Commerce.
- Section 2. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.
- Section 3. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.
- Section 4. That, this Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, and for the further reason that this legislation must be in effect at the earliest possible time to allow for timely application of the MARCS grant which has a deadline of November 10, 2015; therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law.

Passed:			
			Travis B. Sheaffer, Council President
Approved:			Ronald A. Behm, Mayor
VOTE ON PASSAGE	Yea	Nay	Abstain
Attest:			
Gregory J. Heath, Clerk/Fi	nance Direc	ctor	
foregoing Resolution No. 059 circulation in said City, on the	9-15 was dui he do ished in Cha	ly published ay of upter 103 of t	of the City of Napoleon, do hereby certify that the in the Northwest Signal, a newspaper of general
			Gregory J. Heath, Clerk/Finance Director



### CITY OF NAPOLEON, OHIO

### LAW DEPARTMENT MEMORANDUM

255 W. RIVERVIEW AVENUE, PO Box 151 Napoleon, OH 43545

PHONE: 419.592.4010 - FAX: 419.592.4723

To:

Members of City Council; Ronald A. Behm, Mayor; Monica Irelan, City Manager;

and Gregory J. Heath, Finance Director/Clerk of Council

FROM:

Lisa L. Nagel, Law Director

DATE:

Friday, October 30, 2015

Re: Second reading of Ordinance No. 053-15: Municipal Income Tax Ordinance

As you may recall, Ordinance No. 053-15, "An Ordinance to adopt Chapter 194 of the Codified Ordinances of the City of Napoleon regarding Municipal Income Tax" was passed on first reading at the October 19, 2015 Council Meeting. The following day, on October 20, 2015, we received notice from the Ohio Municipal League ("OML") that a few minor changes must be made to certain sections of the sample ordinance issued by the OML several months ago.

I have implemented the four (4) changes to Ordinance No. 053-15 and to Chapter 194 (Exhibit A to Ordinance No. 053-15), and respectfully request that a Motion be made to adopt the changes prior to a second reading and passage of the Ordinance at the November 2, 2015, Council Meeting. These four (4) changes consist of the following:

- In the Ordinance itself, in the first "Whereas" paragraph, the Roman numeral citation should be "XVIII," not "XVII."
- In Chapter 194 (Exhibit A) on page 12, section "718.691" should be changed to "715.691" in paragraph (19).
- In Chapter 194 (Exhibit A) on page 13, "(23)(A) of this section" was removed and replaced with, "For the purposes of this division..."
- In Chapter 194 (Exhibit A) on page 43, the language "(E) of section 194.19 of this Chapter" was removed.

In the Council Packet, you will see all four (4) changes noted above are highlighted within the documents, so you can easily reference them if needed. The changes are insignificant and have no bearing on the Ordinance's implementation.

Please let me know if you have any questions.

Sincerely,

Lisa L. Nagel

Law Director, City of Napoleon lnagel@napoleonohio.com

#### **ORDINANCE NO. 053-15**

### AN ORDINANCE TO ADOPT CHAPTER 194 OF THE CODIFIED ORDINANCES OF THE CITY OF NAPOLEON REGARDING MUNICIPAL INCOME TAX

WHEREAS, the Home Rule Amendment of the Ohio Constitution, Article XVIII XVIII, Section 3, provides that "Municipalities shall have authority to exercise all powers of local self-government," and the municipal taxing power is one of such powers of local self-government delegated by the people of the State to the people of municipalities; and

WHEREAS, Article XIII, Section 6 of the Ohio Constitution provides that the General Assembly may restrict a municipality's power of taxation to the extent necessary to prevent abuse of such power, and Article XVIII, Section 13 of the Ohio Constitution states that "laws may be passed to limit the powers of municipalities to levy taxes and incur debts for local purposes;" and

**WHEREAS**, the General Assembly has determined it is necessary and appropriate to comprehensively review and amend Chapter 718 of the Ohio Revised Code, setting forth statutory requirements for municipal income tax codes in Ohio; and

WHEREAS, more specifically, the General Assembly enacted H. B. 5 in December 2014, and mandated that municipal income tax codes be amended by January 1, 2016 such that any income or withholding tax is "levied in accordance with the provisions and limitations specified in Ohio Revised Code Chapter 718;" and

WHEREAS, upon a detailed review of H. B. 5 and the Codified Ordinances of the City of Napoleon, this Ordinance is found and determined by this Council to enact the amendments required prior to the January 1, 2016 deadline to be in accord with the provisions and limitations specified in Chapter 718 of the Revised Code; and

WHEREAS, Council also finds and determines that the constitutionality of certain provisions of the state-mandated code may have been put in question by recent decisions of the Ohio Supreme Court regarding, among other things, taxation of professional athletes, but these provisions must be included if the municipal income tax code is to be "levied in accordance with the provisions and limitations specified in Ohio Revised Code Chapter 718" and thus reluctantly are adopted by this Council but are disclaimed to the extent they are unlawful or unconstitutional;

## NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPOLEON, STATE OF OHIO:

Section 1. That Chapter 194 of the Codified Ordinances of Napoleon, Ohio be adopted to read as set forth in the document entitled "Chapter 194, Municipal Income Tax, Effective January 1, 2016" attached hereto as Exhibit A and incorporated herein by reference.

Section 2. That Chapter 193 of the Codified Ordinances of Napoleon, Ohio remains in full force and effect for all taxable years prior to 2016.

Section 3. That this Ordinance No. 053-15 shall take effect and be in force from and after January 1, 2016.

and relating to the adoption of this Ordinance were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of the City of Napoleon, Ohio. Section 5. That, if any other prior Ordinance or Resolution is found to be in conflict with this Ordinance, then the provisions of this Ordinance shall prevail. Further, if any portion of this Ordinance is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. Passed: Travis B. Sheaffer, Council President Approved: Ronald A. Behm, Mayor VOTE ON PASSAGE \_\_\_\_\_ Yea \_\_\_\_ Nay \_\_\_\_ Abstain Attest: Gregory J. Heath, Clerk/Finance Director I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Ordinance No. 053-15 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances Of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings. Gregory J. Heath, Clerk/Finance Director

That, it is found and determined that all formal actions of this City Council concerning

#### **CHAPTER 194**

Municipal Income Tax
Effective January 1, 2016
For taxable years beginning with taxable year 2016
Exhibit A to Ordinance 053-15

194.01	AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE					
	194.011	AUTHORITY TO LEVY TAX				
	194.012	PURPOSES OF TAX; RATE				
	194.013	ALLOCATION OF FUNDS				
	194.014	STATEMENT OF PROCEDURAL HISTORY; STATE				
		MANDATED CHANGES TO MUNICIPAL INCOME TAX				
194.02	<b>EFFECTIVE</b>	ECTIVE DATE; FISCAL YEAR				
194.03	DEFINITION	DEFINITIONS				
194.04	INCOME SUBJECT TO TAX FOR INDIVIDUALS					
	194.041	DETERMINING MUNICIPAL TAXABLE INCOME FOR				
		INDIVIDUALS; LOSSES				
	194.042	DOMICILE				
	194.043	EXEMPTION FOR MEMBER OR EMPLOYEE OF GENERAL				
		ASSEMBLY AND CERTAIN JUDGES				
194.05	COLLECTIO	N AT SOURCE				
	194.051	COLLECTION AT SOURCE; WITHHOLDING FROM WAGES				
	194.052	COLLECTION AT SOURCE; OCCASIONAL ENTRANT				
	194.053	COLLECTION AT SOURCE; CASINO AND VLT				
194.06	INCOME SU	JBJECT TO NET PROFIT TAX				
	194.061	DETERMINING MUNICIPAL TAXABLE INCOME FOR				
		TAXPAYERS WHO ARE NOT INDIVIDUALS; LOSSES				
	194.062	NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX;				
		ALTERNATIVE APPORTIONMENT				
	194.063	CONSOLIDATED FEDERAL INCOME TAX RETURN				
	194.064	TAX CREDIT FOR BUSINESSES THAT FOSTER NEW JOBS IN				
		OHIO				
	194.065	TAX CREDITS TO FOSTER JOB RETENTION				
194.07	DECLARATI	DECLARATION OF ESTIMATED TAX				
194.08	CREDIT FOR TAX PAID					
	194.081	CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY				
	194.082	REFUNDABLE CREDIT FOR QUALIFYING LOSS				

	194.083	CREDIT FOR PERSON WORKING IN JOINT ECONOMIC			
		DEVELOPMENT DISTRICT			
	194.084	CREDIT FOR TAX BEYOND STATUTE FOR OBTAINING			
		REFUND			
194.09	ANNUAL RETURN				
	194.091	RETURN AND PAYMENT OF TAX			
	194.092	RETURN AND PAYMENT OF TAX; INDIVIDUALS SERVING IN			
		COMBAT ZONE			
	194.093	USE OF OHIO BUSINESS GATEWAY; TYPES OF FILINGS			
		AUTHORIZED			
	194.094	EXTENSION OF TIME TO FILE			
	194.095	AMENDED RETURNS			
	194.096	REFUNDS			
194.10	PENALTY, INTEREST, FEES AND CHARGES				
194.11	AUDIT				
194.12	ROUNDING				
194.13	AUTHORITY AND POWERS OF THE TAX ADMINISTRATOR				
	194.131	AUTHORITY OF TAX ADMINISTRATOR; ADMINISTRATIVE			
		POWERS OF THE TAX ADMINISTRATOR			
	194.132	AUTHORITY OF TAX ADMINISTRATOR; COMPROMISE OF			
		CLAIM AND PAYMENT OVER TIME			
	194.133	AUTHORITY OF TAX ADMINISTRATOR; RIGHT TO EXAMINE			
	194.134	AUTHORITY OF TAX ADMINISTRATOR; REQUIRING			
		IDENTIFYING INFORMATION			
194.14	CONFIDENTIALITY				
194.15	FRAUD				
194.16	OPINION OF THE TAX ADMINISTRATOR				
194.17	ASSESSMENT; APPEAL BASED ON PRESUMPTION OF DELIVERY				
194.18	LOCAL BOARD OF TAX REVIEW; APPEAL TO LOCAL BOARD OF TAX				
	REVI	EW			
194.19	ACTIONS TO RECOVER; STATUTE OF LIMITATIONS				
194.20	ADOPTION OF RULES				
194.97	COLLECTION OF TAX AFTER TERMINATION OF CHAPTER				
194.98	SAVINGS CLAUSE				
194.99	VIOLATIONS – PENALTY				

#### 194.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE

#### 194,011 AUTHORITY TO LEVY TAX

- (A) The tax on income and the withholding tax established by this Chapter 194 are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax on income and the withholding tax established by this Chapter 194 are deemed to be levied in accordance with, and to be consistent with, the provisions and limitations of Ohio Revised Code 718 (ORC 718). This Chapter is deemed to incorporate the provisions of ORC 718.
- (B) The tax is an annual tax levied on the income of every person residing in or earning or receiving income in the municipal corporation, and shall be measured by municipal taxable income. The Municipality shall tax income at a uniform rate. The tax is levied on Municipal Taxable Income, as defined herein.

(Source: ORC 718.04)

#### 194,012 PURPOSES OF TAX; RATE

- (A) To provide funds for the purposes of: (1) General municipal operations, (2) Acquisition and maintenance of both personal and real property for the use or benefit of the City, (3) Extension, enlargement, maintenance and improvement of municipal services and facilities, (4) Capital improvements in and of the City, and (5) For the promotion of economic development in and for the City, there is hereby levied a tax at the rate of one percent (1%) upon all the following through June 30, 2009. Effective July 1, 2009, on and after said date, there is hereby levied a tax at the rate of one and three-tenths percent (1.3%) upon all of the following:
- (1) All salaries, wages, and other compensation and net profits earned or received by resident individuals:
- (2) All salaries, wages, and other compensation and net profits earned or received by non-resident individuals for, or derived from, or as a result of, work done, services rendered and business conducted in the City;
- (3) All net profits attributable to the City earned by all resident and nonresident unincorporated businesses, professions and other activities for, or derived from, work done, rentals or services performed, and business or other activities conducted in the City;
- (4) The entire portion of the distributive share of all net profits, not otherwise attributable to the City, earned by a resident, individual, resident owner of an unincorporated business entity, or resident partner for, or derived from, work done, rentals or services performed, and business or other activities conducted outside the City, and not otherwise lawfully levied against by another municipality;
- (5) The entire portion of the distributive share of all net profits, not otherwise attributable to the City, earned by a non-resident individual, non-resident owner of an unincorporated business activity, or non-resident partner for, or derived from, work done, rentals or services performed, and business or other activities conducted in the City and not levied against the unincorporated business entity itself:
- (6) All net profits attributable to the City earned by corporations for, or derived from, work done, rentals or services performed, and business or other activities conducted in the City;
- (7) All net profits earned by fiduciaries of resident individuals for, or derived from, business conducted;
- (8) All net profits attributable to the City earned by fiduciaries of non-resident individuals for, or derived from, business conducted in the City; and
- (9) The gross proceeds earned or derived from gaming, wagering, lotteries, including but not limited to the Ohio State Lottery, or lotteries where the State of Ohio is a part thereof, or games or schemes of chance, by residents of the City; and/or, the gross proceeds earned or

derived from gaming, wagering, lotteries, or games or schemes of chance, when any part of the activity is engaged into or conducted in the City, by nonresidents, are all subject to the City tax to the same extent includable on the recipient's federal tax return, whether or not the recipient is required to file a federal tax return and whether or not the recipient pays federal income tax on the gross proceeds, except that it shall not be taxed as a business income unless the person subject to this tax has a federal gamblers' permit effective during the tax year in which income from gaming, wagering, lotteries or schemes or games of chance is received.

- (B) The portion of the net profits attributable to the City of a taxpayer doing work, rendering services or conducting business both within and outside the City shall be determined in the same proportion as the average ratio of the following:
- (1) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business in the City during the taxable period to the average original cost of all real and tangible personal property owned or used by the taxpayer in the business during the same period, wherever situated. As used in this paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8);
- (2) Salaries, wages and other compensation paid during the taxable period to persons employed in the business and salespeople for work done or services rendered in the City to compensation paid during the same period to persons employed in the business and salespeople, wherever their work is done or their services are rendered;
- (3) Gross receipts of the business during the taxable period from sales made and services rendered in the City to gross receipts of the business during the same period from sales and services, wherever made or rendered.

If the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.

- (C) As used in subsection (b) hereof, "sales made in the City" means:
- (1) All sales of tangible personal property which is delivered within the City regardless of where title passes if shipped or delivered from stock of goods within the City;
- (2) All sales of tangible personal property which is delivered within the City regardless of where title passes even though transported from a point outside the City if the taxpayer is regularly engaged through its own employees and salespeople in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion;
- (3) All sales of tangible personal property which is shipped from a place within the City to purchasers outside the City regardless of where title passes if the taxpayer is not, through its own employees and salespeople regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(Source: ORC 718.04; Portions also approved by voters 5-5-09)

#### 194.013 ALLOCATION OF FUNDS

- (A) <u>Effective January 1, 2014,</u> the funds collected under the provisions of this Chapter shall be deposited in the "General Fund equivalent" of the City for municipal income taxes and shall be disbursed in the following order:
- (1) Such part thereof as shall be necessary to defray all costs of collecting this tax and all costs of administering and enforcing the provisions of this Chapter and the rules and regulations adopted by Council in connection therewith.
- (2) Not more than 62% of the net available tax receipts received annually may be used to defray operating expenses of the City.
- (3) At least 38% of the net available tax receipts received annually shall be set aside and used for capital improvements including, but not limited to, development and construction of storm sewers and street improvements; for public buildings, parks, and playgrounds; and for equipment necessary for the Police, Fire, Street, Traffic, and Safety Departments.

- (B) <u>Effective January 1, 2015 and thereafter,</u> the funds collected under the provisions of this chapter shall be deposited in the "General Fund equivalent" of the City for municipal income taxes and shall be disbursed in the following order:
- (1) Such part thereof as shall be necessary to defray all costs of collecting this tax and all costs of administering and enforcing the provisions of this chapter and the rules and regulations adopted by Council in connection therewith.
- (2) Not more than 50% of the net available tax receipts received annually may be used to defray operating expenses of the City.
- (3) At least 50% of the net available tax receipts received annually shall be set aside and used for capital improvements including, but not limited to, development and construction of storm sewers and street improvements; for public buildings, parks, and playgrounds; and for equipment necessary for the Police, Fire, Street, Traffic, and Safety Departments. (Res. 068-13. Passed 12-16-13)

### 194.014 STATEMENT OF PROCEDURAL HISTORY; STATE MANDATED CHANGES TO MUNICIPAL INCOME TAX

- (A) Significant and wide-ranging amendments to ORC 718 were enacted by Am Sub HB 5, passed by the 130<sup>th</sup> General Assembly, and signed by Governor Kasich on December 19, 2014, and H.B. 5 required municipal corporations to conform to and adopt the provisions of ORC 718 in order to have the authority to impose, enforce, administer and collect a municipal income tax.
- (B) As mandated by H.B. 5, this Municipal Income Tax Ordinance 053-15, effective January 1, 2016, comprehensively adopts Chapter 194 in accordance with the provisions of ORC 718 to allow the City to continue the income tax and withholding tax administration and collection efforts on behalf of the City.

#### 194.02 EFFECTIVE DATE; FISCAL YEAR

- (A) Ordinance 053-15, effective January 1, 2016, and corresponding changes to ORC 718, apply to municipal taxable years beginning on or after January 1, 2016. All provisions of this Chapter 194 apply to taxable years beginning 2016 and succeeding taxable years.
- (B) Ordinance 053-15 does not repeal the existing sections of Chapter 193 for any taxable year prior to 2016, but rather adopts Chapter 194 effective January 1, 2016 and continuing for each taxable year thereafter. For municipal taxable years beginning before January 1, 2016, the City shall continue to administer, audit, and enforce the income tax of the Municipality under ORC 718 and Ordinances and Resolutions of the City as that Chapter and those Ordinances and Resolutions existed before January 1, 2016.
- (C) The City tax shall be levied, collected and paid with respect to compensation earned or received and with respect to the net profits earned or received on a calendar year basis, except as herein provided. When the fiscal year of a taxpayer is other than the calendar year that may be otherwise permitted by law, and a modification of this Tax Code impacts such fiscal taxpayer, then the City tax shall be levied upon that part of the net profits for the fiscal year which are earned or received on or after the effective date of such modification until the close of the taxpayer's fiscal year, and, thereafter, shall be levied on the taxpayer's fiscal-year basis.

(Source: Uncodified Section 2 of Am Sub HB 5, passed Dec 2014; ORC 718.04; Ord. 091-08. Passed 1-5-09)

#### 194.03 DEFINITIONS

Any term used in this Chapter that is not otherwise defined in this Chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Ohio Revised Code, unless a different meaning is clearly required. If a term used in this Chapter that is not otherwise defined in this Chapter is used in a

comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Ohio Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code. For purposes of this Section 194.03, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

#### As used in this Chapter:

- (1) "ADJUSTED FEDERAL TAXABLE INCOME," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division 23(D) of this section, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:
  - (A) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
  - (B) Add an amount equal to five per cent (5%) of intangible income deducted under division (1)(A) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;
  - (C) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
  - (D) (i) Except as provided in division (1)(D)(ii) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
    - (ii) Division (1)(D)(i) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
  - (E) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
  - (F) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;
  - (G) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Ohio Revised Code;
  - (H) (i) Except as limited by divisions (1)(H)(ii), (iii) and (iv) of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.
    - The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.
    - (ii) No person shall use the deduction allowed by division (1)(H) of this section to offset qualifying wages.
    - (iii) (a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty per cent (50%) of the amount of the deduction otherwise allowed by division (1)(H)(i) of this section.

- (b) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (1)(H)(i) of this section.
- (iv) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (1)(H) of this section.
- (v) Nothing in division (1)(H)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (1)(H)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (1)(H)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (1)(H)(iii)(a) of this section shall apply to the amount carried forward.
- (I) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (E)(3)(b) of Section 194.063 of this Chapter.
- (J) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with division (E)(3)(b) of Section 194.063 of this Chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (47)(B) of this section, is not a publicly traded partnership that has made the election described in division (23)(D) of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

- (2) (A) "ASSESSMENT" means any of the following:
  - (i) A written finding by the Tax Administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation;
  - (ii) A full or partial denial of a refund request issued under Section 194.096 (B)(2) of this Chapter;
  - (iii) A Tax Administrator's denial of a taxpayer's request for use of an alternative apportionment method, issued under Section 194.062(B)(2) of this Chapter; or
  - (iv) A Tax Administrator's requirement for a taxpayer to use an alternative apportionment method, issued under Section 194.062(B)(3) of this Chapter.

- (v) For purposes of division (2)(A)(i), (ii), (iii) and (iv) of this Section, an assessment shall commence the person's time limitation for making an appeal to the Local Board of Tax Review pursuant to Section 194.18 of this Chapter, and shall have "ASSESSMENT" written in all capital letters at the top of such finding.
- (B) "ASSESSMENT" does not include notice(s) denying a request for refund issued under Section 194.096 (B)(3) of this Chapter, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (2)(A) of this section.
- (3) **"AUDIT"** means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax
- (4) "BOARD OF REVIEW" has same meaning as "Local Board of Tax Review".
- (5) **"CALENDAR QUARTER"** means the three-month period ending on the last day of March, June, September, or December.
- (6) "CASINO OPERATOR" and "CASINO FACILITY" have the same meanings as in section 3772,01 of the Ohio Revised Code.
- (7) "CERTIFIED MAIL," "EXPRESS MAIL," "UNITED STATES MAIL," "POSTAL SERVICE," and similar terms include any delivery service authorized pursuant to section 5703.056 of the Ohio Revised Code.
- (8) "COMPENSATION" means any form of remuneration paid to an employee for personal services.
- (9) "DISREGARDED ENTITY" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.
- (10) "**DOMICILE**" means the true, fixed and permanent home of the taxpayer to which, whenever absent, the taxpayer intends to return.
- (11) **"EXEMPT INCOME"** means all of the following:
  - (A) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state:
  - (B) (i) Except as provided in division (11)(B)(ii) of this section, intangible income;
    - (ii) A municipal corporation that taxed any type of intangible income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th General Assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on November 8, 1988.
  - security benefits. (C) Social railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (11)(C) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.
  - (D) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

- (E) Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars for the taxable year. Such compensation in excess of one thousand dollars for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.
- (F) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations;
- (G) Alimony and child support received;
- (H) Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages;
- (I) Income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code. Division (11)(I) of this section does not apply for purposes of Chapter 5745 of the Ohio Revised Code.
- (J) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business;
- (K) Compensation or allowances excluded from federal gross income under section 107 of the Internal Revenue Code;
- (L) Employee compensation that is not qualifying wages as defined in division (34) of this section:
- (M) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States Air Force that is used for the housing of members of the United States Air Force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.
- (N) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code. The City of Napoleon did not go to ballot and obtain the approval of the electorate in 2003 or 2004 to tax a shareholder's distributive share of net profits from an S corporation.

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- (P) (i) Except as provided in divisions (11)(P)(ii), (iii), and (iv) of this section, qualifying wages described in division (B)(1) or (E) of Section 194.052 of this Chapter to the extent the qualifying wages are not subject to withholding for the Municipality under either of those divisions.
  - (ii) The exemption provided in division (11)(P)(i) of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.
  - (iii) The exemption provided in division (11)(P)(i) of this section does not apply to qualifying wages that an employer elects to withhold under division (D)(2) of Section 194.052 of this Chapter
  - (iv) The exemption provided in division (11)(P)(i) of this section does not apply to qualifying wages if both of the following conditions apply:

- (a) For qualifying wages described in division (B)(1) of Section 194.052 of this Chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in division (E) of Section 194.052 of this Chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;
- (b) The employee receives a refund of the tax described in division (11)(P)(iv)(a) of this section on the basis of the employee not performing services in that municipal corporation.
- (Q) (i) Except as provided in division (11)(Q)(ii) or (iii) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the Municipality on not more than twenty days in a taxable year.
  - (ii) The exemption provided in division (11)(Q)(i) of this section does not apply under either of the following circumstances:
    - (a) The individual's base of operation is located in the Municipality.
    - (b) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (11)(Q)(ii)(b) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 194.052 of this Chapter.
  - (iii) Compensation to which division (11)(Q) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.
  - (iv) For purposes of division (11)(Q) of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.
- (R) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to section 709.023 of the Ohio Revised Code on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.
- (S) Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under division (11) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

- (12) **"FORM 2106"** means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
- (13) **"GENERIC FORM"** means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability, including a request for refund.
- (14) "INCOME" means the following:

- (A) (i) For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (23)(D) of this section.
  - (ii) For the purposes of division (14)(A)(i) of this section:
    - (a) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (14)(A)(iv) of this section;
    - (b) The resident's distributive share of the net profit of each passthrough entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.
  - (iii) Division (14)(A)(ii) of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division 11(N) of this Section.
  - (iv) Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.
- (B) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the Municipality, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.
- (C) For taxpayers that are not individuals, net profit of the taxpayer;
- (D) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in Section 194.081 of this Chapter.

#### (E) INTENTIONALLY LEFT BLANK

(15) **"INTANGIBLE INCOME"** means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts,

investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

- (16) "INTERNAL REVENUE CODE" means the "Internal Revenue Code of 1986," 100 Sta. 2085, 26 U.S.C.A. 1, as amended.
- (17) **"LIMITED LIABILITY COMPANY"** means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
- (18) "LOCAL BOARD OF TAX REVIEW" and "BOARD OF TAX REVIEW" means the entity created under Section 194.18 of this Chapter..
- (19) **"MUNICIPAL CORPORATION**" means, in general terms, a status conferred upon a local government unit, by state law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under section 715.691, 718.691, 715.70, 715.71, or 715.74 of the Ohio Revised Code.
- (20) (A) "MUNICIPAL TAXABLE INCOME" means the following:
  - (i) For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to the Municipality under Section 194.062 of this Chapter, and further reduced by any pre-2017 net operating loss carryforward available to the person for the Municipality.
  - (ii) (a) For an individual who is a resident of a Municipality other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (20)(B) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.
    - (b) For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified municipal corporation from the qualified municipal corporation's tax on or before December 31, 2013. If a qualified municipal corporation, on or before December 31, 2013, exempts income earned by individuals who are not residents of the qualified municipal corporation and net profit of persons that are not wholly located within the qualified municipal corporation, such individual or person shall have no municipal taxable income for the purposes of the tax levied by the qualified municipal corporation and may be exempted by the qualified municipal corporation from the requirements of section 718.03 of the Ohio Revised Code.
  - (iii) For an individual who is a nonresident of the Municipality, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to the Municipality under Section 194.062 of this Chapter, then reduced as provided in division (20)(B) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.
  - (B) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (20)(A)(ii)(a) or (iii) of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the

extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation.

- (21) "MUNICIPALITY" means the City of Napoleon.
- (22) "NET OPERATING LOSS" means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.
- (23) (A) "NET PROFIT" for a person other than an individual means adjusted federal taxable income.
  - (B) "NET PROFIT" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of this division division (23)(A) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (1)(H) of this section.
  - (C) For the purposes of this chapter, and notwithstanding division (23)(A) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.
  - (D) (i) For purposes of this chapter, "publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.
    - (ii) For the purposes of this chapter, and not withstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in division (23)(D) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.
    - (iii) A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. Once the election is made, the election is binding for a five-year period beginning with the first taxable year of the initial election. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a C corporation for municipal purposes under division (D)(iv) of this section.
    - (iv) An election to discontinue filing as a C corporation must be made in the first year following the last year of a five-year election period in effect under division (D)(iii) of this section. The election to discontinue filing as a C corporation is binding for a five-year period beginning with the first taxable year of the election and continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a partnership for municipal purposes. An election to discontinue filing as a partnership must be made in the first year following the last year of a five-year election period.
    - (v) The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but division (D) of this section applies to all municipal corporations in which an individual owner of the partnership resides.
    - (vi) The individual owners of the partnership not filing as a C Corporation shall be required to file with their municipal corporation of residence, and report partnership distribution of net profit.

- (24) "NONRESIDENT" means an individual that is not a resident of the Municipality.
- (25) **"OHIO BUSINESS GATEWAY"** means the online computer network system, created under section 125.30 of the Ohio Revised Code, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.
- (26) **"OTHER PAYER"** means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.
- (27) **"PASS-THROUGH ENTITY**" means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. "Pass-through entity" does not include a trust, estate, grantor of a grantor trust, or disregarded entity.
- (28) "PENSION" means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.
- (29) **"PERSON"** includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.
- (30) **"POSTAL SERVICE"** means the United States postal service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.
- (31) "POSTMARK DATE," "DATE OF POSTMARK," and similar terms include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course if its business and marked on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery
- (32) (A) "PRE-2017 NET OPERATING LOSS CARRYFORWARD" means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the Municipality that was adopted by the Municipality before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such Municipality in future taxable years.
  - (B) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.
- (33) "QUALIFIED MUNICIPAL CORPORATION" means a municipal corporation that, by resolution or ordinance adopted on or before December 31, 2011, adopted Ohio adjusted gross income, as defined by section 5747.01 of the Ohio Revised Code, as the income subject to tax for the purposes of imposing a municipal income tax.
- (34) "QUALIFYING WAGES" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:
  - (A) Deduct the following amounts:
    - (i) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.
    - (ii) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.

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- (v) Any amount included in wages that is exempt income.
- (B) Add the following amounts:
  - (i) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.
  - (ii) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Division (34)(B)(ii) of this section applies only to those amounts constituting ordinary income.
  - (iii) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (34)(B)(iii) of this section applies only to employee contributions and employee deferrals.
  - (iv) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.
  - (v) Any amount received that is treated as self-employment income for federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code.
  - (vi) Any amount not included in wages if all of the following apply:
    - (a) For the taxable year the amount is employee compensation that is earned outside of the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;
    - (b) For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;
    - (c) For no succeeding taxable year will the amount constitute wages; and
    - (d) For any taxable year the amount has not otherwise been added to wages pursuant to either division (34)(B) of this section or section 718.03 of the Ohio Revised Code, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, March 23, 2015.
- (35) "RELATED ENTITY" means any of the following:
  - (A) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent (50%) of the value of the taxpayer's outstanding stock;
  - (B) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

- (C) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (35)(D) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock;
- (D) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (35)(A) to (C) of this section have been met.
- (36) **"RELATED MEMBER**" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty per cent" shall be substituted for "5 percent" wherever "5 percent" appears in section 1563(e) of the Internal Revenue Code.
- (37) **"RESIDENT"** means an individual who is domiciled in the Municipality as determined under Section 194.042 of this Chapter.
- (38) **"S CORPORATION"** means a person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
- (39) **"SCHEDULE C"** means internal revenue service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (40) "SCHEDULE E" means internal revenue service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (41) **"SCHEDULE F"** means internal revenue service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (42) "SINGLE MEMBER LIMITED LIABILITY COMPANY" means a limited liability company that has one direct member.
- (43) "SMALL EMPLOYER" means any employer that had total revenue of less than five hundred thousand dollars during the preceding taxable year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.
- (44) **"TAX ADMINISTRATOR"** means the individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this chapter, and also includes the following:
  - (A) A municipal corporation acting as the agent of another municipal corporation;
  - (B) A person retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the person in whole or in part on a contingency basis;
  - (C) The Central Collection Agency (CCA) or the Regional Income Tax Agency (RITA) or their successors in interest, or another entity organized to perform functions similar to those performed by the Central Collection Agency and the Regional Income Tax Agency.
- (45) "TAX RETURN PREPARER" means any individual described in section 7701(a)(36) of the Internal Revenue CODE AND 26 C.F.R. 301,7701-15.

- (46) **"TAXABLE YEAR"** means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
- (47) (A) "TAXPAYER" means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (47)(B)(i) of this section, a disregarded entity.
  - (B) (i) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:
    - (a) The limited liability company's single member is also a limited liability company.
    - (b) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.
    - (c) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of section 718.01 of the Ohio Revised Code as this section existed on December 31, 2004.
    - (d) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.
    - (e) The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.
    - (ii) For purposes of division (47)(B)(i)(e) of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least four hundred thousand dollars.
- (48) "TAXPAYERS' RIGHTS AND RESPONSIBILITIES" means the rights provided to taxpayers in sections 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011, and 5717.03 of the Ohio Revised Code and any corresponding ordinances of the Municipality, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with Chapter 718. of the Ohio Revised Code and resolutions, ordinances, and rules adopted by a municipal corporation for the imposition and administration of a municipal income tax.
- (49) **"VIDEO LOTTERY TERMINAL**" has the same meaning as in section 3770.21 of the Ohio Revised Code.
- (50) **"VIDEO LOTTERY TERMINAL SALES AGENT"** means a lottery sales agent licensed under Chapter 3770 of the Ohio Revised Code to conduct video lottery terminals on behalf of the state pursuant to section 3770.21 of the Ohio Revised Code.

(Source: Most definitions can be found in ORC 718.01. For additional definitions other than those noted in Section 194.03, see Section 194.205)

#### 194.04 INCOME SUBJECT TO TAX FOR INDIVIDUALS

### 194.041 DETERMINING MUNICIPAL TAXABLE INCOME FOR INDIVIDUALS; LOSSES

(A) "Municipal Taxable Income" for a resident of the Municipality is calculated as follows:

- (1) "Income" reduced by "Exempt Income" to the extent such exempt income is otherwise included in income, reduced by allowable employee business expense deduction as found in division (20)(B) of Section 194.03 of this Chapter, further reduced by any "Pre-2017 Net Operating Loss Carryforward" equals "Municipal Taxable Income".
  - (a) "Income" is defined in Section 194.03 (14) of this Chapter.
    - (i) "Qualifying Wages" is defined in Section 194,03(34).
    - (ii) "Net profit" is included in "income", and is defined in Section 194.03 (23) of this Chapter. This section also provides that the net operating loss carryforward shall be calculated and deducted in the same manner as provided in division (1)(H) of Section 194.03. Treatment of net profits received by an individual taxpaver from rental real estate is provided in Section 194.062(E).
    - (iii) Section 194.03(14) provides the following: offsetting and net operating loss carryforward treatment in (14)(A)(ii)(a); resident's distributive share of net profit from pass through entity treatment in (14)(A)(ii)(b); treatment of S Corporation distributive share of net profit in the hands of the shareholder in (14)(A)(iii); restriction of amount of loss permitted to be carried forward for use by taxpayer in a subsequent taxable year in (14)(A)(iv).
    - (iv) "Pass Through Entity" is defined in Section 194.03(27).
  - (b) "Exempt Income" is defined in Section 194.03 (11) of this Chapter.
  - (c) Allowable employee business expense deduction is described in (20)(B) of Section 194.03 of this Chapter, and is subject to the limitations provided in that section.
  - (d) "Pre-2017 Net Operating Loss Carryforward" is defined in Section 194.03 (32) of this Chapter
- (B) "Municipal Taxable Income" for a nonresident of the Municipality is calculated as follows:
  - (1) "Income" reduced by "Exempt Income" to the extent such exempt income is otherwise included in income, as applicable, apportioned or sitused to the Municipality as provided in Section 194.062 of this Chapter, reduced by allowable employee business expense deduction as found in (20)(B) of Section 194.03 of this Chapter, further reduced by any "Pre-2017 Net Operating Loss Carryforward" equals "Municipal Taxable Income".
    - (a) "Income" is defined in Section 194.03(14) of this Chapter.
      - (i) "Qualifying Wages" is defined in Section 194.03(34).
      - (ii) "Net profit" is included in "income", and is defined in Section 194.03(23) of this Chapter. This section also provides that the net operating loss carryforward shall be calculated and deducted in the same manner as provided in division (1)(H) of Section 194.03. "Net profit" for a nonresident individual includes any net profit of the nonresident, but excludes the distributive share of net profit or loss of only pass through entity owned directly or indirectly by the nonresident.
      - (iii) "Pass Through Entity" is defined in Section 194.03(27).
    - (b) "Exempt Income" is defined in Section 194.03(11) of this Chapter.
    - (c) "Apportioned or sitused to the Municipality as provided in Section 194.062 of this Chapter" includes the apportionment of net profit income attributable to work done or services performed in the Municipality. Treatment of net profits received by an individual taxpayer from rental real estate is provided in Section 194.062(E).
    - (d) "Allowable employee business expense deduction" as described in (20)(B) of Section 194.03 of this Chapter, is subject to the limitations

provided in that section. For a nonresident of the Municipality, the deduction is limited to the extent the expenses are related to the performance of personal services by the nonresident in the Municipality.

- (C) (1) Losses. The portion of a net operating loss sustained in any taxable year, allocable to the City, may be applied against the portion of the profit of succeeding years allocable to the City until exhausted, but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.
- (2) The net profits and losses sustained by a taxpayer from business activities subject to the City tax, other than from the taxpayer's principal source of income, shall be aggregated for each of the taxpayer's tax years. If the result of such aggregation is a net profit, tax will be imposed and paid on the net profit. If the result of such aggregation is a net loss, the net loss may be carried forward to any of the succeeding five (5) years and may be used against an aggregate net profit for any of these five (5) succeeding tax years. (Ord. 091-08. Passed 1-5-09)
- (3) In a taxable year beginning on or after January 1, 2017, the amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.
  - (a) No person shall use the deduction allowed to offset qualifying wages.
  - (b) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty percent (50%) of the amount of the deduction.
  - (c) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed.
  - (d) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount.

#### 194,042 **DOMICILE**

- (A) As used in this section:
  - (1) "Domicile" means the true, fixed and permanent home of the taxpayer to which whenever absent, the taxpayer intends to return.
  - (2) An individual is presumed to be domiciled in the Municipality for all or part of a taxable year if the individual was domiciled in the Municipality on the last day of the immediately preceding taxable year or if the tax administrator reasonably concludes that the individual is domiciled in the Municipality for all or part of the taxable year.
  - (3) An individual may rebut the presumption of domicile described in division (A)(1) of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the Municipality for all or part of the taxable year.
- (B) For the purpose of determining whether an individual is domiciled in the Municipality for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:
  - (1) The individual's domicile in other taxable years;
  - (2) The location at which the individual is registered to vote;
  - (3) The address on the individual's driver's license;
  - (4) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;
  - (5) The location and value of abodes owned or leased by the individual;
  - (6) Declarations, written or oral, made by the individual regarding the individual's

residency;

- (7) The primary location at which the individual is employed.
- (8) The location of educational institutions attended by the individual's dependents as defined in section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation or state where the educational institution is located:
- (9) The number of contact periods the individual has with the Municipality. For the purposes of this division, an individual has one "contact period" with the Municipality if the individual is away overnight from the individual's abode located outside of the Municipality and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the Municipality. For purposes of this section, the State's contact period test or bright-line test and resulting determination have no bearing on municipal residency or domicile.
- (C) All applicable factors are provided in Ohio Revised Code Section 718.012. (Source: ORC 718.012)

### 194.043 EXEMPTION FOR MEMBER OR EMPLOYEE OF GENERAL ASSEMBLY AND CERTAIN JUDGES

- (A) Only the municipal corporation of residence shall be permitted to levy a tax on the income of any member or employee of the Ohio General Assembly, including the Lieutenant Governor, whose income is received as a result of services rendered as such member or employee and is paid from appropriated funds of this state.
- (B) Only the municipal corporation of residence and the city of Columbus shall levy a tax on the income of the Chief Justice or a Justice of the Supreme Court received as a result of services rendered as the Chief Justice or Justice. Only the municipal corporation of residence shall levy a tax on the income of a judge sitting by assignment of the Chief Justice or on the income of a district court of appeals judge sitting in multiple locations within the district, received as a result of services rendered as a judge. (Source: ORC 718.50)

#### 194.05 COLLECTION AT SOURCE

#### 194.051 COLLECTION AT SOURCE; WITHHOLDING FROM QUALIFYING WAGES

- (A) (1) Each employer, agent of an employer, or other payer located or doing business in the Municipality shall withhold from each employee an amount equal to the qualifying wages of the employee earned by the employee in the Municipality multiplied by the applicable rate of the Municipality's income tax, except for qualifying wages for which withholding is not required under section 194.052 of this Chapter or division (D) or (F) of this section. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.
  - (2) In addition to withholding the amounts required under division (A)(1) of this section, an employer, agent of an employer, or other payer may also deduct and withhold, on the request of an employee, taxes for the municipal corporation in which the employee is a resident.
  - (3) All tax payments are first applied to the oldest year owing, and such payments are first applied to penalty and interest for that year, and then to tax owed.
- (B) (1) An employer, agent of an employer, or other payer shall remit to the Tax Administrator of the Municipality the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or

other payer, along with any report required by the Tax Administrator to accompany such payment, according to the following schedule:

- (a) Any employer, agent of an employer, or other payer not required to make payments under division (B)(1)(b) of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the fifteenth day of the month following the end of each calendar quarter.
- (b) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the municipal corporation in the preceding calendar year exceeded two thousand three hundred ninety-nine dollars, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the Municipality in any month of the preceding calendar quarter exceeded two hundred dollars. Payment under division (B)(1)(b) of this section shall be made so that the payment is received by the Tax Administrator not later than fifteen (15) days after the last day of each month.
- (C) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by the Municipality as the return required of an employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer, unless the Municipality requires all resident individual taxpayers to file a tax return under section 194.091 of this Chapter,
- (D) An employer, agent of an employer, or other payer is not required to withhold municipal income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.
- (E) (1) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.
  - (2) The failure of an employer, agent of an employer, or other payer to remit to the Municipality the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.
- (F) Compensation deferred before June 26, 2003, is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.
- (G) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be deemed to be held in trust for the Municipality until such time as the withheld amount is remitted to the Tax Administrator.
- (H) On or before the last day of February of each year, an employer shall file a Withholding Reconciliation Return with the Tax Administrator listing the names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the Municipality during the preceding calendar year, the amount of tax withheld, if any, from each such employee's qualifying wage, the total amount of qualifying wages paid to such employee during the preceding calendar year, the name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year, any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect

to such employee, and other information as may be required by the Tax Administrator.

- (I) The officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.
- (J) An employer is required to deduct and withhold municipal income tax on tips and gratuities received by the employer's employees and constituting qualifying wages only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.
- (K) A Tax Administrator shall consider any tax withheld by an employer at the request of an employee when such tax is not otherwise required to be withheld by this Chapter to be tax required to be withheld and remitted for the purposes of this section. (Source: ORC 718.03)

#### 194,052 COLLECTION AT SOURCE; OCCASIONAL ENTRANT

- (A) The following terms as used in this section:
  - (1) "Employer" includes a person that is a related member to or of an employer.
  - (2) "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.
  - (3) "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
  - (4) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.
  - (5) "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.
  - (6) "Worksite location" means a construction site or other temporary worksite in this state at which the employer provides services for more than twenty (20) days during the calendar year. "Worksite location" does not include the home of an employee.
  - (7) "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (B)(1)(a) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which

qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be deemed in accordance with division (B)(2) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

- (B) (1) Subject to divisions (C), (E), (F), and (G) of this section, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation that imposes such a tax if the employee performed such services in the municipal corporation on twenty or fewer days in a calendar year, unless one of the following conditions applies:
  - (a) The employee's principal place of work is located in the Municipality.
  - (b) The employee performed services at one or more presumed worksite locations in the Municipality. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in this state at which the employer provides services that can reasonably be expected by the employer to last more than twenty days in a calendar year. Services can "reasonably be expected by the employer to last more than twenty (20) days" if either of the following applies at the time the services commence:
    - (i) The nature of the services are such that it will require more than twenty days of actual services to complete the services;
    - (ii) The agreement between the employer and its customer to perform services at a location requires the employer to perform actual services at the location for more than twenty (20) days.
  - (c) The employee is a resident of the Municipality and has requested that the employer withhold tax from the employee's qualifying wages as provided in section 194.051 of this Chapter.
  - (d) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure within the Municipality.
  - (2) For the purposes of division (B)(1) of this section, an employee shall be considered to have spent a day performing services in a municipal corporation only if the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:
    - (a) Traveling to the location at which the employee will first perform services for the employer for the day:
    - (b) Traveling from a location at which the employee was performing services for the employer to any other location;
    - (c) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;
    - (d) Transporting or delivering property described in division (B)(2)(c) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;
    - (e) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the

employer.

- (C) If the principal place of work of an employee is located in a municipal corporation that imposes an income tax in accordance with this chapter, the exception from withholding requirements described in division (B)(1) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to the municipal corporation in which the employee's principal place of work is located.
- (D) (1) Except as provided in division (D)(2) of this section, if, during a calendar year, the number of days an employee spends performing personal services in a municipal corporation exceeds the twenty-day threshold described in division (B)(1) of this section, the employer shall withhold and remit tax to that municipal corporation for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in that municipal corporation.
  - (2) An employer required to begin withholding tax for a municipal corporation under division (D)(1) of this section may elect to withhold tax for that municipal corporation for the first twenty days on which the employer paid qualifying wages to the employee for personal services performed in that municipal corporation.
  - (3) If an employer makes the election described in division (D)(2) of this section, the taxes withheld and paid by such an employer during those first twenty days to the municipal corporation in which the employee's principal place of work is located are refundable to the employee.
- (E) Without regard to the number of days in a calendar year on which an employee performs personal services in any municipal corporation, an employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the municipal corporation in which the employer's fixed location is located if the employer qualifies as a small employer as defined in Section 194.03 of this Chapter. To determine whether an employer qualifies as a small employer for a taxable year, a Tax Administrator may require the employer to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.
- (F) Divisions (B)(1) and (D) of this section shall not apply to the extent that a Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of section 194.051 of this Chapter.
- (G) In the case of a person performing personal services at a petroleum refinery located in a municipal corporation that imposes a tax on income, an employer is not required to withhold municipal income tax on the qualifying wages of such a person if the person performs those services on twelve or fewer days in a calendar year, unless the principal place of work of the employer is located in another municipal corporation in this state that imposes a tax applying to compensation paid to the person for services performed on those days and the person is not liable to that other municipal corporation for tax on the compensation paid for such services. For the purposes of this division, a petroleum refinery is a facility with a standard industrial classification code facility classification of 2911, petroleum refining. Notwithstanding division (D) of this section, if, during a calendar year, the number of days an individual performs personal services at a petroleum refinery exceeds twelve, the employer shall withhold tax for the municipal corporation for the first twelve days for which the employer paid qualifying wages to the individual and for all subsequent days in the calendar year on which the individual performed services at the refinery. (Source: ORC 718.011; ORC 718.01)

#### 194,053 COLLECTION AT SOURCE; CASINO AND VLT

- (A) The Municipality shall require a casino facility or a casino operator, as defined in Section 6(C)(9) of Article XV, Ohio Constitution, and section 3772.01 of the Ohio Revised Code, respectively, or a lottery sales agent conducting video lottery terminals sales on behalf of the state to withhold and remit municipal income tax with respect to amounts other than qualifying wages as provided in this section.
- (B) If a person's winnings at a casino facility are an amount for which reporting to the

internal revenue service of the amount is required by section 6041 of the Internal Revenue Code, as amended, the casino operator shall deduct and withhold municipal income tax from the person's winnings at the rate of the tax imposed by the municipal corporation in which the casino facility is located.

- (C) Amounts deducted and withheld by a casino operator are held in trust for the benefit of the municipal corporation to which the tax is owed.
  - (1) On or before the tenth day of each month, the casino operator shall file a return electronically with the Tax Administrator of the Municipality, providing the name, address, and social security number of the person from whose winnings amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the winnings from which each such amount was withheld, the type of casino gaming that resulted in such winnings, and any other information required by the Tax Administrator. With this return, the casino operator shall remit electronically to the Municipality all amounts deducted and withheld during the preceding month.
  - (2) Annually, on or before the thirty-first day of January, a casino operator shall file an annual return electronically with the Tax Administrator of the municipal corporation in which the casino facility is located, indicating the total amount deducted and withheld during the preceding calendar year. The casino operator shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address, or social security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.
  - (3) Annually, on or before the thirty-first day of January, a casino operator shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted from the person's winnings during the preceding year. The casino operator shall provide to the Tax Administrator a copy of each information return issued under this division. The administrator may require that such copies be transmitted electronically.
  - (4) A casino operator that fails to file a return and remit the amounts deducted and withheld shall be personally liable for the amount withheld and not remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.
  - (5) If a casino operator sells the casino facility or otherwise quits the casino business, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor shall withhold an amount of the purchase money that is sufficient to cover the amounts deducted and withheld along with any penalties and interest thereon until the predecessor casino operator produces either of the following:
    - (a) A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid;
    - (b) A certificate from the Tax Administrator indicating that no amounts are due.

If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts deducted and withheld and penalties and interest thereon.

- (6) The failure of a casino operator to deduct and withhold the required amount from a person's winnings does not relieve that person from liability for the municipal income tax with respect to those winnings.
- (D) If a person's prize award from a video lottery terminal is an amount for which reporting to the internal revenue service is required by section 6041 of the Internal Revenue Code, as amended, the video lottery sales agent shall deduct and withhold municipal income tax from the person's prize award at the rate of the tax imposed by the municipal corporation in which the video lottery terminal facility is located.

- (E) Amounts deducted and withheld by a video lottery sales agent are held in trust for the benefit of the municipal corporation to which the tax is owed.
  - (1) The video lottery sales agent shall issue to a person from whose prize award an amount has been deducted and withheld a receipt for the amount deducted and withheld, and shall obtain from the person receiving a prize award the person's name, address, and social security number in order to facilitate the preparation of returns required by this section.
  - (2) On or before the tenth day of each month, the video lottery sales agent shall file a return electronically with the Tax Administrator of the Municipality providing the names, addresses, and social security numbers of the persons from whose prize awards amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the prize award from which each such amount was withheld, and any other information required by the Tax Administrator. With the return, the video lottery sales agent shall remit electronically to the Tax Administrator all amounts deducted and withheld during the preceding month.
  - (3) A video lottery sales agent shall maintain a record of all receipts issued under division (E) of this section and shall make those records available to the Tax Administrator upon request. Such records shall be maintained in accordance with section 5747.17 of the Ohio Revised Code and any rules adopted pursuant thereto.
  - (4) Annually, on or before the thirty-first day of January, each video lottery terminal sales agent shall file an annual return electronically with the Tax Administrator of the municipal corporation in which the facility is located indicating the total amount deducted and withheld during the preceding calendar year. The video lottery sales agent shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address, or social security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.
  - (5) Annually, on or before the thirty-first day of January, a video lottery sales agent shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted and withheld from the person's prize award by the video lottery sales agent during the preceding year. A video lottery sales agent shall provide to the Tax Administrator of the municipal corporation a copy of each information return issued under this division. The Tax Administrator may require that such copies be transmitted electronically.
  - (6) A video lottery sales agent who fails to file a return and remit the amounts deducted and withheld is personally liable for the amount deducted and withheld and not remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.
- (F) If a video lottery sales agent ceases to operate video lottery terminals, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor of the video lottery sales agent that purchases the video lottery terminals from the agent shall withhold an amount from the purchase money that is sufficient to cover the amounts deducted and withheld and any penalties and interest thereon until the predecessor video lottery sales agent operator produces either of the following:
  - (1) A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid;
  - (2) A certificate from the Tax Administrator indicating that no amounts are due. If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts deducted and withheld and penalties and interest thereon.
- (G) The failure of a video lottery sales agent to deduct and withhold the required amount from a person's prize award does not relieve that person from liability for the municipal income tax with respect to that prize award.
- (H) If a casino operator or lottery sales agent files a return late, fails to file a return, remits

amounts deducted and withheld late, or fails to remit amounts deducted and withheld as required under this section, the Tax Administrator of a municipal corporation may impose the following applicable penalty:

- (1) For the late remittance of, or failure to remit, tax deducted and withheld under this section, a penalty equal to fifty per cent (50%) of the tax deducted and withheld;
- (2) For the failure to file, or the late filing of, a monthly or annual return, a penalty of five hundred dollars for each return not filed or filed late. Interest shall accrue on past due amounts deducted and withheld at the rate prescribed in section 5703.47 of the Ohio Revised Code.
- (I) Amounts deducted and withheld on behalf of a municipal corporation shall be allowed as a credit against payment of the tax imposed by the municipal corporation and shall be treated as taxes paid for purposes of section 194.07 of this Chapter. This division applies only to the person for whom the amount is deducted and withheld.
- (J) The Tax Administrator shall prescribe the forms of the receipts and returns required under this section.

(Source: ORC 718.031)

#### 194,06 INCOME SUBJECT TO NET PROFIT TAX

### 194.061 DETERMINING MUNICIPAL TAXABLE INCOME FOR TAXPAYERS WHO ARE NOT INDIVIDUALS; LOSSES

"Municipal Taxable Income" for a taxpayer who is not an individual for the Municipality is calculated as follows:

- (A) "Income" reduced by "Exempt Income" to the extent otherwise included in income, multiplied by apportionment, further reduced by any "Pre-2017 Net Operating Loss Carryforward" equals "Municipal Taxable Income".
  - (1) "Income" for a taxpayer that is not an individual means the "Net Profit" of the taxpayer.
    - (i) "Net Profit" for a person other than an individual is defined in Section 194.03(23).
    - (ii) "Adjusted Federal Taxable Income" is defined in Section 194.03(1) of this Chapter.
  - (2) "Exempt Income" is defined in Section 194.03(11) of this Chapter.
  - (3) "Apportionment" means the apportionment as determined by Section 194.062 of this Chapter.
  - (4) Losses.
    - (a) The portion of a net operating loss sustained in any taxable year, allocable to the City, may be applied against the portion of the profit of succeeding years allocable to the City until exhausted, but in no event for more than five taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.
    - (b) The net profits and losses sustained by a taxpayer from business activities subject to the City tax, other than from the taxpayer's principal source of income, shall be aggregated for each of the taxpayer's tax years. If the result of such aggregation is a net profit, tax will be imposed and paid on the net profit. If the result of such aggregation is a net loss, the net loss may be carried forward to any of the succeeding five years and may be used against an aggregate net profit for any of these five succeeding tax years. (Ord. 091-08. Passed 1-5-09)
    - (c) In a taxable year beginning on or after January 1, 2017, the amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal

taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

- (1) No person shall use the deduction allowed to offset qualifying wages.
- (2) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty percent (50%) of the amount of the deduction.
- (3) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed.
- (4) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount.

### 194.062 NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE APPORTIONMENT

This section applies to any taxpayer engaged in a business or profession in the Municipality unless the taxpayer is an individual who resides in the Municipality or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745 of the Ohio Revised Code.

- (A) Net profit from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the Municipality for purposes of municipal income taxation in the same proportion as the average ratio of the following:
  - (1) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the Municipality during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

- (2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the Municipality to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not-required to be withheld under section 194.052 of this Chapter;
- (3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Municipality to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- (B) (1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the Municipality, the taxpayer may request, or the Tax Administrator of the Municipality may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:
  - (a) Separate accounting;

- (b) The exclusion of one or more of the factors;
- (c) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the Municipality;
- (d) A modification of one or more of the factors.
- (2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by division (A) of Section 194.19 of this Chapter.
- (3) A Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (B)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by division (A) of Section 194.19 of this Chapter.
- (4) Nothing in division (B) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by a Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.
- (C) As used in division (A)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:
  - (1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
    - (a) The employer;
    - (b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
    - (c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.
  - (2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;
  - (3) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If a Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.
- (D) For the purposes of division (A)(3) of this section, receipts from sales and rentals made and services performed shall be sitused to a municipal corporation as follows:
  - (1) Gross receipts from the sale of tangible personal property shall be sitused to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in a municipal corporation if, regardless of where title passes, the property meets any of the following criteria:
    - (a) The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.
    - (b) The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.
    - (c) The property is shipped from a place within the municipal corporation to purchasers outside the municipal corporation, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

- (2) Gross receipts from the sale of services shall be sitused to the municipal corporation to the extent that such services are performed in the municipal corporation.
- (3) To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be sitused to the municipal corporation.
- (4) To the extent included in income, gross receipts from rents and royalties from real property located in the municipal corporation shall be sitused to the municipal corporation.
- (5) Gross receipts from rents and royalties from tangible personal property shall be sitused to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.
- (E) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual or by a disregarded entity owned by the individual shall be subject to tax only by the municipal corporation in which the property generating the net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides.

A municipal corporation shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit sitused under this division to the municipal corporation in which the property is located.

- (F) (1) Except as provided in division (F)(2) of this section, commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be sitused to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to a municipal corporation based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the municipal corporation to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
  - (2) An individual who is a resident of a municipal corporation that imposes a municipal income tax shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under Section 194.081 of this Chapter.
- (G) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under divisions (11)(L) and (34)(A)(iv) of Section 194.03 of this Chapter, by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to a municipal corporation under this section.

(H) When calculating the ratios described in division (A) of this section for the purposes of that division or division (B) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity. (Source: ORC 718.02)

#### 194.063 CONSOLIDATED FEDERAL INCOME TAX RETURN

#### (A) As used in this section:

(1) "Affiliated group of corporations" means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any

incumbent local exchange carrier that would otherwise be included in the group.

- (2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.
- (3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (A)(1) of this section.
- (4) "Incumbent local exchange carrier" has the same meaning as in section 4927.01 of the Revised Code.
- (5) "Local exchange telephone service" has the same meaning as in section 5727.01 of the Revised Code.
- (B) (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the municipal income tax in that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year.
  - (a) The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law.
  - (b) The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (B)(2) of this section; or
  - (c) A taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.
  - (2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (B)(1) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.
  - (3) An election made under division (B)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.
- (C) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated municipal income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the municipal corporation. A taxpayer that is required to file a consolidated municipal income tax return for a taxable year shall file a consolidated municipal income tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.
- (D) A taxpayer shall prepare a consolidated municipal income tax return in the same manner as is required under the United States Department of Treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.
- (E) (1) Except as otherwise provided in divisions (E)(2), (3), and (4) of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in section 194.03(1) of this Chapter, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

- (2) No corporation filing a consolidated municipal income tax return shall make any adjustment otherwise required under division (1) of 194.03 of this Chapter to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.
- (3) If the net profit or loss of a pass-through entity having at least eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated municipal income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:
  - (a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 194.062 of this Chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.
  - (b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 194.062 of this Chapter, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.
- (4) If the net profit or loss of a pass-through entity having less than eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:
  - (a) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in Section 194.062 of this Chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to a municipal corporation;
  - (b) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.
- (F) Corporations filing a consolidated municipal income tax return shall make the computations required under Section 194.062 of this Chapter by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.
- (G) Each corporation filing a consolidated municipal income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by a municipal corporation in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.
- (H) Corporations and their affiliates that made an election or entered into an agreement with a municipal corporation before January 1, 2016, to file a consolidated or combined tax return with such municipal corporation may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January

1, 2016. (Source: ORC 718.06)

### 194,064 TAX CREDIT FOR BUSINESSES THAT FOSTER NEW JOBS IN OHIO

The Municipality, by ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer to foster job creation in the Municipality. If a credit is granted under this section, it shall be measured as a percentage of the new income tax revenue the Municipality derives from new employees of the taxpayer and shall be for a term not exceeding fifteen years. Before the Municipality passes an ordinance granting a credit, the Municipality and the taxpayer shall enter into an agreement specifying all the conditions of the credit. (Source: ORC 718.15)

### 194.065 TAX CREDITS TO FOSTER JOB RETENTION

The Municipality, by ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer for the purpose of fostering job retention in the Municipality. If a credit is granted under this section, it shall be measured as a percentage of the income tax revenue the Municipality derives from the retained employees of the taxpayer, and shall be for a term not exceeding fifteen years. Before the Municipality passes an ordinance allowing such a credit, the Municipality and the taxpayer shall enter into an agreement specifying all the conditions of the credit. (Source: ORC 718.151)

#### 194.07 DECLARATION OF ESTIMATED TAX

- (A) As used in this section:
  - (1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for a municipal corporation's income tax for the current taxable year.
  - (2) "Tax liability" means the total taxes due to a municipal corporation for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.
- (B) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least two hundred dollars. For the purposes of this section:
  - (a) Taxes withheld from qualifying wages shall be considered as paid to the municipal corporation for which the taxes were withheld in equal amounts on each payment date. If the taxpayer establishes the dates on which all amounts were actually withheld, the amounts withheld shall be considered as paid on the dates on which the amounts were actually withheld.
  - (b) An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.
  - (c) A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the Tax Administrator.
  - (d) Taxes withheld by a casino operator or by a lottery sales agent under section 718.031 of the Ohio Revised Code are deemed to be paid to the municipal corporation for which the taxes were withheld on the date the taxes are withheld from the taxpayer's winnings.
  - (2) Taxpayers filing joint returns shall file joint declarations of estimated taxes.
  - (3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of municipal income tax returns under division (G) of Section 194.091 of this

Chapter or on or before the fifteenth day of the fourth month of the first taxable year after the taxpayer becomes subject to tax for the first time.

- (4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.
- (5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.
- (C) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the Municipality or Tax Administrator, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:
  - (a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half per cent of the tax liability for the taxable year;
  - (b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five per cent of the tax liability for the taxable year;
  - (c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half per cent of the tax liability for the taxable year;
  - (d) On or before the fifteenth day of the twelfth month of the taxable year, ninety per cent of the tax liability for the taxable year.
  - (2) A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates. The amended declaration must be filed on the next applicable due date as outlined in (C)(1)(a) through (d) of this section.
  - (3) On or before the fifteenth day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with section 194.091 of this Chapter.
    - (a) For taxpayers who are individuals, or who are not individuals and are reporting and filing on a calendar year basis, the annual tax return is due on the same date as the filing of the federal tax return, unless extended pursuant to division (G) of section 5747.08 of the Revised Code.
    - (b) For taxpayers who are not individuals, and are reporting and filing on a fiscal year basis or any period other than a calendar year, the annual return is due on the fifteenth day of the fourth month following the end of the taxable year or period.
  - (4) An amended declaration is required whenever the taxpayer's estimated tax liability changes during the taxable year. A change in estimated tax liability may either increase or decrease the estimated tax liability for the taxable year.
- (D) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to section 194.10 of this Chapter upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:
  - (a) For the first payment of estimated taxes each year, twenty-two and one-half per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
  - (b) For the second payment of estimated taxes each year, forty-five per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
  - (c) For the third payment of estimated taxes each year, sixty-seven and one-half per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment:

- (d) For the fourth payment of estimated taxes each year, ninety per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment.
- (2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.
- (E) An underpayment of any portion of tax liability determined under division (D) of this section shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:
  - (1) The amount of estimated taxes that were paid equals at least ninety per cent of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.
  - (2) The amount of estimated taxes that were paid equals at least one hundred per cent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with the municipal corporation under Section 194.091 of this Chapter for that year.
  - (3) The taxpayer is an individual who resides in the Municipality but was not domiciled there on the first day of January of the calendar year that includes the first day of the taxable year.
- (F) A Tax Administrator may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.

(Source: 718.08)

### 194.08 CREDIT FOR TAX PAID

#### 194.081 CREDIT FOR TAX PAID – CITY OF NAPOLEON

- (A) If a resident of Napoleon is subject to and has paid a municipal income tax due to the operation of a business or the receipt of compensation in another taxing municipality, such taxpayer shall be allowed a 100% credit against the Napoleon tax due, but such credit shall not exceed the amount of Napoleon tax levied on such compensation or from the profits of a business
- (B) If a resident of Napoleon operates a business or businesses in another taxing municipality and the business or businesses incur a loss, the amount of the loss is deemed primarily subject to the taxing jurisdiction of the other taxing municipality and may not be used to reduce the taxpayer's Napoleon tax base.

(Ord. 135-04. Passed 12-6-04)

#### 194,082 REFUNDABLE CREDIT FOR QUALIFYING LOSS

- (A) As used in this section:
  - (1) "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.
  - (2) (a) Except as provided in division (A)(2)(b) of this section, "qualifying loss" means the excess, if any, of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan over the total amount of income the taxpayer has recognized for federal income tax purposes for all taxable years on a cumulative basis as compensation with

respect to the taxpayer's receipt of money and property attributable to distributions in connection with the nonqualified deferred compensation plan.

- (b) If, for one or more taxable years, the taxpayer has not paid to one or more municipal corporations income tax imposed on the entire amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan, then the "qualifying loss" is the product of the amount resulting from the calculation described in division (A)(2)(a) of this section computed without regard to division (A)(2)(b) of this section and a fraction the numerator of which is the portion of such compensation on which the taxpayer has paid income tax to one or more municipal corporations and the denominator of which is the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.
- (c) With respect to a nonqualified deferred compensation plan, the taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.
- (3) "Qualifying tax rate" means the applicable tax rate for the taxable year for the which the taxpayer paid income tax to a municipal corporation with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan. If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the municipal corporation each year with respect to the nonqualified deferred compensation plan.
- (B) (1) Except as provided in division (D) of this section, a refundable credit shall be allowed against the income tax imposed by a municipal corporation for each qualifying loss sustained by a taxpayer during the taxable year. The amount of the credit shall be equal to the product of the qualifying loss and the qualifying tax rate.
  - (2) A taxpayer shall claim the credit allowed under this section from each municipal corporation to which the taxpayer paid municipal income tax with respect to the nonqualified deferred compensation plan in one or more taxable years.
  - (3) If a taxpayer has paid tax to more than one municipal corporation with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.
  - (4) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to a municipal corporation for all taxable years with respect to the nonqualified deferred compensation plan.
- (C) (1) For purposes of this section, municipal corporation income tax that has been withheld with respect to a nonqualified deferred compensation plan shall be considered to have been paid by the taxpayer with respect to the nonqualified deferred compensation plan.
  - (2) Any municipal income tax that has been refunded or otherwise credited for the benefit of the taxpayer with respect to a nonqualified deferred compensation plan shall not be considered to have been paid to the municipal corporation by the taxpayer.
- (D) The credit allowed under this section is allowed only to the extent the taxpayer's qualifying loss is attributable to:
  - (1) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or
  - (2) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

(Source: ORC 718.021)

## 194.083 CREDIT FOR PERSON WORKING IN JOINT ECONOMIC DEVELOPMENT DISTRICT OR ZONE

A Municipality shall grant a credit against its tax on income to a resident of the Municipality who works in a joint economic development zone created under section 715.691 or a joint economic development district created under section 715.70, 715.71, or 715.72 of the Ohio Revised Code to the same extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation, pursuant to Section 194.081 of this Chapter. (Source: ORC 718.16)

#### 194.084 CREDIT FOR TAX BEYOND STATUTE FOR OBTAINING REFUND

- (A) Income tax that has been deposited or paid to the Municipality, but should have been deposited or paid to another municipal corporation, is allowable by the Municipality as a refund, but is subject to the three-year limitation on refunds as provided in Section 194.096 of this Chapter.
- (B) Income tax that should have been deposited or paid to the Municipality, but was deposited or paid to another municipal corporation, shall be subject to collection and recovery by the Municipality. To the extent a refund of such tax or withholding is barred by the limitation on refunds as provided in section 194.096, the Municipality will allow a non-refundable credit equal to the tax or withholding paid to the other municipality against the income tax the Municipality claims is due. If the Municipality's tax rate is higher, the tax representing the net difference of the tax rates is also subject to collection by the Municipality, along with any penalty and interest accruing during the period of nonpayment.
- (C) No carryforward of credit will be permitted when the overpayment is beyond the three-year limitation for refunding of same as provided in Section 194.096 of this Chapter.
- (D) Nothing in this section requires a Municipality to allow credit for tax paid to another municipal corporation if the Municipality has reduced credit for tax paid to another municipal corporation. Section 194.081 of this Chapter regarding any limitation on credit shall prevail. (Source: ORC 718.121)

#### 194.09 ANNUAL RETURN

## 194.091 RETURN AND PAYMENT OF TAX

- (A) (1) An annual return with respect to the income tax levied on Municipal Taxable Income by the Municipality shall be completed and filed by every taxpayer for any taxable year for which the taxpayer is subject to the tax, regardless of whether or not income tax is due.
  - (2) The Tax Administrator shall accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer located in the Municipality under subsection 194.051(C) of this Chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due to the Municipality.
  - (3) All resident individual taxpayers, 18 years of age and older, shall file an annual municipal income tax return with the Municipality, regardless of income or liability.
  - (4) If a taxpayer is retired and is receiving only Social Security income or other retirement income, then that taxpayer need not file an annual tax return. However, during any tax year, if that taxpayer receives income other than retirement income or Social Security income (for example, including but not limited to, income received from lottery winnings, taxable wages, or any other miscellaneous income), then that taxpayer must file a timely tax return for each year in which income other than retirement income or Social Security income is received.

- (5) All tax payments are first applied to the oldest year owing, and such payments are first applied to penalty and interest for that year, and then to tax owed.
- (B) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.
- (C) If an individual is unable to complete and file a return or notice required by the Municipality in accordance with this chapter, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual. Such duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the duly authorized agent, guardian, conservator, fiduciary, or other person.
- (D) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust. Such fiduciary shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the fiduciary.
- (E) No municipal corporation shall deny spouses the ability to file a joint return.
- (F) (1) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's social security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.
  - (2) A taxpayer who is an individual is required to include, with each annual return, amended return, or request for refund required under this section, copies of only the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040; and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.
  - (3) A taxpayer that is not an individual is required to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.
  - (4) A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio business gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio business gateway or a portal provided by Municipality. The department of taxation shall publish a method of electronically submitting the documents required under this division through the Ohio business gateway on or before January 1, 2016. The department shall transmit all documents submitted electronically under this division to the appropriate Tax Administrator.
  - (5) After a taxpayer files a tax return, the Tax Administrator shall request, and the taxpayer shall provide, any information, statements, or documents required by the Municipality to determine and verify the taxpayer's municipal income tax liability. The

requirements imposed under division (F) of this section apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.

- (6) Any other documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses, or other pertinent factors on the return shall also be included to avoid delay in processing, or disallowance by the Tax Administrator of undocumented credits or losses.
- (G) (1) (a) Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of section 5747.08 of the Ohio Revised Code. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the Municipality or Tax Administrator.
  - (b) Except as otherwise provided in this chapter, each annual net profit income tax return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the tax administrator on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year or period. The taxpayer shall complete and file the return or notice on forms prescribed by the tax administrator or on generic forms, together with remittance made payable to the Municipality or Tax Administrator.
  - (c) In the case of individual income tax return required to be filed by an individual, and net profit income tax return required to be filed by a taxpayer who is not an individual, no remittance is required if the amount shown to be due is ten dollars or less.
  - (2) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the Municipality in accordance with this chapter, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.
  - (3) With respect to taxpayers to whom Section 194.092 of this Chapter applies, to the extent that any provision in this division conflicts with any provision in Section 194.092 of this Chapter, the provision in Section 194.092 of this Chapter prevails.
- (H) (1) For taxable years beginning after 2015, the Municipality shall not require a taxpayer to remit tax with respect to net profits if the amount due is ten dollars or less.
  - (2) Any taxpayer not required to remit tax to the Municipality for a taxable year pursuant to division (H)(1) of this section shall file with the Municipality an annual net profit return under division (F)(3) and (4) of this section.
- (I) This division shall not apply to payments required to be made under division (B)(1)(b) of Section 194.051 of this Chapter.
  - (1) If any report, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under this chapter is delivered after that period or that to the Tax Administrator or other municipal official with which the report, claim, statement, or other document is required to be filed, or to which the payment is required to be made, the date of the postmark stamped on the cover in which the report, claim, statement, or other document, or payment is mailed shall be deemed to be the date of delivery or the date of payment. "The date of postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.
  - (2) If a payment is required to be made by electronic funds transfer, the payment is considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. For purposes of this section, "submitted the payment" means the date which

the taxpayer has designated for the delivery of payment, which may or may not be the same date as the date the payment was initiated by the taxpayer.

- (J) The amounts withheld for the Municipality by an employer, the agent of an employer, or other payer as described in section 194.051 of this Chapter shall be allowed to the recipient of the compensation as credits against payment of the tax imposed on the recipient unless the amounts withheld were not remitted to the Municipality and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.
- (K) Each return required by the Municipality to be filed in accordance with this section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the Tax Administrator to contact the preparer or other person concerning questions that arise during the examination or other review of the return and authorizes the preparer or other person only to provide the Tax Administrator with information that is missing from the return, to contact the Tax Administrator for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the Tax Administrator and has shown to the preparer or other person. Authorization by the taxpayer of another person to communicate with the Tax Administrator about matters pertaining to the return does not preclude the Tax Administrator from contacting the taxpayer regarding such matters.
- (L) The Tax Administrator of the Municipality shall accept for filing a generic form of any income tax return, report, or document required by the Municipality in accordance with this Chapter, provided that the generic form, once completed and filed, contains all of the information required by ordinances, resolutions, or rules adopted by the Municipality or Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this Chapter and of the Municipality's ordinance or resolution governing the filing of returns, reports, or documents.
- (M) When income tax returns, reports, or other documents require the signature of a tax return preparer, the Tax Administrator shall accept a facsimile of such a signature in lieu of a manual signature.
- (N) (1) As used in this division, "worksite location" has the same meaning as in section 194.052 of this chapter.
  - (2) A person may notify a tax administrator that the person does not expect to be a taxpayer with respect to the municipal corporation for a taxable year if both of the following conditions apply:
    - (a) The person was required to file a tax return with the municipal corporation for the immediately preceding taxable year because the person performed services at a worksite location within the municipal corporation, and the person has filed all appropriate and required returns and remitted all applicable income tax and withholding payments as provided by this chapter. The tax administrator is not required to accept an affidavit from a taxpayer who has not complied with the provisions of this chapter.
    - (b) The person no longer provides services in the municipal corporation, and does not expect to be subject to the municipal corporation's income tax for the taxable year.

The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the municipal corporation. The affidavit also shall include the following statement: "The affiant has no plans to perform any services within the municipal corporation, make any sales in the municipal corporation, or otherwise become subject to the tax levied by the municipal corporation for the affiant does become subject to the tax levied by the municipal corporation for

the taxable year, the affiant agrees to be considered a taxpayer and to properly register as a taxpayer with the municipal corporation, if such a registration is required by the municipal corporation's resolutions, ordinances, or rules." The person shall sign the affidavit under penalty of perjury.

(c) If a person submits an affidavit described in division (N)(2) of this section, the tax administrator shall not require the person to file any tax return for the taxable year unless the tax administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change, or the taxpayer has engaged in activity which results in work being performed, services provided, sales made, or other activity that results in municipal taxable income reportable to the Municipality in the taxable year. It shall be the responsibility of the taxpayer to comply with the provisions of this chapter relating to the reporting and filing of municipal taxable income on an annual municipal income tax return, even if an affidavit has been filed with the tax administrator for the taxable year. Nothing in division (N) of this section prohibits the tax administrator from performing an audit of the person.

(Source: ORC 718.05)

## 194.092 RETURN AND PAYMENT OF TAX; INDIVIDUALS SERVING IN COMBAT ZONE

- (A) Each member of the national guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the President of the United States or an act of the Congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the Tax Administrator of the Municipality for both an extension of time for filing of the return and an extension of time for payment of taxes required by the Municipality in accordance with this chapter during the period of the member's or civilian's duty service and for one hundred eighty days thereafter. The application shall be filed on or before the one hundred eightieth day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.
- (B) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the one hundred eighty-first day after the applicant's active duty or service terminates. Except as provided in division (B)(3) of this section, the Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate.
  - (2) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the Municipality before the one hundred eighty-first day after the applicant's active duty or service terminates.
  - (3) Taxes paid pursuant to a contract entered into under division (B)(1) of this section are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.
- (C) (1) Nothing in this division denies to any person described in this division the application of divisions (A) and (B) of this section.
  - (2) (a) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by the Municipality in accordance with this chapter. The length of any extension granted under division (C)(2)(a) of this section shall be equal to the length of the corresponding extension that the taxpayer receives

under the Internal Revenue Code. As used in this section, "qualifying taxpayer" means a member of the national guard or a member of a reserve component of the armed forces of the United States called to active duty pursuant to either an executive order issued by the President of the United States or an act of the Congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.

- (b) Taxes the payment of which is extended in accordance with division (C)(2)(a) of this section are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (C)(2)(a) of this section in calculating the penalty or interest due on any unpaid tax.
- (D) For each taxable year to which division (A), (B), or (C) of this section applies to a taxpayer, the provisions of divisions (B)(2) and (3) or (C) of this section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

(Source: ORC 718.052)

### 194.093 USE OF OHIO BUSINESS GATEWAY; TYPES OF FILINGS AUTHORIZED

- (A) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file any municipal income tax return or, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.
- (B) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.
- (C) Nothing in this section affects the due dates for filing employer withholding tax returns or deposit of any required tax.
- (D) The use of the Ohio Business Gateway by municipal corporations, taxpayers, or other persons does not affect the legal rights of municipalities or taxpayers as otherwise permitted by law. The State of Ohio shall not be a party to the administration of municipal income taxes or to an appeal of a municipal income tax matter, except as otherwise specifically provided by law.
- (E) Nothing in this section shall be construed as limiting or removing the authority of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

(Source: ORC 718.051)

#### 194.094 EXTENSION OF TIME TO FILE

- (A) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates.
- (B) Any taxpayer that qualifies for an automatic federal extension for a period other than sixmonths for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as that of the extended federal income tax return.
- (C) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the tax administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the request is received by the tax administrator on or before the date the municipal income tax

return is due, the tax administrator shall grant the taxpayer's requested extension.

- (D) An extension of time to file under this chapter is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.
- (E) If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of section 5747.08 of the Ohio Revised Code, a taxpayer shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as the extended due date of the state income tax return.

(Source: ORC 718.05)

#### 194,095 AMENDED RETURNS

- (A) (1) A taxpayer shall file an amended return with the Tax Administrator in such form as the Tax Administrator requires if any of the facts, figures, computations, or attachments required in the taxpayer's annual return to determine the tax due levied by the Municipality in accordance with this chapter must be altered.
  - (2) Within sixty (60) days after the final determination of any federal or state tax liability affecting the taxpayer's municipal tax liability, that taxpayer shall make and file an amended municipal return showing income subject to the municipal income tax based upon such final determination of federal or state tax liability, and pay any additional municipal income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is ten dollars or less.
  - (3) If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return.
- (B) (1) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. If the combined tax shown to be due is ten dollars or less, such amount need not accompany the amended return. Except as provided under division (B)(2) of this section, the amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless the applicable statute of limitations for civil actions or prosecutions under section 194.19 of this Chapter has not expired for a previously filed return.
  - (2) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened.
- (C) (1) In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by division (A)(2) of this section (E) of section 194.19 of this Chapter for filing the amended return even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division. If the amount of the refund is ten dollars or less, no refund need be paid by the Municipality to the taxpayer. Except as set forth in division (C)(2) of this section, a request filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless it is also filed within the time prescribed in section 194.096 of this Chapter. Except as set forth in division (C)(2) of this section, the request shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return.
  - (2) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened.

(Source: ORC 718.12, 718.41)

#### 194,096 **REFUNDS**

- (A) Upon receipt of a request for a refund, the Tax Administrator of the Municipality, in accordance with this section, shall refund to employers, agents of employers, other payers, or taxpayers, with respect to any income or withholding tax levied by the Municipality:
  - (1) Overpayments of more than ten dollars;
  - (2) Amounts paid erroneously if the refund requested exceeds ten dollars.
- (B) (1) Except as otherwise provided in this chapter, returns setting forth a request for refund shall be filed with the Tax Administrator, within three years after the tax was due or paid, whichever is later. Any documentation that substantiates the taxpayer's claim for a refund must be included with the return filing. Failure to remit all documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses or other pertinent factors on the return will cause delay in processing, and / or disallowance of undocumented credits or losses.
  - (2) On filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount to the appropriate municipal corporation official for payment. Except as provided in division (B)(3) of this section, the administrator shall issue an assessment to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the assessment.
  - (3) If a Tax Administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the Tax Administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under Section 194.18 of this Chapter.
- (C) A request for a refund that is received after the last day for filing specified in division (B) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:
  - (1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request.
  - (2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days of such last day.
  - (3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven days of the last day for making the request.
- (D) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in division (A)(4) of Section 194.10 of this Chapter.
- (E) As used in this section, "withholding tax" has the same meaning as in section 194.10 of this Chapter.

(Source: ORC 718.19)

## 194.10 PENALTY, INTEREST, FEES, AND CHARGES

- (A) As used in this section:
  - (1) "Applicable law" means this chapter, the resolutions, ordinances, codes, directives, instructions, and rules adopted by the Municipality provided such resolutions, ordinances, codes, directives, instructions, and rules impose or directly or indirectly address the levy, payment, remittance, or filing requirements of a municipal income tax,
  - (2) "Federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.
  - (3) "Income tax," "estimated income tax," and "withholding tax" mean any income tax, estimated income tax, and withholding tax imposed by a municipal corporation pursuant to applicable law, including at any time before January 1, 2016.
  - (4) "Interest rate as described in division (A) of this section" means the federal short-term rate, rounded to the nearest whole number per cent, plus five per cent. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with division (A)(2) of this section.
  - (5) "Return" includes any tax return, report, reconciliation, schedule, and other document required to be filed with a Tax Administrator or municipal corporation by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.
  - (6) "Unpaid estimated income tax" means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.
  - (7) "Unpaid income tax" means income tax due but not paid by the date the income tax is required to be paid under applicable law.
  - (8) "Unpaid withholding tax" means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.
  - (9) "Withholding tax" includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee's qualifying wages.
- (B) (1) This section shall apply to the following:
  - (a) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;
  - (b) Income tax, estimated income tax, and withholding tax required to be paid or remitted to the Municipality on or after January 1, 2016 for taxable years beginning on or after January 1, 2016
  - (2) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the ordinances or rules, as adopted from time to time before January 1, 2016 of this Municipality.
- (C) The Municipality shall impose on a taxpayer, employer, any agent of the employer, and any other payer, and will attempt to collect, the interest amounts and penalties prescribed in this section when the taxpayer, employer, any agent of the employer, or any other payer for any reason fails, in whole or in part, to make to the Municipality timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the Municipality any return required to be filed.
  - (1) Interest shall be imposed at the rate defined as "interest rate as described in division (A) of this section", per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.

- (2) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to fifteen percent of the amount not timely paid shall be imposed.
- (3) With respect to any unpaid withholding tax, a penalty equal to fifty percent of the amount not timely paid shall be imposed.
- (4) With respect to returns other than estimated income tax returns, the Municipality shall impose a monthly penalty of twenty-five dollars for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of one hundred fifty dollars in assessed penalty for each failure to timely file a return.
- (D). With respect to income taxes, estimated income taxes, withholding taxes, and returns, the Municipality shall not impose, seek to collect, or collect any penalty, amount of interest, charges or additional fees not described in this section.
- (E). With respect to income taxes, estimated income taxes, withholding taxes, and returns, the Municipality shall not refund or credit any penalty, amount of interest, charges, or additional fees that were properly imposed or collected before January 1, 2016.
- (F). The Tax Administrator may, in the Tax Administrator's sole discretion, abate or partially abate penalties or interest imposed under this section when the Tax Administrator deems such abatement or partial abatement to be appropriate. Such abatement or partial abatement shall be properly documented and maintained on the record of the taxpayer who received benefit of such abatement or partial abatement.
- (G). The Municipality may impose on the taxpayer, employer, any agent of the employer, or any other payer the Municipality's post-judgment collection costs and fees, including attorney's fees.

(Source: ORC 718.27)

### 194.11 AUDIT

- (A) At or before the commencement of an audit, as defined in Section 194.03(3) of this Chapter, the Tax Administrator shall provide to the taxpayer a written description of the roles of the Tax Administrator and of the taxpayer during an audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of tax. At or before the commencement of an audit, the Tax Administrator shall inform the taxpayer when the audit is considered to have commenced.
- (B) Except in cases involving suspected criminal activity, the Tax Administrator shall conduct an audit of a taxpayer during regular business hours and after providing reasonable notice to the taxpayer. A taxpayer who is unable to comply with a proposed time for an audit on the grounds that the proposed time would cause inconvenience or hardship must offer reasonable alternative dates for the audit.
- (C) At all stages of an audit by the Tax Administrator, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The Tax Administrator shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the Tax Administrator. If a taxpayer has not submitted such a form, the Tax Administrator may accept other evidence, as the Tax Administrator considers appropriate, that a person is the authorized representative of a taxpayer.

A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner. This division does not authorize the practice of law by a person who is not an attorney.

- (D) A taxpayer may record, electronically or otherwise, the audit examination.
- (E) The failure of the Tax Administrator to comply with a provision of this section shall neither excuse a taxpayer from payment of any taxes owed by the taxpayer nor cure any procedural defect in a taxpayer's case.

(F) If the Tax Administrator fails to substantially comply with the provisions of this section, the Tax Administrator, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest arising from the audit.

(Source: ORC 718.36)

### **194.12 ROUNDING**

A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document required under this chapter. Any fractional part of a dollar that equals or exceeds fifty cents shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents shall be dropped, rounding down to the nearest whole dollar. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.

(Source: ORC 718.25)

## 194,13 AUTHORITY AND POWERS OF THE TAX ADMINISTRATOR

## 194.131 AUTHORITY OF TAX ADMINISTRATOR; ADMINISTRATIVE POWERS OF THE TAX ADMINISTRATOR

The Tax Administrator has the authority to perform all duties and functions necessary and appropriate to implement the provisions of this Chapter, including without limitation:

- (A) Exercise all powers whatsoever of an inquisitorial nature as provided by law, including, the right to inspect books, accounts, records, memorandums, and federal and state income tax returns, to examine persons under oath, to issue orders or subpoenas for the production of books, accounts, papers, records, documents, and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths; provided that the powers referred to in this division of this section shall be exercised by the Tax Administrator only in connection with the performance of the duties respectively assigned to the Tax Administrator under a municipal corporation income tax ordinance or resolution adopted in accordance with this chapter;
- (B) Appoint agents and prescribe their powers and duties;
- (C) Confer and meet with officers of other municipal corporations and states and officers of the United States on any matters pertaining to their respective official duties as provided by law;
- (D) Exercise the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes, including penalties and interest thereon, illegally or erroneously imposed or collected, or for any other reason overpaid, and, in addition, the Tax Administrator may investigate any claim of overpayment and make a written statement of the Tax Administrator's findings, and, if the Tax Administrator finds that there has been an overpayment, approve and issue a refund payable to the taxpayer, the taxpayer's assigns, or legal representative as provided in this chapter;
- (E) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;
- (F) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with section 194.062 of this Chapter;
- (G) Make all tax findings, determinations, computations, assessments and orders the Tax Administrator is by law authorized and required to make and, pursuant to time limitations provided by law, on the Tax Administrator's own motion, review, redetermine, or correct any tax findings, determinations, computations, assessments or orders the Tax Administrator has made, but the Tax Administrator shall not review, redetermine, or correct any tax finding, determination, computation, assessment or order which the Tax Administrator has made for which an appeal has been filed with the Local Board of Tax Review or other appropriate tribunal, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed, or is otherwise final:

- (H) Destroy any or all returns or other tax documents in the manner authorized by law;
- (I) Enter into an agreement with a taxpayer to simplify the withholding obligations described in section 194.051 of this Chapter.

(Source: ORC 718.24)

## 194.132 AUTHORITY OF TAX ADMINISTRATOR; COMPROMISE OF CLAIM AND PAYMENT OVER TIME

- (A) As used in this section, "claim" means a claim for an amount payable to the Municipality that arises pursuant to the municipal income tax imposed in accordance with this chapter.
- (B) The Tax Administrator may do either of the following if such action is in the best interests of the Municipality:
  - (1) Compromise a claim;
  - (2) Extend for a reasonable period the time for payment of a claim by agreeing to accept monthly or other periodic payments, upon such terms and conditions as the Tax Administrator may require.
- (C) The Tax Administrator's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.
- (D) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall inure to the benefit of only the parties to the compromise or agreement, and shall not extinguish or otherwise affect the liability of any other person.
- (E) (1) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.
  - (2) The Tax Administrator shall have sole discretion to determine whether or not penalty, interest, charges or applicable fees will be assessed through the duration of any compromise or payment-over-time agreement.
- (F) The Tax Administrator may require that the taxpayer provide detailed financial documentation and information, in order to determine whether or not a payment-over-time agreement will be authorized. The taxpayer's failure to provide the necessary and required information by the Tax Administrator shall preclude consideration of a payment-over-time agreement.

(Source: ORC 718.28)

#### 194.133 AUTHORITY OF TAX ADMINISTRATOR: RIGHT TO EXAMINE

- (A) The Tax Administrator, or any authorized agent or employee thereof may examine the books, papers, records, and federal and state income tax returns of any employer, taxpayer, or other person that is subject to, or that the Tax Administrator believes is subject to, the provisions of this Chapter for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due under this Chapter. Upon written request by the Tax Administrator or a duly authorized agent or employee thereof, every employer, taxpayer, or other person subject to this section is required to furnish the opportunity for the Tax Administrator, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.
- (B) The records and other documents of any taxpayer, employer, or other person that is subject to, or that a Tax Administrator believes is subject to, the provisions of this Chapter shall be open to the Tax Administrator's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents

relate, unless the Tax Administrator, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Tax Administrator of a municipal corporation may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by the Municipality or for the withholding of such tax.

- (C) The Tax Administrator may examine under oath any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal and state income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.
- (D) No person issued written notice by the Tax Administrator compelling attendance at a hearing or examination or the production of books, papers, records, or federal and state income tax returns under this section shall fail to comply. (Source: ORC 718.23)

## 194.134 AUTHORITY OF TAX ADMINISTRATOR; REQUIRING IDENTIFYING INFORMATION

- (A) The Tax Administrator may require any person filing a tax document with the Tax Administrator to provide identifying information, which may include the person's social security number, federal employer identification number, or other identification number requested by the Tax Administrator. A person required by the Tax Administrator to provide identifying information that has experienced any change with respect to that information shall notify the Tax Administrator of the change before, or upon, filing the next tax document requiring the identifying information.
- (B) (1) If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within thirty days of making the request, nothing in this chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to section 194.10 of this Chapter, in addition to any applicable penalty described in section 194.99 of this Chapter.
  - (2) If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under division (A) of this section within thirty days after filing the next tax document requiring such identifying information, nothing in this chapter prohibits the Tax Administrator from imposing a penalty pursuant to section 194.10 of this Chapter.
  - (3) The penalties provided for under divisions (B)(1) and (2) of this section may be billed and imposed in the same manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in section 194.99 of this Chapter for a violation of 194.15 of this Chapter, and any other penalties that may be imposed by the Tax Administrator by law. (Source: ORC 718.26)
- (C) Information Submission by Landlords. On or before May 1 of each year, all property owners who rent to tenants of residential, commercial, or industrial premises, shall file with the Tax Administrator, a report showing the name, address, and phone number, of each tenant who occupies residential, commercial, or industrial premises within the City of Napoleon. The list shall also include all name(s), address(es), and phone number(s), of any tenant who has vacated the property in the preceding twelve (12) month period. The list should also include, when the information is available to the landlord, the date in which the tenant vacated the property, along with the tenant's forwarding address. If a landlord is not in possession of a

former tenant's forwarding address or other current contact information, the landlord will not be penalized pursuant to any provision in this Section 194.20. Any information referred to in this Section may be requested at any time under audit by the Tax Administrator. Such report shall be in writing, and shall be delivered to the Tax Administrator by one of the following methods:

- (1) Regular U.S. mail delivery to the City Income Tax Department
- (2) Delivered by electronic mail (E-mail) directly to the City Income Tax Department
- (3) Facsimile transmission directly to the City Income Tax Department
- (4) Hand delivery to the City Income Tax Department.

Forms and instruction for reporting shall be made available on the City's website. For purposes of this Section (B), "tenant" means:

- (1) If there is a written lease or rental agreement, the person(s) who signed the written lease or rental agreement with the owner or their agent.
- (2) If there is an oral lease or rental agreement, the person(s) who entered into the oral lease or rental agreement with the owner or their agent.

Failure to comply with this section (B) will result in:

- (1) Notification (sent by regular U.S. mail delivery) to landlord and requiring compliance within 30 days.
- (2) Subpoena (sent by certified mail) for the property owner or agent to appear before the Tax Administrator with required documentation (with hearing scheduled within 14 days of date mailed).
- (3) Prohibition. No person shall knowingly fail, refuse, or neglect to file any return or report required under this Chapter or under rules and regulations made under authority thereof; or file or knowingly cause to be filed any incomplete, false or fraudulent return, report or statement; or knowingly fail, refuse, or neglect to withhold or remit any City tax; or knowingly fail, refuse, or neglect to pay any City tax, penalty or interest; or aid or abet another in the filing of any incomplete, false or fraudulent return, report or statement.
- (4) Penalty. Any person who violates this Section (B) is guilty of a misdemeanor of the 1st degree, and in addition to other penalties provided by law, shall be fined not more than \$1,000.00 or imprisoned not more than six (6) months, or both.

### 194.14 CONFIDENTIALITY

- (A) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by ORC 718 or by the charter or ordinance of the Municipality is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the Municipality as authorized by ORC 718 or the charter or ordinance authorizing the levy. The Tax Administrator of the Municipality or a designee thereof may furnish copies of returns filed or otherwise received under this chapter and other related tax\_information to the Internal Revenue Service, the State Tax Commissioner, and Tax Administrators of other municipal corporations.
- (B) This section does not prohibit the Municipality from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.
- (C) The Finance Director, or his duly authorized agent or employee in the Department of Taxation, is authorized to examine the books, papers and records of any employer, taxpayer or person subject to the provisions of this chapter, or of any employer, taxpayer or person he reasonably believes to be subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the City tax due. Every employer, supposed employer, taxpayer and supposed taxpayer shall furnish the Finance Director, or his duly authorized agent or employee in the Department of Taxation, within thirty (30) days following a written request by the Finance Director, or his duly authorized agent or employee in the Department of Taxation, the means, facilities and opportunity for making such

examination and investigation as hereby authorized.

- (D) The Finance Director, or his duly authorized agent or employee in the Department of Taxation, is authorized to examine any person, employer, or taxpayer under oath concerning any compensation or net profits which were or should have been returned for taxation or any City tax which was or should have been withheld or paid, and for this purpose, may compel by subpoena or otherwise the production of books, papers, records and federal and state income tax returns and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such compensation, net profits, information or documentation.
- (E) All returns, investigations, examinations and hearings, and all information and documentation produced therewith, and all information and documentation gained as a result thereof are confidential except for official purposes and except in accordance with proper judicial order and shall be carefully preserved so that they shall not be available for inspection by or dissemination to anyone other than the proper officers, agents and employees of the City for official purposes. Any person disclosing any such information or documentation is guilty of a misdemeanor of the 1st degree. Each disclosure shall constitute a separate offense. In addition to the above penalties, any officer, agent or employee of the City who violates any provision of this chapter relative to disclosures of confidential information shall be dismissed immediately from the service of the City.

(Source: ORC 718.13)

#### 194.15 FRAUD

No person shall knowingly make, present, aid, or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim, or document authorized or required by municipal corporation ordinance or state law to be filed with the Tax Administrator, or knowingly procure, counsel, or advise the preparation or presentation of such report, return, schedule, statement, claim, or document, or knowingly change, alter, or amend, or knowingly procure, counsel or advise such change, alteration, or amendment of the records upon which such report, return, schedule, statement, claim, or document is based with intent to defraud the Municipality or the Tax Administrator.

(Source: ORC 718.35)

#### 194.16 OPINION OF THE TAX ADMINISTRATOR

- (A) An "opinion of the Tax Administrator" means an opinion issued under this section with respect to prospective municipal income tax liability. It does not include ordinary correspondence of the Tax Administrator.
- (B) A taxpayer may submit a written request for an opinion of the Tax Administrator as to whether or how certain income, source of income, or a certain activity or transaction will be taxed. The written response of the Tax Administrator shall be an "opinion of the Tax Administrator" and shall bind the Tax Administrator, in accordance with divisions (C), (G), and (H) of this section, provided all of the following conditions are satisfied:
  - (1) The taxpayer's request fully and accurately describes the specific facts or circumstances relevant to a determination of the taxability of the income, source of income, activity, or transaction, and, if an activity or transaction, all parties involved in the activity or transaction are clearly identified by name, location, or other pertinent facts.
  - (2) The request relates to a tax imposed by the Municipality in accordance with this Chapter.
  - (3) The Tax Administrator's response is signed by the Tax Administrator and designated as an "opinion of the Tax Administrator."
- (C) An opinion of the Tax Administrator shall remain in effect and shall protect the taxpayer for whom the opinion was prepared and who reasonably relies on it from liability for any taxes,

penalty, or interest otherwise chargeable on the activity or transaction specifically held by the Tax Administrator's opinion to be taxable in a particular manner or not to be subject to taxation for any taxable years that may be specified in the opinion, or until the earliest of the following dates:

- (1) The effective date of a written revocation by the Tax Administrator sent to the taxpayer by certified mail, return receipt requested. The effective date of the revocation shall be the taxpayer's date of receipt or one year after the issuance of the opinion, whichever is later:
- (2) The effective date of any amendment or enactment of a relevant section of the Ohio Revised Code, uncodified state law, or the Municipality's income tax ordinance that would substantially change the analysis and conclusion of the opinion of the Tax Administrator;
- (3) The date on which a court issues an opinion establishing or changing relevant case law with respect to the Ohio Revised Code, uncodified state law, or the Municipality's income tax ordinance;
- (4) If the opinion of the Tax Administrator was based on the interpretation of federal law, the effective date of any change in the relevant federal statutes or regulations, or the date on which a court issues an opinion establishing or changing relevant case law with respect to federal statutes or regulations;
- (5) The effective date of any change in the taxpayer's material facts or circumstances;
- (6) The effective date of the expiration of the opinion, if specified in the opinion.
- (D) (1) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that contained any misrepresentation or omission of one or more material facts.
  - (2) If the taxpayer knowingly has misrepresented the pertinent facts or omitted material facts with intent to defraud the Municipality in order to obtain a more favorable opinion, the taxpayer may be in violation of section 194.15 of this Chapter.
- (E) If a Tax Administrator provides written advice under this section, the opinion shall include a statement that:
  - (1) The tax consequences stated in the opinion may be subject to change for any of the reasons stated in division (C) of this section;
  - (2) It is the duty of the taxpayer to be aware of such changes.
- (F) A Tax Administrator may refuse to offer an opinion on any request received under this section.
- (G) This section binds a Tax Administrator only with respect to opinions of the Tax Administrator issued on or after January 1, 2016.
- (H) An opinion of a Tax Administrator binds that Tax Administrator only with respect to the taxpayer for whom the opinion was prepared and does not bind the Tax Administrator of any other municipal corporation.
- (I) A Tax Administrator shall make available the text of all opinions issued under this section, except those opinions prepared for a taxpayer who has requested that the text of the opinion remain confidential. In no event shall the text of an opinion be made available until the Tax Administrator has removed all information that identifies the taxpayer and any other parties involved in the activity or transaction.
- (J) An opinion of the Tax Administrator issued under this section or a refusal to offer an opinion under subsection (F) may not be appealed. (Source: ORC 718.38)

## 194.17 ASSESSMENT; APPEAL BASED ON PRESUMPTION OF DELIVERY

(A) (1) The Tax Administrator shall serve an assessment either by personal service, by certified mail, or by a delivery service authorized under section 5703.056 of the Ohio

Revised Code.

- (2) The Tax Administrator may deliver the assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail. Such alternative delivery method must be authorized by the person subject to the assessment.
- (3) Once service of the assessment has been made by the Tax Administrator or other municipal official, or the designee of either, the person to whom the assessment is directed may protest the ruling of that assessment by filing an appeal with the Local Board of Tax Review within sixty (60) days after the receipt of service. The delivery of an assessment of the Tax Administrator as prescribed in Section 718.18 of the Revised Code is prima facie evidence that delivery is complete and that the assessment is served.
- (B) (1) A person may challenge the presumption of delivery and service as set forth in this division. A person disputing the presumption of delivery and service under this section bears the burden of proving by a preponderance of the evidence that the address to which the assessment was sent was not an address with which the person was associated at the time the Tax Administrator originally mailed the assessment by certified mail. For the purposes of this section, a person is associated with an address at the time the Tax Administrator originally mailed the assessment if, at that time, the person was residing, receiving legal documents, or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the assessment was mailed, the person's agent or the person's affiliate was conducting business at the address. For the purposes of this section, a person's affiliate is any other person that, at the time the assessment was mailed, owned or controlled at least twenty per cent, as determined by voting rights, of the addressee's business.
  - (2) If a person elects to appeal an assessment on the basis described in division (B)(1) of this section, and if that assessment is subject to collection and is not otherwise appealable, the person must do so within sixty (60) days after the initial contact by the Tax Administrator or other municipal official, or the designee of either, with the person. Nothing in this division prevents the Tax Administrator or other official from entering into a compromise with the person if the person does not actually file such an appeal with the Local Board of Tax Review.

(Source: ORC 718.18)

## 194.18 LOCAL BOARD OF TAX REVIEW; APPEAL TO LOCAL BOARD OF TAX REVIEW

- (A) (1) The legislative authority of the Municipality shall maintain a Local Board of Tax Review to hear appeals as provided in Ohio Revised Code Chapter 718.
  - (2) The Local Board of Tax Review shall consist of three members. The three members of the Local Board of Tax Review must be domiciled in the Municipality. Two members shall be appointed by the legislative authority of the Municipality, and may not be employees, elected officials, or contractors with the Municipality at any time during their term or in the five (5) years immediately preceding the date of appointment. One member shall be appointed by the top administrative official of the Municipality (City Manager). This member may be an employee of the Municipality, but may not be the director of finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.
  - (3) The term for members of the Local Board of Tax Review appointed by the legislative authority of the Municipality shall be two years. There is no limit on the number of terms that a member may serve should the member be reappointed by the legislative authority. The board member appointed by the top administrative official of the Municipality shall serve at the discretion of the administrative official.

- (4) Members of the board of tax review appointed by the legislative authority may be removed by the legislative authority as set forth in Section 718.11(A)(4) of the Revised Code.
- (5) A member of the board who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.
- (6) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty (60) days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the board shall impair the power and authority of the remaining members to exercise all the powers of the board.
- (7) If a member is temporarily unable to serve on the board due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the board in the member's place. This appointment shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.
- (8) No member of the Local Board of Tax Review shall receive compensation, fee, or reimbursement of expenses for service on the board.
- (9) A member of a Local Board of Tax Review shall not be appointed to or serve on another such board simultaneously.
- (B) Whenever a Tax Administrator issues an assessment, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed, and to whom the appeal should be directed.
- (C) Any person who has been issued an assessment may appeal the assessment to the board by filing a request with the board. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty days after the taxpayer receives the assessment.
- (D) The Local Board of Tax Review shall schedule a hearing to be held within sixty days after receiving an appeal of an assessment under division (C) of this section, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the board and/or may be represented by an attorney at law, certified public accountant, or other representative. The board may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within one hundred twenty days after the first day of the hearing unless the parties agree otherwise.
- (E) The board may affirm, reverse, or modify the Tax Administrator's assessment or any part of that assessment. The board shall issue a final determination on the appeal within ninety days after the board's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the board's final determination as provided in section 5717.011 of the Ohio Revised Code.
- (F) The Local Board of Tax Review created pursuant to this section shall adopt rules governing its procedures, including a schedule of related costs, and shall keep a record of its transactions. The rules governing the Local Board of Tax Review procedures shall be in writing, and may be amended as needed by the Local Board of Tax Review. Such records are not public records available for inspection under section 149.43 of the Ohio Revised Code. For this reason, any documentation, copies of returns or reports, final determinations, or working papers for each case must be maintained in a secure location under the control of the Tax Administrator. No member of the Local Board of Tax Review may remove such documentation, copies of returns or reports, final determinations, or working papers from the hearing. Hearings requested by a taxpayer before a Local Board of Tax Review created pursuant to this section are not meetings of a public body subject to section 121.22 of the Ohio Revised Code. For this

reason, such hearings shall not be open to the public, and only those parties to the case may be present during the hearing.

(Source: ORC 718.11)

## 194.19 ACTIONS TO RECOVER; STATUTE OF LIMITATIONS

- (A) (1) (a) Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within the latter of:
  - (i) Three years after the tax was due or the return was filed, whichever is later; or
  - (ii) One year after the conclusion of the qualifying deferral period, if any.
  - (b) The time limit described in division (A)(1)(a) of this section may be extended at any time if both the Tax Administrator and the employer, agent of the employer, other payer, or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in division (C) of this section.
  - (2) As used in this section, "qualifying deferral period" means a period of time beginning and ending as follows:
    - (a) Beginning on the date a person who is aggrieved by an assessment files with a Local Board of Tax Review the request described in Section 194.18 of this Chapter. That date shall not be affected by any subsequent decision, finding, or holding by any administrative body or court that the Local Board of Tax Review with which the aggrieved person filed the request did not have jurisdiction to affirm, reverse, or modify the assessment or any part of that assessment.
    - (b) Ending the later of the sixtieth day after the date on which the final determination of the Local Board of Tax Review becomes final or, if any party appeals from the determination of the Local Board of Tax Review, the sixtieth day after the date on which the final determination of the Local Board of Tax Review is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal of either that affirmation, in whole or in part, or that reversal is available or taken.
- (B) Prosecutions for an offense made punishable under a resolution or ordinance imposing an income tax shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five per cent or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.
- (C) A claim for a refund of municipal income taxes shall be brought within the time limitation provided in Section 194.096 of this Chapter.
- (D) (1) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a payment by the Municipality does not prejudice any claim for refund upon final determination of the appeal.
  - (2) If upon final determination of the appeal an error in the assessment is corrected by the Tax Administrator, upon an appeal so filed or pursuant to a final determination of the Local Board of Tax Review created under Section 194.18 of this Chapter, of the Ohio board of tax appeals, or any court to which the decision of the Ohio board of tax appeals has been appealed, so that the amount due from the party assessed under the corrected assessment is less than the amount paid, there shall be issued to the appellant or to the appellant's assigns or legal representative a refund in the amount of the overpayment as provided by Section 194.096 of this Chapter, with interest on that amount as provided by division (D) of this section.
- (E) No civil action to recover municipal income tax or related penalties or interest shall be

brought during either of the following time periods:

- (1) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties;
- (2) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

(Source: ORC 718.12)

#### 194.20 ADOPTION OF RULES

- (A) Pursuant to Section 718.30 of the Revised Code, the legislative authority of the Municipality has the authority, by ordinance or resolution, to adopt rules to administer the income tax imposed by the Municipality.
- (B) All rules adopted under this Section 194.20 shall be published and posted on the Internet.

### 194,201 DUTIES OF THE FINANCE DIRECTOR

- (A) The Finance Director shall collect the City tax from taxpayers in the manner prescribed in this chapter, shall keep accurate records thereof and shall annually make written report to Council of all monies so received during the preceding year. All cashiers handling City tax monies shall be subject to the direct control of the Finance Director and shall give daily accountings to the Finance Director.
- (B) The Finance Director shall enforce payment of all City tax owing the City and shall keep accurate records for the minimum period of time as permitted by law of all returns filed by employers and taxpayers and all City tax paid, withheld and refunded, including, but not limited too, the dates and amounts thereof.
- (C) The Finance Director is charged with the administration, collection and enforcement of the provisions of this chapter and the rules and regulations of the Council relating to any matter or thing pertaining to the collection of the City tax, including, but not limited to provisions for the filing and examination of returns and collection of payments.
- (D) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of City tax due, the Finance Director may determine the amount of City tax appearing to be due from the taxpayer and, in that case, shall mail to the taxpayer, with a proof of mailing, a written statement showing the amount of City tax so determined, together with interest and penalties thereon, if any. If the taxpayer fails to pay that City tax, together with interest and penalties thereon, if any, within thirty (30) days of the proof of mailing date, the Finance Director may undertake enforcement of the provision of this chapter against the taxpayer and collection of all such amounts.
- (E) The Finance Director shall have the power to abate or compromise any interest or penalty, or both, imposed by this chapter upon a showing of reasonable excuse or other good cause and not willful neglect.

(Ord. 135-04. Passed 12-6-04)

#### 194.202 DEPARTMENT OF TAXATION

The Department of Taxation is created within the Finance Department of the City. The Department of Taxation shall have a Tax Administrator, clerks, and other employees who shall receive such compensation as may be determined from time to time by the City. The Department of Taxation shall be charged with the administration of this Chapter under the direction of the Finance Director. The Finance Director shall prescribe the form and method of accounts and reports for the Department of Taxation, as well as the forms for taxpayers and employer returns, and shall be charged with the internal examination and audit of all returns. (Ord. 123-95. Passed 11-27-95)

## 194.203 INVESTIGATIVE POWERS OF THE FINANCE DIRECTOR - PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION

- (A) The Finance Director, or his duly authorized agent or employee in the Department of Taxation, is authorized to examine the books, papers and records of any employer, taxpayer or person subject to the provisions of this chapter, or of any employer, taxpayer or person he reasonably believes to be subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the City tax due. Every employer, supposed employer, taxpayer and supposed taxpayer shall furnish the Finance Director, or his duly authorized agent or employee in the Department of Taxation, within thirty (30) days following a written request by the Finance Director, or his duly authorized agent or employee in the Department of Taxation, the means, facilities and opportunity for making such examination and investigation as hereby authorized.
- (B) The Finance Director, or his duly authorized agent or employee in the Department of Taxation, is authorized to examine any person, employer, or taxpayer under oath concerning any compensation or net profits which were or should have been returned for taxation or any City tax which was or should have been withheld or paid, and for this purpose, may compel by subpoena or otherwise the production of books, papers, records and federal and state income tax returns and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such compensation, net profits, information or documentation.
- (C) All returns, investigations, examinations and hearings, and all information and documentation produced therewith, and all information and documentation gained as a result thereof are confidential except for official purposes and except in accordance with proper judicial order and shall be carefully preserved so that they shall not be available for inspection by or dissemination to anyone other than the proper officers, agents and employees of the City for official purposes. Any person disclosing any such information or documentation is guilty of a misdemeanor of the 1st degree. Each disclosure shall constitute a separate offense. In addition to the above penalties, any officer, agent or employee of the City who violates any provision of this chapter relative to disclosures of confidential information shall be dismissed immediately from the service of the City.

(Ord. 123-95. Passed 11-27-95)

## 194.204 TAX FOR RECREATION FUND

- (A) <u>Purpose.</u> To provide funds for the Recreation Fund of the City, there shall be, and is hereby continued levied, in addition to the general income tax as found in Section 194.012 and any other pertinent Sections, a permanent tax on certain compensation and net profits as hereinafter provided in this section.
- (B) <u>Imposition of Tax.</u> The additional annual tax for the purpose specified in subsection (A) hereof is levied at the rate of one-fifth percent (.2%) per annum on all salaries, wages, commissions and other compensation and net profits earned or received as the same are defined and levied upon in Sections 194.01 through 194.99 inclusive, and as such sections may be amended from time to time.
- (C) <u>Effective Period.</u> The tax shall be levied, collected and paid with respect to said salaries, wages, commissions and other compensation and net profits earned or received on and after January 1, 2016. This Section shall continue effective insofar as the levy of said tax is concerned until otherwise repealed. Insofar as the collection of said tax, penalties and interest levied hereunder and actions or proceedings for collecting said tax so levied or enforcing any provisions of this Section are concerned, including the tax for the recreation fund that was in effect prior to enactment of this Section, it shall continue effective until all of said tax levied under this Section is fully paid and any and all suits and prosecutions for the collection of said tax or for the punishment of violations of this section have been fully terminated.

- (D) Allocation of Funds. The funds collected under this Section shall be paid into the Recreation Fund of the City. No part of said tax shall be appropriated or used to defray the costs of collecting said tax or the costs of administering and enforcing the provisions of this section as long as the City is collecting a sufficient amount of income tax under Sections 194.01 through 194.99 inclusive, (as they now exist or as may later be amended from time to time) to defray such costs. If at any time while this Section is in effect, said tax becomes the only income tax collected by the City, there shall first be appropriated from the funds derived from said tax such part thereof as shall be deemed necessary to defray all costs of collecting said tax and of administering and enforcing the provisions hereof. The balance remaining after such costs shall be allocated to the Recreation Fund of the City.
- (E) <u>Incorporated by Reference.</u> All provisions of Sections 194.01 through 194.99, and all income tax rules and regulations shall govern and apply to this Section and said tax levied hereunder.
- (F) <u>Applicability.</u> This Section shall not apply to any person or to any compensation or net profits as to whom or to which it is beyond the power of the City to impose the tax provided for in this Section.
- (G) <u>Penalties.</u> The penalties found in any Section herein shall apply to this Section, such Sections which may be amended from time to time.
- (For reference purposes only, see also Ord. 080-09. Passed 12-7-09; Approved by voters 5-4-10)

#### 194.205 ADDITIONAL DEFINITIONS

- (1) **"BUSINESS,"** means an activity, enterprise, operation, profession, trades, transaction, undertaking, or venture of any nature conducted or ordinarily conducted for gain, profit, or income, including, but not limited to farming, leasing, and rental activities.
- (2) "CITY," means the City of Napoleon, Ohio.
- (3) "CITY TAX," means the tax imposed by this Chapter.
- (4) "SALARIES, WAGES, COMMISSIONS, AND OTHER COMPENSATION," means the total compensation paid to an individual in cash or in kind on an hourly, daily, weekly, monthly, annual, or other basis, including, but not limited to, the following: severance or termination pay: wage continuation payments made as a result of early retirement or employment termination; wage continuation payments made as a result of sickness or temporary disability and whether paid by the recipient's employer or by a third party; vacation or holiday pay; tips or gratuities received; group term insurance premiums paid on an employee's behalf to the extent taxed by the IRS; employee contributions to tax sheltered annuities, non-qualified pension plans, or into employer or third party trusts or pension plans as permitted by IRS and which may be excludable from wages for federal tax purpose; ordinary income portion of stock options or employee stock purchase plans; supplemental unemployment benefits (SUB pay); strike pay; jury duty pay; working condition fringe benefits subject to tax by IRS; moving allowances; guardian, executor, conservator, trustee, or administrator fees; bonuses; ordinary income portion of lump sum distributions which become subject to federal tax because the recipient did not roll over the distribution within the time required by IRS; cancellation of indebtedness to the extent taxed by IRS; income from bartering.
- (5) "CORPORATION," means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, foreign country, or dependency, with exception to Sub-S Corporations.
- (6) "COUNCIL," means the Council of the City of Napoleon, Ohio.
- (7) "DEPARTMENT OF TAXATION," means the Department of Taxation of the City of Napoleon, Ohio.
- (8) **"EMPLOYEE,"** means an individual who is employed and whose compensation is subject to the tax imposed by this Chapter.
- (9) **"EMPLOYER,"** means a person that employs one or more employees on a salary, wage, or other compensation basis.

- (10) **"FIDUCIARY,"** means a guardian, trustee, executor, administrator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.
- (11) "FINANCE DEPARTMENT," means the Finance Department of the City of Napoleon, Ohio.
- (12) "FINANCE DIRECTOR," means the Finance Director of the City of Napoleon, Ohio or his or her designee.
- (13) "INDIVIDUAL," means a natural person.
- (14) "NAPOLEON," means the City of Napoleon, Ohio.
- (15) "NET PROFIT," in addition to the definition of "Net Profit" found in Section 194.03(23), "Net Profit" also means the net gain from the operation of a business, profession, or other enterprise after provision for all expenses paid or incurred in the conduct thereof, including reasonable allowances for depreciation, depletion, and amortization and reasonable additions to reserve for bad debts, either paid or accrued, in accordance with recognized principles of accounting applicable to the accounting method regularly employed by the business and without deduction of federal or state taxes based on income and the tax imposed by this Chapter.
- (16) "NON-RESIDENT," in addition to the definition of "Non-Resident' found in Section 194.03(24), "Non-Resident" also means an individual, trust, or estate that is not a resident of the City of Napoleon, Ohio.
- (17) "OTHER ENTITY," means any agency, association, authority, body, commission, organization, or person not previously named or defined in this Section, including, but not limited to, any governmental agency, authority, body, or commission.
- (18) "PARTNERSHIP," means an unincorporated business association including, but not limited to, a general partnership, limited partnership, syndicate, group, pool, or joint venture through or by means of which any business is carried on, but excluding a trust or estate.
- (19) "PERSON," in addition to the definition of "Person" found in Section 194.03(29), "Person" also means an individual, fiduciary, partnership, corporation, or other entity. Whenever used in any clause prescribing and imposing a penalty, the word "person," as applied to any partnership, shall mean the partners or other owners thereof and, as applied to any corporation or other entity, shall mean the officers thereof.
- (20) "**RESIDENT**," in addition to the definition of "Resident" found in Section 194.03(37), "Resident" also means an individual, partnership, corporation, fiduciary, estate, trust, or other entity domiciled in or doing business in the City of Napoleon, Ohio.
- (21) "RETURN," means the notifications and reports required to be filed pursuant to this chapter for the purpose of reporting the tax imposed by this chapter, including, but not limited to, taxpayer returns, employer returns, W-2 forms, declarations of estimated tax when so required, and any supporting documents.
- (22) "TAX ADMINISTRATOR," in addition to the definition of "Tax Administrator" found in Section 194.03(44), "Tax Administrator" also means the person appointed to the position of Tax Administrator as set forth in this chapter.
- (23) "TAXPAYER," in addition to the definition of "Taxpayer" found in Section 194.03(47), "Taxpayer" also means a person subject to this chapter and required to file a return or pay the tax imposed by this Chapter.

In all instances, the singular shall include the plural and the masculine gender shall include the feminine and neuter genders.

(For reference purposes, see Ordinance 091-08. Passed 1-5-09)

### 194,97 COLLECTION AFTER TERMINATION OF CHAPTER

(A) This Chapter shall continue in full force and effect insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions and proceedings for collecting any tax so levied or enforcing any provisions of this Chapter are concerned, it shall continue in full force and effect until all of the taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of taxes or for the

punishment of violations of this Chapter have been fully terminated, subject to the limitations contained in Section 194.19.

(B) Annual returns due for all or any part of the last effective year of this Chapter shall be due on the date provided in Section 194.091 as though the same were continuing.

#### 194.98 SAVINGS CLAUSE

If any sentence, clause, section or part of this Chapter, or any tax imposed against, or exemption from tax granted to, any taxpayer or forms of income specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this chapter so found and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of the legislative authority of the Municipality that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included in this Chapter.

## 194.99 VIOLATIONS; PENALTY

- (A) Except as provided in division (B) of this section, whoever violates Section 194.15 of this Chapter, division (A) of Section 194.14 of this Chapter, or Section 194.051 of this Chapter by failing to remit municipal income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars or imprisonment for a term of up to six months, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.
- (B) Any person who discloses information received from the Internal Revenue Service in violation of Internal Revenue Code Sec. 7213(a), 7213A, or 7431 shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than five thousand dollars plus the costs of prosecution, or imprisonment for a term not exceeding five years, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.
- (C) Each instance of access or disclosure in violation of division (A) of Section 194.14 of this Chapter constitutes a separate offense.
- (D) Whoever violates any provision of this Chapter for which violation no penalty is otherwise provided, is guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars or imprisonment for a term of up to six months, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both. By way of an illustrative enumeration, violations of this Chapter shall include but not be limited to the following acts, conduct, and/or omissions:
  - (1) Fail, neglect or refuse to make any return or declaration required by this Chapter; or
  - (2) Knowingly make any incomplete return; or
  - (3) Willfully fail, neglect, or refuse to pay the tax, penalties, and interest, or any combination thereof, imposed by this Chapter; or
  - (4) Cause to not be remitted the city income tax withheld from qualifying wages of employees to the Municipality municipal corporation as required by Section 194.051; or
  - (5) Neglect or refuse to withhold or remit municipal income tax from employees; or
  - (6) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or her books, records, papers, federal and state income tax returns, or any documentation relating to the income or net profits of a taxpayer; or
  - (7) Fail to appear before the Tax Administrator and to produce his or her books, records, papers, federal and state income tax returns, or any documentation relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator; or
  - (8) Refuse to disclose to the Tax Administrator any information with respect to such

person's income or net profits, or in the case of a person responsible for maintaining information relating to his or her employers' income or net profits, such person's employer's income or net profits; or

- (9) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator; or
- (10) To avoid imposition or collection of municipal income tax, willfully give to an employer or prospective employer false information as to his or her true name, correct social security number and residence address, or willfully fail to promptly notify an employer or a prospective employer of any change in residence address and date thereof; or
- (11) Fail, as an employer, agent of an employer, or other payer, to maintain proper records of employees residence addresses, total qualifying wages paid and municipal tax withheld, or to knowingly give the Tax Administrator false information; or
- (12) Willfully fail, neglect, or refuse to make any payment of estimated municipal income tax for any taxable year or any part of any taxable year in accordance with this Chapter; or
- (13) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter.
- (14) For purposes of this Section, any violation that does not specify a culpable mental state or intent, shall be one of strict liability and no culpable mental state or intent shall be required for a person to be guilty of that violation.
- (15) For purposes of this Section, the term "person" shall, in addition to the meaning prescribed in Section 194.03, include in the case of a corporation, association, pass-through entity or unincorporated business entity not having any resident owner or officer within the city, any employee or agent of such corporation, association, pass-through entity or unincorporated business entity who has control or supervision over or is charged with the responsibility of filing the municipal income tax returns and making the payments of the municipal income tax as required by this Chapter.

(Source: ORC 718.99)

#### **ORDINANCE NO. 055-15**

AN ORDINANCE AMENDING CHAPTER 913 OF THE CODIFIED ORDINANCES OF THE CITY OF NAPOLEON, OHIO REGARDING CITY SIDEWALK POLICY BY ADDING SECTION "913.06 APPEALS" TO ALLOW FOR AN APPEAL PROCESS RELATED TO THE INSTALLATION OF CITY SIDEWALKS

**WHEREAS**, Council for the City of Napoleon previously enacted Ordinance No. 111-02, now codified as Chapter 913 of the Codified Ordinances of the City of Napoleon, Ohio, related to the construction, reconstruction, repair, and replacement of sidewalks, driveways, and abutting improvements thereto; and,

**WHEREAS**, the Municipal Properties, Buildings, Land Use, and Economic Development Committee, and Council for the City of Napoleon, have previously met and discussed, on several occasions during 2015, the City's current sidewalk installation policy; and

WHEREAS, Council for the City of Napoleon now desires to implement an appeals process whereby a citizen who is mandated to comply with Chapter 913 of the Codified Ordinances of the City of Napoleon, Ohio by installing a new sidewalk at that citizen's property location, may, prior to installing the new sidewalk, pursue an appeals process related to the sidewalk installation mandate found in Chapter 913 of the Codified Ordinances of the City of Napoleon, Ohio;

## NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPOLEON, STATE OF OHIO:

- Section 1. (a) As part of any City construction or reconstruction project, new sidewalk installation remains the financial burden and responsibility of the property owner as provided in Chapter 913 of the Codified Ordinances of the City of Napoleon, Ohio; (b) Said new sidewalk installation must encompass the entire length of the project, unless otherwise determined or decided by the City Engineer; and (c) Said new sidewalk must be completely installed (pursuant to the requirements found in all relevant Sections in Chapter 913) no later than twelve (12) months following completion of the construction project;
- Section 2. The aforementioned appeals process related to the sidewalk installation mandate found in Chapter 913 of the Codified Ordinances of the City of Napoleon, Ohio, shall follow the following rules, and shall otherwise be heard by the City, in the following manner:
- (a) If a property owner wishes to challenge the new sidewalk installation mandate on his/her property, then that property owner shall notify the City Engineer in writing, either by hand delivery, or by regular U.S. Mail, to the City of Napoleon, P.O. Box 151, 255 W. Riverview Ave., Napoleon, OH 43545 (the "Appeal"), no later than 90 days following completion of the construction project.
- (b) The City Engineer shall then provide a written response to the Appeal. The City Engineer's written response shall be either hand delivered, or mailed by regular U.S. Mail, to the property owner's address of record, no later than 15 days following receipt of the Appeal. No hearing will be held.
- (c) If the property owner wishes to appeal the City Engineer's written response, then the property owner shall notify the City Manager in writing, either by hand delivery, or by regular

- U.S. Mail, to the City of Napoleon, P.O. Box 151, 255 W. Riverview Ave., Napoleon, OH 43545, no later than 30 days following receipt of the City Engineer's written response.
- (d) The City Manager shall then provide a written response to the Appeal. The City Manager's written response shall be either hand delivered, or mailed by regular U.S. Mail, to the property owner's address of record, no later than 15 days following receipt of the Appeal. No hearing will be held.
- (e) If the property owner wishes to appeal the City Manager's decision, then the property owner shall notify the Clerk of Council in writing, either by hand delivery, or by regular U.S. Mail, to the City of Napoleon, P.O. Box 151, 255 W. Riverview Ave., Napoleon, OH 43545, no later than 30 days following receipt of the City Manager's written response. Upon timely receipt of said notification, the full body of Council for the City of Napoleon shall hear and decide said Appeal at the next regularly scheduled City Council Meeting, or at another later scheduled Council Meeting as deemed necessary by Council or the City Manager. Council shall only overturn the City Manager's decision if a majority of Council Members determine, and vote accordingly, that the City Manager's decision was arbitrary and capricious. If a majority of Council Members do not find the City Manager's decision to be arbitrary and capricious, then the City Manager's decision will stand as final. Council's decision will be considered a final order.
- (f) The 12-month installation deadline, as stated in Section 1 above, remains in full force and effect at all times, and shall not be extended due to the filing of an appeal.
- (g) A filing fee, as established by the City, and as may be amended from time to time, will be charged for all appeals related to the sidewalk policy; however, this fee will be returned to the appealing party if he/she prevails.
- Section 3. That the aforementioned language contained in Section 2, shall be added to Chapter 913, "Construction and Repair," of the Codified Ordinances of the City of Napoleon, Ohio as Section 913.06. Said Section 913.06 shall be titled "Appeal."
- Section 4. That the remainder of Chapter 913 in the Codified Ordinances, namely Sections 913.01, 913.02, 913.03, 913.04, 913.05, and 913.99, as existed prior to the enactment of this Ordinance 055-15, remains enacted, lawful, and effective.
- Section 5. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of the City of Napoleon, Ohio.
- Section 6. That, if any other prior Ordinance or Resolution is found to be in conflict with this Ordinance, then the provisions of this Ordinance shall prevail. Further, if any portion of this Ordinance is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof.
- **Section 7.** That, upon passage, this Ordinance shall take effect at the earliest time permitted by law.

Passed:	
	Travis B. Sheaffer, Council President
Approved:	
	Ronald A. Behm, Mayor
VOTE ON PASSAGE Yea Nay _	Abstain
Attest:	
Gregory J. Heath, Clerk/Finance Director	
I, Gregory J. Heath, Clerk/Finance Din that the foregoing Ordinance No. 055-15 was a newspaper of general circulation in said City, o	
; & I further certify the compliance w	
	Gregory J. Heath, Clerk/Finance Director

## **RESOLUTION NO. 056-15**

A RESOLUTION AUTHORIZING THE CITY FINANCE DIRECTOR TO UPGRADE FINANCE ACCOUNTING SOFTWARE WITH CMI FROM FINANCE CLIENT SERVER TO FINANCE AUTHORITY SOFTWARE; AUTHORIZING EXPENDITURE OF FUNDS IN EXCESS OF \$25,000 AND ELIMINATING THE NECESSITY OF COMPETITIVE BIDDING

**WHEREAS**, CMI is and has been the software provider to the City's Finance Department as it relates to finance accounting; and,

**WHEREAS**, CMI has offered the City an upgrade to the finance accounting software with CMI from a finance client server to finance authority software; and

**WHEREAS**, this matter has been reviewed and recommended for approval by the City's Finance and Budget Committee of Council in the 2015 Budget Approval; Now Therefore.

# BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

- Section 1. That, the City Finance Director is granted the authority to upgrade from a finance client server to finance authority software under the terms and conditions as presented by CMI (Contract No. 2015-15), such terms and conditions having been reviewed by this Council; moreover, the City Finance Director shall be the executing officer of the said contract.
- Section 2. That, the expenditure of funds in excess of \$25,000.00 is hereby approved as a necessary and proper expenditure for such software.
- Section 3. That, the necessity of competitive bidding is hereby eliminated in the best interest of the City.
- Section 4. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.
- Section 5. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.
- Section 6. That, upon passage, this Resolution shall take effect at the earliest time permitted by law.

Passed:	
	Travis B. Sheaffer, Council President
Approved:	
	Ronald A. Behm, Mayor
VOTE ON PASSAGE Yea Nay	Abstain
Attest:	
Gregory J. Heath, Clerk/Finance Director	
I, Gregory J. Heath, Clerk/Finance Director that the foregoing Resolution No. 056-15 was duly pu newspaper of general circulation in said City, on the	blished in the Northwest Signal, a, day of,
; & I further certify the compliance with rules Ordinances Of Napoleon Ohio and the laws of the Sta	
Gree	gory I Heath Clerk/Finance Director

#### **ORDINANCE NO. 057-15**

# AN ORDINANCE AMENDING THE ALLOCATION OF FUNDS AS FOUND IN SECTIONS 193.11 AND 194.013 OF THE CODIFIED ORDINANCES OF THE CITY OF NAPOLEON, OHIO

## BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, Section 193.11 of the Codified Ordinances of Napoleon, Ohio, shall be amended and enacted as follows:

#### "193.11 ALLOCATION OF FUNDS.

- (a) Effective January 1, 2016, the funds collected under the provisions of this chapter shall be deposited in the "General Fund equivalent" of the City for municipal income taxes and shall be disbursed in the following order:
- (1) Such part thereof as shall be necessary to defray all costs of collecting this tax and all costs of administering and enforcing the provisions of this chapter and the rules and regulations adopted by Council in connection therewith.
- (2) Not more than 62% of the net available tax receipts received annually may be used to defray operating expenses of the City.
- (3) At least 38% of the net available tax receipts received annually shall be set aside and used for capital improvements including, but not limited to, development and construction of storm sewers and street improvements; for public buildings, parks, and playgrounds; and for equipment necessary for the Police, Fire, Street, Traffic, and Safety Departments.
- (b) Effective January 1, 2017 and thereafter, the funds collected under the provisions of this chapter shall be deposited in the "General Fund equivalent" of the City for municipal income taxes and shall be disbursed in the following order:
- (1) Such part thereof as shall be necessary to defray all costs of collecting this tax and all costs of administering and enforcing the provisions of this chapter and the rules and regulations adopted by Council in connection therewith.
- (2) Not more than 50% of the net available tax receipts received annually may be used to defray operating expenses of the City.
- (3) At least 50% of the net available tax receipts received annually shall be set aside and used for capital improvements including, but not limited to, development and construction of storm sewers and street improvements; for public buildings, parks, and playgrounds; and for equipment necessary for the Police, Fire, Street, Traffic, and Safety Departments."
- Section 2. That, Section 193.11 of the Codified Ordinances of Napoleon, Ohio, as existed prior to the enactment of this Ordinance, is repealed effective December 31, 2015 at 11:59 PM.
- Section 3. That, Section 194.013 of the Codified Ordinances of Napoleon, Ohio, shall be amended and enacted as follows:

#### "194.013 ALLOCATION OF FUNDS.

- (A) <u>Effective January 1, 2016</u>, the funds collected under the provisions of this Chapter shall be deposited in the "General Fund equivalent" of the City for municipal income taxes and shall be disbursed in the following order:
- (1) Such part thereof as shall be necessary to defray all costs of collecting this tax and all costs of administering and enforcing the provisions of this Chapter and the rules and regulations adopted by Council in connection therewith.
- (2) Not more than 62% of the net available tax receipts received annually may be used to defray operating expenses of the City.
- (3) At least 38% of the net available tax receipts received annually shall be set aside and used for capital improvements including, but not limited to, development and construction of storm sewers and street improvements; for public buildings, parks, and playgrounds; and for equipment necessary for the Police, Fire, Street, Traffic, and Safety Departments.
- (B) <u>Effective January 1, 2017 and thereafter,</u> the funds collected under the provisions of this chapter shall be deposited in the "General Fund equivalent" of the City for municipal income taxes and shall be disbursed in the following order:
- (1) Such part thereof as shall be necessary to defray all costs of collecting this tax and all costs of administering and enforcing the provisions of this chapter and the rules and regulations adopted by Council in connection therewith.
- (2) Not more than 50% of the net available tax receipts received annually may be used to defray operating expenses of the City.
- (3) At least 50% of the net available tax receipts received annually shall be set aside and used for capital improvements including, but not limited to, development and construction of storm sewers and street improvements; for public buildings, parks, and playgrounds; and for equipment necessary for the Police, Fire, Street, Traffic, and Safety Departments."
- Section 4. That, Section 194.013 of the Codified Ordinances of Napoleon, Ohio, as existed prior to the enactment of this Ordinance, is repealed effective December 31, 2015 at 11:59 PM.
- Section 5. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.
- Section 6. That, if any other prior Ordinance or Resolution is found to be in conflict with this Ordinance, then the provisions of this Ordinance shall prevail. Further, if any portion of this Ordinance is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof.
- Section 7. That, this Ordinance shall take effect at the earliest time permitted by law.

Passed:	
	Travis B. Sheaffer, Council President
Approved:	
	Ronald A. Behm, Mayor
VOTE ON PASSAGE Yea Attest:	_ Nay Abstain
Gregory J. Heath, Clerk/Finance Director	or
	Director of the City of Napoleon, do hereby certify as duly published in the Northwest Signal, a ty, on the day of,
	re with rules established in Chapter 103 of the distributed the laws of the State of Ohio pertaining to Public
	Gregory J. Heath, Clerk/Finance Director

#### **ORDINANCE NO. 051-15**

#### AN ORDINANCE TO APPROVE CURRENT SEPTEMBER 2015 REPLACEMENT PAGES TO THE NAPOLEON CODIFIED ORDINANCES

**WHEREAS**, certain provisions within the Codified Ordinances should be amended to conform with current State law as required by the Ohio Constitution; and

**WHEREAS**, various ordinances of a general and permanent nature have been passed by Council which should be included in the Codified Ordinances; and

**WHEREAS**, the City has heretofore entered into a contract with the Walter H. Drane Company to prepare and publish such revision which is before Council; Now Therefore,

#### BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, the ordinances of the City of Napoleon, Ohio, of a general and permanent nature, as revised, recodified, rearranged and consolidated into component codes, titles, chapters and sections within the September, 2015 Replacement Pages to the Codified Ordinances are hereby approved and adopted; such having been certified as correct by the Clerk of Council and the Mayor.

Section 2. That, the following sections and chapters are hereby added, amended or repealed as respectively indicated in order to comply with current State law.

#### Traffic Code

301.19	Motorcycle. (Amended)
303.081	Impounding Vehicles on Private Residential Property.
	(Amended)
303.082	Tow Away Zones. (Amended)
331.48	Vehicular Operation on Street Closed Due to Rise in Water
	Level. (Added)
335.031	Driving With Probationary License; Curfew. (Amended)
335.074	Driving Under License Forfeiture or Child Support
	Suspension. (Amended)
335.09	Display of License Plates. (Amended)
335.10	Expired or Unlawful License Plates. (Amended)
341.01	Definitions. (Amended)
341.03	Prerequisites to Operation of a Commercial Vehicle.
	(Amended)
341.05	Criminal Offenses. (Amended)
341.06	Employment of Drivers of Commercial Vehicles.
	(Amended)
351.04	Parking Near Curb; Handicapped Parking. (Amended)
373.02	Riding Upon Seats; Handlebars; Helmets and Glasses.
	(Amended)

#### General Offenses Code

501.07	Requirements For Criminal Liability. (Amended)
501.08	Culpable Mental States. (Amended)
	Fire Prevention Code
1511.01	Open Burning Definitions. (Amended)
1511.03	Open Burning in Restricted Areas. (Amended)
1511.04	Permission to Individuals and Notification to the Ohio
	EPA. (Amended)

Section 3. That, the complete text of the sections listed above is set forth in full in the current replacement pages to the Codified Ordinances which are hereby attached to this Ordinance as Exhibit "A." Any summary publication of this Ordinance shall include a complete listing of these sections. Notice of adoption of each new section by reference to its title shall constitute sufficient publication of new matter contained therein.

Section 4. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon, Ohio.

Section 5. That, if any other prior Ordinance or Resolution is found to be in conflict with this Ordinance, then the provisions of this Ordinance shall prevail. Further, if any portion of this Ordinance is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof.

Section 6. That, upon passage, this Ordinance shall take effect at the earliest time permitted by law.

Passed:	
	Travis B. Sheaffer, Council President
Approved:	
	Ronald A. Behm, Mayor
VOTE ON PASSAGE Yea N	Nay Abstain
Attest:	
Gregory J. Heath, Clerk/Finance Director	
foregoing Ordinance No. 051-15 was duly publishe	tor of the City of Napoleon, do hereby certify that the ed in the Northwest Signal, a newspaper of general ; & I further certify
the compliance with rules established in Chapter 1 the laws of the State of Ohio pertaining to Public M	03 of the Codified Ordinances Of Napoleon Ohio and
	Gregory J. Heath, Clerk/Finance Director

mPARD. Kidz Kingdom Donation

220.4400.44350

HENRY COUNTY COMMUNITY FOUNDATION, INC.

238 56-7085/2412

611 NORTH PERRY ST NAPOLEON, OH 43545

10.20-15

Pay to the City of Napolem Parks Dep C/o tony Cotten \$ 1,229.00 One thousand Iwo hundred twenty-nine and obligo Dollars 1 Parks

For Kigs Kingdom

# City of Napoleon Parks and Recreation Department

255 West Riverview Avenue Napoleon, Ohio 43545 (419) 592-4010 (419) 592-8955 (fax) tcotter@napoleonohio.com

### Memorandum

To: Monica Irelan, City Manager

From: Tony Cotter, Director of Parks and Recreation

Date: November 2, 2015

Subject: Donation from Henry County Community Foundation

The Henry County Community Foundation recently donated \$1,229.00 to the Parks and Recreation Department for ongoing maintenance of the Kidz Kingdom playground. This donation is given every two years. We will be using the funds this year for ADA accessible surfacing.

I am requesting that this donation be formerly accepted by City Council. If you have any questions or need additional information, please let me know.

## Memorandum

**To:** Technology and Communication Committee, Council, Mayor, City Manager, City Law Director, City Finance Director, Department Supervisors, Media

From: Gregory J. Heath, Finance Director/Clerk of Council

**Date:** 10/28/2015

**Re:** Technology and Communication Committee Meeting Cancellation

The Technology and Communication Committee meeting regularly scheduled for Monday, November 2, 2015 at 6:15pm has been CANCELED due to lack of agenda items.

#### City of Napoleon, Ohio

## Municipal Properties, Buildings, Land Use & Economic Development Committee

### **Special Meeting Minutes**

Monday, October 8, 2012 at 7:00 PM

PRESENT

**Committee Members** 

City Staff

Recorder Others

ABSENT

Committee

Staff

Call To Order

Minutes Stand Approved

Review Updated Information From Staff. . Remained Tabled

**Review Of 2012 Projects** 

John Helberg - Chair, Jeff Lankenau, Patrick McColley, Mayor Ron Behm

Dennis Clapp, Electric Superintendent

Trevor Hayberger, Law Director

Greg Heath, Finance Director/Clerk of Council

Chad Lulfs, Acting City Manager

Barbara Nelson News Media

None

Dr. Jon Bisher, City Manager

Chairman Helberg called the meeting to order at 7:00 PM

Minutes of the June 11, 2012, meeting stand approved as presented.

Review Updated Information From Staff On Economic Development remained tabled.

Lulfs said there were few projects in 2012. He will bring one water project to Council on Monday night which requires emergency funding. He'll bring plans and specifications for the job, but he can't pay for it. It will be up to Council whether to move forward or not. Heath said the key is where to legally pay for it from. It can come from the general fund or capital improvement fund. Heath checked the water balances today and doesn't know how to do this project without taking the balance precipitously low.

Lulfs said the problem is that the cast iron waterline on Strong Street has severe rust issues. We are replacing water filters for residents every 5 days. The filters cost about \$40 each. When one homeowner fills his bathtub, you can't see the bottom of the tub for all the rust. One homeowner has a new baby and can't bathe it in the water. This project was split out from another project. He took Welsted out of that project because it's not part of this issue. He'll put Welsted in the 2013 budget for \$205,000. Projects cost more separately. He estimated about \$300,000 for both together. He's never had residents complain as much about any other issue. Bisher is involved with the homeowners on this and can talk about it at Monday's meeting.

Helberg asked if the utility fund can borrow from the general fund. Heath said we can borrow money, but cannot transfer funds from another fund. Helberg suggested selling a 6 month note until the project can be included in the budget. Heath said we still have to follow the process to sell notes. We have to maintain minimum balances in the funds to maintain trust agreements with revenue bonds. He'll look at emergency clauses in the Ohio Revised Code (ORC) and check with our bond counsel. We have money in the general fund if Council wants to allocate it. At some point, we need to

address emergency situations and how to deal with them. Hayberger said this shouldn't affect our bond rating. Heath said the water fund and general fund are our only options. The water fund is not as healthy as the sewer fund.

Lulfs said if Council wants to do it now, we will. If not, we'll put it in 2013. It was in the 2012 budget, but got cut because the water fund was broke. Helberg said he would rather do the big project. Lulfs said both sets of plans are done.

**Review Of 2013 Projects** 

Lulfs said he didn't bring the Scott Street Project because we don't have much say on that. He distributed plans for the Haley Ave Interceptor I/I Reduction Project (LTCP Project 17B) on Riverview Ave. and described them in detail. The plan includes replace existing sidewalks, and giving the homeowner one year to put in sidewalks where none existed before. Council can change this if they want, but this is what we did on Clairmont.

The east side of the driveway at house #836 is where the existing sidewalk stops. From there to Glenwood, there are no sidewalks. This is an issue to consider. Another issue is that houses at 900, 904 and 908 have blocks/walls in their yards and the sidewalk in these proposed locations go through them. They are in the right of way by about 12'-15'. The plans on page 11 show the sidewalks where we normally put them. This is the standard location of sidewalks with the back of the sidewalk 1' inside the right of way.

Lulfs said the issue is, do we pull the sidewalk all the way inside where the walls are? The flagstone is more than halfway to the road. We don't have to take the walls out to put in utilities. It is hard to fit the sidewalks in between the road and the wall. There is no curb and nothing to slow down traffic once the wall is down.

Helberg said this might be a place to put a bike path. Lulfs said it would fit, but the cost would be quite a bit more because we have to watch thickness due to being on the edge of the pavement. There would be drainage to contend with. That's where the catch basins are. Police would have to be sure people don't park on it. Lulfs will check on cost. He will also contact people to see if they want the walls. We'll take walls out for free. One property had a license agreement with the City, but it is not transferrable. Hayberger said the agreement can be revoked at any time with an ordinance.

Helberg said some people park there. Lulfs said many times when we do projects like this, parking goes away. One concern is having a bike path in front of three residences and a sidewalk at each end. Helberg said it could be called a walkway. Lulfs said if it is 10', we would want to do asphalt not concrete. The walls end at 908. There is a short wall west of there. Hayberger suggested doing a curb for those three houses. Lulfs said that is possible but we would have to change the drainage. It might be a cheaper option. Lulfs will check to see what residents want to do with their sidewalks. The projected cost for this project is just under \$750,000. We have a grant for 45% as long as it doesn't go over \$750,000. It will be in the budget for next year. The EPA says we have to do it.

Helberg asked why we replace the laterals. Lulfs said we've always replaced

everything in the right of way when we replace the main. That's the industry practice. Heath said one funding option to consider is assessment. Lulfs said we could assess sidewalks even where they exist because they have reached their useful life. His understanding is there is something in the ORC stating that when something has reached its useful life, it can be assessed again. Helberg said some people are still paying on their assessments, but the rates are higher for everyone because we haven't been assessing in the last 10 years. Heath said all of the south side was assessed in 1992 for the Southside Sewer Project. Helberg said those people got their sewers assessed, but they are still paying higher rates. Heath said utility bills are high because of socializing everything. We are spending money out of the socialized rates. The only other funding is assessments. The precedent has been set, and it will be hard to go back to assessing.

Helberg said there could be a long-term phase back in of assessments. Heath noted that industry and commercial customers are paying these rates too. Lulfs said when we had hearings for Woodlawn, people from the south side complained. McColley said we may need to do socializing on deeper sewers. Mayor Behm said there are smaller pipes on the outskirts of town and bigger ones in town. Heath said things like the water plant should be paid by everyone. Sidewalks should be paid by the homeowner. Nothing got assessed on Woodlawn and Washington.

Lulfs said assessment costs are calculated based on the cost of the project, frontage of property with special consideration for corner lots, etc. Every lot is calculated. We don't do assessment calculations in a day. Heath said the assessments are added to property taxes. Council has the legal authority to place assessments on projects. Helberg suggested overall project assessing, one person at the end may be deep and the other is shallow, we can assess them more evenly as an overall project. Lulfs said in assessment calculations we look at the cost of an 8" sewer which is the standard requirement. There may be something in Issue 2 funding about the local share. Some grants can't be assessed. CDBG is low income and we can't assess those. It cost \$10,000 in engineering costs to get calculations done for assessments on the Woodlawn Ave. Project and then we didn't assess.

Heath believes Council needs to reconsider assessing at some point and decide when to do it and when not. Council chambers will fill up on the first project you do. McColley said W. Riverview has more traffic. We are building it up a lot. Lulfs said if we assess it, we would look at 6 on 8 instead of 10 on 8 or 8 on 10. The minimum width for a street is 25'. Council could set minimum guidelines.

Lulfs will contact folks about the walls by their property. He rerouted the proposed sidewalk on Riverview at Glenwood.

Helberg asked about the Indiana Avenue taps. Lulfs said we can nonperform the taps. We have always done this wherever we worked. Helberg said the sewer is outside of the curb line. Lulfs said we're out there working and have the right to work on taps when we're out there. We may be able to get out I/I.

Helberg suggested that Lulfs come back to the Committee with the sidewalk issue after he talks to people and before he gets too far into the design.

McColley asked if assessments should be put on the agenda for future discussion. Heath said this can be discussed as part of the budget process. Helberg asked how to get the topic to Council. Heath said he can put it on the Council agenda for the next meeting. We have regular Council meetings during the budget meetings.

Mayor Behm asked about future projects. Lulfs said Scott Street, Miscellaneous Streets, Welsted and Ohio Street waterlines, Ohio St. sanitary sewer, Hudson waterline, Kenilworth I/I Reduction Phase II. The sidewalk under Rt. 24 is a few years out. We're trying to get other funding to fix the road at the same time. We have \$500,000 now, but hope to get enhancement funding with a safety grant. When those are combined, ODOT allows us to use the funds for engineering as well. Helberg asked if ODOT will do that part of 108 with 24. Lulfs said anything full depth is us and every one of those bumps is full depth. 424 will be paved next year. The Riverview Sewer Project is the only substantial project except Scott Street. We'll put utilities in the Kenilworth area. There's a 1-1/2" line on Hudson.

Lulfs said the sewer on Ohio St. is an emergency in his mind. It has bad rust. Next year will be the biggest year and the issue will be having bodies for inspection. Helberg asked whether the City or ODOT inspect 108. Lulfs said we can, but no one in our office knows how to do the recording process. We want to hire someone to do the recording and we supplement them. McColley said ODOT inspected the Oakwood Avenue bridge.

Mayor Behm asked how much money we're borrowing next year. Lulfs said we have almost \$3,500,000 in grants. Cost is an estimated \$6,000,000. The bids will probably come in lower, but there will be about \$2,500,000 of City responsibility to spread across the funds. Helberg asked if Lulfs has access to Brad anymore. Lulfs said roadway projects don't work well with his schedule. He works better with site based projects, but can't be here 10-12 hours per day.

Motion To Adjourn

Motion: Lankenau Second: McColley To adjourn the meeting at 8:15 PM

Passed: Yea-4 Nay-0 Roll call vote on motion: Yea- Helberg, Lankenau, McColley, Mayor Behm

Nay-

Date\_\_\_\_\_

John Helberg, Chair

#### CITY COUNCIL

### **Meeting Minutes**

Monday, August 20, 2012 at 7:00 PM

PRESENT

Council

Mayor

Glenn Miller (President), John Helberg, James Hershberger, Jeffrey Lankenau, Patrick

McColley (arrived at 7:17), Christopher Ridley

Ronald A. Behm - via telephone conference

City Manager Law Director Acting Finance

Trevor M. Hayberger Christine Peddicord

Dr. Jon A. Bisher

Director

Recorder

Barbara Nelson

City Staff

Robert Bennett, Fire Chief

Dennis Clapp, Electric Superintendent

Chad Lulfs, City Engineer Robert Weitzel, Police Chief

Others

News Media

ABSENT Council

Others

Travis Sheaffer

Gregory Heath, Finance Director/Clerk of Council

Call To Order

President Miller called the meeting to order at 7:00 PM with the Lord's Prayer.

Minutes Approved

Minutes of the August 6 Council meeting stand approved with no objections.

Citizen

Communication

None

Reports From Committees

The Technology & Communication Committee did not meet on Monday, August 6 due to lack of agenda items. The Electric Committee did not meet on August 13 due to lack of a quorum.

Chairman Lankenau reported that the Water, Sewer, Refuse, Recycling and Litter Committee met on August 13, and

- a. Recommended to accept the BOPA recommendation with respect to modifying Water/Sewer Rule 5.4 regarding Lawn Meter Policy
- b. Recommended to grant an exception to the owner of 804 W. Washington waiving the tap fee for two years
- c. Recommended a rule change in regard to water tap fees for residents who purchase a property and demolish and rebuild a house to extend a 2 year grace period on the tap fee
- d. Recommended to leave the Water/Sewer Rule regarding shared sanitary taps as is
- e. Discussed and tabled Low Occupancy Bill
- f. Discussed and tabled Water Treatment Plant Evaluation
- g. Review of Responsibility for Sanitary Sewer Tap Repair & New Installation remained tabled.

**Good Of The City** 

(Cont.)

Peddicord

Peddicord – no items

Ridley

Ridley – no items

Helberg

Helberg asked where Absolute Animal & Pest Control is rounding up geese. Bisher said there was a problem with geese at Oakwood Park, but he will find out for sure.

Review Of Rules & Rates For A Second House Meter Assigned To Water/ **Sewer Committee** 

Helberg said he has had complaints on how much it costs to install a second meter. Residents pay the increased rate for 12 months even though they only use it for a few months each year. Bisher said he doesn't think the City is making money on the meters, but he will find out. President Miller assigned Review of Rules & Rates for a Second House Meter to the Water, Sewer, Refuse, Recycling & Litter Committee.

Review Of 2012 Projects And Review Of 2013 Projects Assigned To Muni **Prop Committee** 

Helberg asked about Municipal Properties reviewing upcoming projects. Lulfs said he can bring the projects to the next meeting for review. President Miller assigned Review of 2012 Projects and Review of 2013 Projects to the Municipal Properties, Buildings, Land Use & Economic Development Committee.

Hershberger

Hershberger received a suggestion that the City put in a permanent Christmas tree in Veterans Park. Someone else would like a sign put up at the edge of town supporting Campbells since Campbells has helped the City prosper. Hayberger said we must be careful about using City funds for something like that. Hershberger said he can talk to people about donating money to put up a sign.

President Miller

President Miller said the City will inherit Rt. 424 soon. He asked that staff pressure ODOT into resurfacing this route before it is turned over to us. Lulfs said he got them to agree to take down the old train trestle. This route was last resurfaced in 2005. ODOT is taking down the Rt. 424 signs soon to go along with the opening of new US 24, but they are not dedicating the route to the City or the County yet. With the opening of new US 24, they wanted to do all the signage at the same time, but it is still not our road. McColley said it should be turned over to the County by the end of the year. Lulfs said there are major utility issues. We signed off on the plans, but haven't heard about bidding or the construction schedule. Helberg asked what the name of the road will be. McColley said it will be County Road 24. Lulfs said it will be Riverview Avenue inside the City limits.

McColley

McColley – no items

Lankenau

Lankenau – no items

Hayberger

Hayberger asked that Council request legislation for the two year grace period for the water tap fee as previously discussed

Motion To Bring Legislation Forward

Second: Ridley Motion: Lankenau

To ask the Law Director to bring forward legislation for a rule change regarding a two year grace period on the water tap fee for residents who purchase a property and

demolish and rebuild a house

Passed Yea - 6

Roll call vote on above motion:

Nay-

Nav - 0

Yea- McColley, Lankenau, Ridley, Helberg, Hershberger, Miller

Council Meeting Minutes

7 of 7 8/28/2012

Bisher said rules for the Fremont Plant are set up to appease several communities who

weren't sure how AMP would hedge gas prices and wanted the ability to opt out. All indicators are that gas prices will go up. AMP prepared a hedge strategy for next the 20 years: 1/2013 through 12/2022. They are buying a piece of forward contracts for that period of time. This will be 17% of what would be anticipated used. There are 19 communities and so far none have suggested opting out. If we want to opt out, we must do it by next Wednesday. Bisher explained the hedging strategy. He noted that the hedging strategy on coal was a problem in the past. We are not hedging to make money. We believe we will burn it.

Helberg asked if we have to pay for it if we don't use it. Bisher affirmed. McColley asked how much we are paying now. Bisher could not locate these figures, but he will find them. Helberg asked what would happen if gas prices go so high that we don't use that plant. Lankenau said the risk is if the price goes down and the contract is locked in at a higher price. If it goes the other way, we bought gas cheaper. Bisher said that's why we're buying a small portion. McColley said it seems like an acceptable risk. Miller agreed. Bisher said no action is needed if we take the hedge.

Mayor – no items

**Approval Of Bills** 

Bills and reports stand approved as presented with no objections.

Motion To Adjourn

Motion: Ridley

Second: Helberg

JOHN A. HELBERG

To adjourn the meeting.

Passed

Yea-6

Nay -0

Roll call vote on above motion:

Yea- McColley, Lankenau, Ridley, Helberg, Hershberger, Miller

Nay-

Adjournment

Meeting adjourned at 8:35 PM.

Approved:

September 4, 2012

Ronald A Belim Mayor

Gregory J. Meath Finance Director/Clerk of Council

uncil President

### **Fw: MVPO Meeting Information**

From: "Gregory J Heath" <gheath@napoleonohio.com> 10/30/15 08:20 AM

To: "Roxanne Dietrich" <rdietrich@napoleonohio.com>

Cc: "Monica Irelan" < mirelan@napoleonohio.com > , "Chad Lulfs" < clulfs@napoleonohio.com >

Attachments: HenryMeetingLetter\_Signed.pdf (458.1 kB);

#### Rox, please include in Council Packet.

----Original Message----

From: "Ellen Smith" <esmith@mvpo.org>

To: gheath@napoleonohio.com Date: 10/30/2015 08:10 AM

Subject: MVPO Meeting Information

#### Good morning,

Attached to this email is a letter providing information about an upcoming meeting the Maumee Valley Planning Organization (MVPO) is holding in Henry County on Thursday, November 12th. The purpose of this meeting is to inform the entities within the county of the technical assistance MVPO now provides to communities for transportation and to provide an update about our transportation program. Could you pass along this information to the Mayor for me?

Thank you!

**Ellen Smith** 

Transportation Planner/GIS Analyst

Maumee Valley Planning Organization
1300 E Second St. Defiance, OH 43512
419-784-3882

esmith@mvpo.org \*\*\*Please note the new email address



# Maumee Valley Planning Organization

Serving Defiance Fulton, Henry, Paulding and Williams Counties October 29, 2015

To whom it may concern:

As you may already be aware, the Maumee Valley Planning Organization (MVPO) has been carrying out transportation planning activities for the counties of Defiance, Fulton, Henry, Paulding and Williams for the past two years. In 2013, MVPO was chosen by the Ohio Department of Transportation to be a Regional Transportation Planning Organization (RTPO) during a two year pilot program. During the pilot program, MVPO developed a long range transportation plan known as Moving Together 2040 for the area while conducting public and stakeholder outreach and developing transportation expertise. The pilot program was successful and the RTPO program is continuing. Moving forward with the program, MVPO now offers transportation technical services to the region in addition to the transportation planning activities already being carried out. These technical services include traffic counting, map making, data distribution, and assistance with preparing funding applications for transportation projects.

MVPO will hold a meeting on **Thursday**, **November 12**, **2015** to discuss the technical assistance now being offered to the region. You are invited to attend this meeting and learn how you can benefit from the services provided by MVPO.

Meeting Information:

Thursday, November 12, 2015 at 10:00 a.m.

Henry County Commissioners Office, Conference Room 1853 Oakwood Avenue Napoleon, OH 43545

We hope to see you there and should you have any questions please contact Ellen Smith by phone (419-784-3882) or email (esmith@mypo.org).

Sincerely,

Ellen Smith

Transportation Planner/GIS Analyst Maumee Valley Planning Organization

Since

1300 E. Second St., Suite 200

Defiance, OH 43512



# Legislative Bulletin

#### Ohio Municipal League Legislative Bulletin

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**Committee Schedule** 

October 30, 2015

# OML ANNUAL CONFERENCE LAST WEEK A SUCCESS; BOARD TAKES POSITIONS ON STATE BALLOT ISSUES 2 & 3

The Ohio Municipal League held its 64 th Annual Conference last week at the Renaissance Hotel in downtown Columbus, hosting a great turn-out of municipal officials from across the state, who were interested in learning about current administrative "best practices" in addressing issues related to employment matters, environmental regulations and other opportunities to make communities run more efficiently. We want to thank all those who attended the conference, individuals and organizations that helped present information for our work sessions and to our great group of vendors who make the two day exhibition show a big success. The last day of the conference was dedicated to a review of components of HB5, the municipal income tax reform bill, for those that needed assistance with final clarifications on several complicated new changes being mandated by the state legislature before the revised tax ordinances are enacted by the beginning of next year. The league thanks the municipal tax experts who participated in the panel discussion to help address the administrative questions that remain.

As part of the annual conference, the OML Board of Trustees met on Wednesday to address league matters before the board which included the review and adoption of positions on two of the upcoming state ballot issues voters will be facing in next week's election. After careful and lengthy deliberations, the OML Board of Trustees voted to support Issue 2, the amendment by the Ohio General Assembly to prevent the establishment of economic monopolies in the Ohio Constitution and moved to oppose Issue 3, the initiative to legalization the sale and use of medical and recreational marijuana. Copies of the Resolutions adopted by the board in support and opposition of the state issues can be found on our website HERE.

In comments following the action taken by the board, Jim Bodenmiller, OML Board President and Springfield's City Manager said, "If Issue 3 were successfully passed, it is our feeling that this would unfairly place a monopoly in the Ohio Constitution, providing exclusive benefits to a small group of investors and bringing harm to Ohio's business community while increasing challenges for local officials." In support of Issue 2, President Bodenmiller remarked, "It is the Board's position that the Ohio Constitution should never be a tool for a select group of individuals to receive unfair economic advantage over any other Ohioan."

#### BILLS MOVE CORRECTING LANGUAGE IN RECENT STATE BUDGET

In the Ohio House this week, legislative action was taken to make several changes to the recently passed HB64, the state's two year operating budget enacted into law July 1 st, some of which affect municipalities. By a unanimous vote, Rep. Amstutz (R-Wooster) won the House's approval of his HB 340 which has been sent to

the Ohio Senate for their consideration. HB 340 addresses an oversight in the recent state budget that failed to extend the sunset on the Local Government Innovation Council (LGIC), forcing the extinction of the popular program at the end of the year. The legislation, passed with an emergency clause ensuring the bill becomes effective upon the Governor's signature, sets the new sunset date for the council and the availability of financial assistance to communities towards purchasing vehicles, equipment, facilities or systems for public safety improvements at December 31, 2019. More information about the opportunities for assistance through the council and to learn more about a special program being offered called Lean Ohio Boot Camp, visit the Ohio Development Services Agency website page: <a href="http://development.ohio.gov/cs/cs\_localgovfund.htm">http://development.ohio.gov/cs/cs\_localgovfund.htm</a>.

Another bill, Sen. Beagle's (R-Beavercreek) SB 208, introduced for the purpose of addressing another error in the HB 64, moved through the legislative process in less than two months and was adopted by the Ohio House by a vote of 84-6. Once received by the Ohio Senate, the bill originally introduced to fix language in HB 64 that creates a flat tax for small businesses, which inadvertently would have led to a projected \$52 million tax increase for some Ohio small businesses, was quickly approved and is awaiting the Governor's signature.

The Legislative Service Commission (LSC) has determined through their Fiscal Note and Local Impact Statement (<a href="www.legislature.ohio.gov/legislation/legislation-documents?id=GA131-SB-208">www.legislature.ohio.gov/legislation/legislation-documents?id=GA131-SB-208</a>) that accompanies the final version of SB 208, that this change in the personal income tax code will create a revenue loss for the state, estimated for Fiscal Year 2016 to reduce the state General Revenue Fund (GRF) by an estimated \$75 to \$81 million. This "modification" will in turn create a revenue loss in FY 2016 for the Local Government Fund (LGF) and the Public Library Fund (PLF) estimated to be between \$1.3 million and \$1.4 million. The report states that beginning in FY 2017 and years thereafter, the combined revenues for these two funds will be reduced by an estimated \$300,000.

Along the way as part of the legislative process, an amendment was added to SB 208 restoring language previously vetoed by Governor Kasich which would have provided Ohio school districts with a new Tangible Personal Property (TPP) supplemental reimbursement fund. The fund, vetoed by the Governor, would have provided school districts up to \$84 million in relief due to the accelerated phase-out and elimination of the TPP reimbursement program, keeping school districts financially "whole" through 2017. Because of the action taken by the Governor and vocal opposition from school leaders across the state, through SB 208 the legislature added language returning \$44 million from the previously appropriated cash in the state budget directed to the School District TPP Supplemental Fund, to school districts. League staff and municipal officials from across the state talked with members of the legislature, asking that relief also be given to local governments negatively impacted by the elimination of the TPP reimbursement schedule but the message was delivered that the money going to the school districts was not "new money" but had previously been budgeted as part of the legislature's spending package and that agreements had been made to only limit the relief to schools impacted by the veto action.

During Tuesday's Ohio House session, another bill offering assistance to Ohio communities was unanimously passed and sent to the Senate. HB 223, legislation introduced by Rep. Kirk Schuring (R-Canton) will authorize municipal corporations to create Downtown Redevelopment Districts (DRD) and Innovation Districts (ID) for the purpose of promoting job creation through the rehabilitation of historic buildings and encouraging economic development in commercial and mixed-use areas. The legislation adopted by the Ohio House would allow for up to 70% of the additional property taxes from the appreciated value of an historic preservation project to be diverted to finance such things as the promotion of activity within the Downtown Redevelopment District (DRD) and to establish revolving loans for other businesses in the district or for infrastructure improvements or debt service on construction loans. This funding mechanism can be used to support economic activity in the districts, serving as a building block to revitalize municipal downtowns interested in supporting this new activity. The Innovation District component of the proposal will use a 100 gigabyte broadband connection to facilitate IT research and development in the form of incubators and business accelerators, attracting the interest of leading-edge businesses and the talented workforce that accompany them.

Other provisions of the bill would: require that an ordinance creating a DRD describe the area included in the district, the number of years the district will exist, and an economic development plan; requires the

municipalities to hold a public hearing on the proposed DRD ordinance and give notice of the hearing to each property owner in the district; requires that the territory of a DRD contain at least one historic building and prohibits the inclusion of areas used exclusively for residential purposes; and restricts the lifetime of DRD exemptions to ten years or, with the approval or reimbursement of affected school districts, 30 years. The league supported the legislation through committee testimony in the House and looks forward to the Senate's favorable review.

# LAKE ERIE CAUCUS CONVENES TO CONSIDER BOND PROPOSALS TO PROTECT OHIO WATER SYSTEMS

The first meeting of an informal legislative panel met this week to consider plans on how best to address the statewide water quality problem that has been pervasive for years due to the expansion of blue-green algae exposures in public drinking water systems and continued threats to Ohio's aquatic assets including Lake Erie, the Ohio River, Grand Lake St. Mary and other state waters. The Lake Erie Caucus, a bipartisan committee made up of legislators who mainly represent areas included in the Lake Erie region met to hear two proposals which would initiate proposed statewide ballot issues seeking to generate the issuance of bonds to fund sewer and water quality programs.

The first initiative was presented by caucus member Senate Minority Leader Senator Joe Schiavoni (D-Youngstown) in the form of SJR 3, a bi-patricianly co-sponsored Senate Joint Resolution currently awaiting a first hearing in the Senate Finance Committee, if passed by the Ohio General Assembly would place before Ohio voters via a statewide ballot issue a proposal to initiate a \$1 billion dollar bond issue for 10 years with a \$100 million annual distribution level, focusing on underground infrastructure projects such as water and sewer systems including capital improvement plans primarily addressing sewage overflow problems. Senator Schiavoni told his fellow caucus members that his plan is to have the measure before voters on the March 15, 2016 ballot, so that funding and projects can begin immediately. That timeframe leaves a tight legislative window to get the measure through the General Assembly, prompting the legislature to pass the Resolution by mid-December. Leader Schiavoni stated that the bonding program would be comparable to the state's public works program renewed by voters last year through Issue 2, the reauthorization of \$1.9 billion bonding program for Ohio roads and bridges.

The second proposal was presented by representatives of a mainly agricultural based organization called Healthy Water Ohio, which was formed in 2013 to develop a long-term water management plan for the state. The organization is promoting the idea of the creating the Ohio Water Trust, whose goal would be to raise \$250 million a year to fund research, monitoring, infrastructure improvements and a public awareness campaign. As explained to caucus members, the primary focus of the bonding measure would be on agriculture, natural resources and community projects, with a concentration towards smaller local projects and not large-scale infrastructure projects that could eat-up all of the available funding. The group said that from the \$250 million figure, \$100 million would come from a voter-approved bonding issue while the remainder would be generated from user fees, private contributions and other sources.

#### ANNOUNCING THE RETIREMENT OF JOHN E. GOTHERMAN

Effective September 30, 2015 John Gotherman assumed the position of Co-Legal Counsel of the Ohio Municipal League until his announced retirement to take effect November 30, 2015. The OML Executive Director has named Garry Hunter as General Counsel effective September 30, 2015.

John Gotherman is the dean of The Ohio Municipal Lawyers. He has been legal counsel to the Ohio Municipal League for the past 50 plus years and has been on countless amicus briefs in cases before the Supreme Court of Ohio involving cities and villages. He is a tireless champion of Home Rule and that is an understatement. John's areas of municipal specialization include serving as Bond Counsel, advising over 50 Municipal Charter Commissions and Charter Review Commissions, serving as the mentor and voice of the Ohio Municipal Attorneys Association for the past 30 plus years and other accomplishments too numerous to list. John even served as a municipal official in the early part of his career.

As stated above Garry Hunter will be succeeding John as OML General Counsel. Garry is a local government attorney with over forty-one years' experience. He was elected Law Director for the City of Athens, Ohio for thirty years and has experience representing a regional jail, school districts, and a solid waste district. He is an experienced local government consultant on countless issues, having authored over eighty-five articles. Please join us in wishing John and his family the very best in his retirement and we appreciate and are grateful for his years of service to all of Ohio.

#### LEGISLATURE TAKES A BREAK NEXT WEEK FOR GENERAL ELECTION

The General Assembly has a very light schedule for next week. As of Friday morning, only one committee has announced a hearing for next week and it does not include any bills of municipal interest. If there are changes to the schedule we will post those on our website Monday.

We wish everyone a safe weekend and hope those municipal officials seeking to continue their service the best of luck on Tuesday and success to issues important to your communities.~

#### Committee Schedule

<b>Past Bulletins:</b>		
<u>2015</u>		
<u>2014</u>		
<u>2013</u>		
<u>2012</u>		
2011		