

AGENDA

DATE: SEPTEMBER 4, 2001 (TUES)

PLACE: COUNCIL CHAMBERS

TIME: 7:30 P.M.

THERE ARE TWO PUBLIC HEARINGS THIS EVENING

ORDINANCE NO. 165 - 2001 7:00 P.M.

ORDINANCE NO. 166 - 2001 7:15 P.M.

- 1. ROLL CALL**
- 2. INVOCATION - COUNCILWOMAN NANCY HALTER (OR GUEST)**
- 3. PLEDGE OF ALLEGIANCE**
- 4. READING OF THE JOURNAL**
- 5. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS ON THE AGENDA**
- 6. INTRODUCTION OF ORDINANCES AND RESOLUTIONS**

ORDINANCE NO. 200 - 2001 BY: COMMUNITY DEVELOPMENT & ANNEXATION COMM

AN ORDINANCE authorizing the amendment and reissuance of the City of Massillon, Ohio Adjustable Rate Industrial Development Revenue Bonds, Series 2000 (A.R.E. Inc. Project) previously issued for the purpose of making a loan to assist A.R.E. Inc. in the financing of costs of a "Project" within the meaning of Chapter 165, Ohio Revised Code; authorizing the execution and delivery of a first amendment to loan agreement and a first supplemental trust indenture relating to the bonds; and authorizing the execution and delivery of certain other documents and actions in connection with the issuance of such bonds, and declaring an emergency.

ORDINANCE NO. 201 - 2001 BY: COMMUNITY DEVELOPMENT & ANNEXATION COMM

AN ORDINANCE amending the agreement between the City of Massillon and Weight Watchers Food Company, that was entered into under the Urban Jobs and Enterprise Zone Program, by approving the assignment and assumption to H. J. Heinz Company L.P. the interest, rights and duties under the original Enterprise Zone Agreement, and declaring an emergency.

ORDINANCE NO. 202 - 2001 BY: FINANCE COMMITTEE

AN ORDINANCE making certain appropriations from the unappropriated balance of the Capital Improvement Fund, Wastewater Treatment Plant Fund, and the Parks and Recreation Fund, for the year ending December 31, 2001, and declaring an emergency.

- 7. UNFINISHED BUSINESS**
- 8. PETITIONS AND GENERAL COMMUNICATIONS**
- 9. BILLS, ACCOUNTS AND CLAIMS**
- 10. REPORTS FROM CITY OFFICIALS**

- A). MAYOR SUBMITS MONTHLY PERMIT REPORT FOR AUGUST - 2001**
- B). AUDITOR SUBMITS MONTHLY REPORT FOR AUGUST - 2001**

- 11. REPORTS OF COMMITTEES**
- 12. RESOLUTIONS AND REQUESTS OF COUNCIL MEMBERS**

13. CALL OF THE CALENDAR

ORDINANCE NO. 165- 2001 BY: COMMUNITY DEVELOPMENT & ANNEXATION COMM

AN ORDINANCE amending Section 111.02 of the Massillon Code rezoning a certain tract of land from Perry Township to Massillon Zoning, and declaring an emergency.

ORDINANCE NO. 166- 2001 BY: COMMUNITY DEVELOPMENT & ANNEXATION COMM

AN ORDINANCE amending Section 111.02 of the Massillon Code rezoning a certain tract of land from R-1 Single Family Residential to B-1 Local Business, and declaring an emergency.

14. THIRD READING ORDINANCES AND RESOLUTIONS

15. SECOND READING ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 187- 2001 BY: STREETS, HIGHWAYS, TRAFFIC & SAFETY COMM

AN ORDINANCE vacating a portion of a certain public alley, and declaring an emergency.

ORDINANCE NO. 188- 2001 BY: STREETS, HIGHWAYS, TRAFFIC & SAFETY COMM

AN ORDINANCE vacating a portion of a certain public alley, and declaring an emergency.

ORDINANCE NO. 197- 2001 BY: HEALTH, WELFARE & BUILDING REGULATIONS COMM

AN ORDINANCE amending Section 1313.02(d) "Definitions" of CHAPTER 1313 "ELECTRICAL CODE" of the Codified Ordinances of the City of Massillon, by adding a new paragraph to Section 1313.02(d) "Definitions" of CHAPTER 1313 ELECTRICAL CODE" of the Codified Ordinances of the City of Massillon, and declaring an emergency.

16. NEW AND MISCELLANEOUS BUSINESS

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

18. ADJOURNMENT

**SHARON HOWELL
CLERK OF COUNCIL**

DATE September 4, 2001

CLERK: SHARON HOWELL

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

passed 9/17/01
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 200-2001

BY: COMMUNITY DEVELOPMENT & ANNEXATION COMMITTEE

AN ORDINANCE AUTHORIZING THE AMENDMENT AND REISSUANCE OF THE CITY OF MASSILLON, OHIO ADJUSTABLE RATE INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 2000 (A.R.E. INC. PROJECT) PREVIOUSLY ISSUED FOR THE PURPOSE OF MAKING A LOAN TO ASSIST A.R.E. INC. IN THE FINANCING OF COSTS OF A "PROJECT" WITHIN THE MEANING OF CHAPTER 165, OHIO REVISED CODE; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO LOAN AGREEMENT AND A FIRST SUPPLEMENTAL TRUST INDENTURE RELATING TO THE BONDS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Massillon, Ohio, pursuant to the laws of the State of Ohio, including without limitation, Section 13 of Article VIII, Ohio Constitution, and Chapter 165, as amended, Ohio Revised Code (the "Act"), issued on December 11, 2000 its Adjustable Rate Industrial Development Revenue Bonds, Series 2000 (A.R.E. INC. Project) (the "Bonds") in the aggregate principal amount of \$1,500,000 and loaned the proceeds thereof to A.R.E. INC., an Ohio corporation (the "Borrower"), to assist the Borrower in financing the costs of acquiring, constructing and installing new robotics and related equipment and facility upgrades (the "Project") to be owned by the Borrower and used in its truck cap and truck lid manufacturing facility located at 400 Nave Road SE, Massillon, Ohio; and

WHEREAS, in order to ensure that the interest on the Bonds will remain excluded from gross income for federal income tax purposes, the Borrower has requested that the Bonds be amended to extend the maturity thereof and that the Bonds as so amended be reissued by the Issuer;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1. Definitions. All words and terms used herein as defined words and terms but not otherwise defined herein shall have the respective meanings given to them in the Trust Indenture dated as of December 1, 2000 with respect to the Bonds between the Issuer and Bank One Trust Company, NA, and its successors in trust, as trustee (the "Trustee"), as such Trust Indenture will be amended by a First Supplemental Trust Indenture between the Issuer and the Trustee, the substantially final form of which is on file with this Council. Such Trust Indenture, as so amended, is hereinafter referred to as the "Indenture".

Any reference herein to the Issuer or this Council (the "Issuing Authority") or to any officers, employees or members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof," "hereby," "hereto," "hereunder," and similar terms, mean this Bond Legislation.

Section 2. Public Approval. This Issuing Authority, as the "applicable elected representative" of the Issuer for purposes of Section 147(f) of the Code, hereby approves the amendment and reissuance of the Bonds in the aggregate face amount of \$1,000,000.

This Issuing Authority also determines that, following reasonable notice, and prior to passage of this Bond Legislation, a public hearing was held with respect to the issuance of the Bonds, as required by Section 147(f) of the Code.

Section 3. Authorization of Amendment and Reissuance Bonds. It is hereby determined to be necessary to, and the Issuer shall, amend and reissue, as provided herein and in the Indenture, the Bonds in the principal amount of \$1,000,000. The Bonds shall be amended to mature on December 1, 2011. The Bonds, as amended, shall be signed on behalf of the Issuer as provided in the Indenture.

The form of the amended Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions hereof and of the Indenture, are hereby approved, and when the same shall be signed on behalf of the Issuer by the appropriate officer thereof in the manner contemplated hereby and by the Indenture, in the maximum aggregate principal amount authorized hereby, shall represent the approved form of amended Bonds.

The Mayor is authorized and directed to make on behalf of the Issuer the necessary arrangements with Banc One Capital Markets,

Inc., as Remarketing Agent, to establish the date, location, procedure and conditions for the delivery of the amended Bonds, and to take all steps necessary to effect due execution and delivery of the amended Bonds under the terms of this Bond Legislation and the Indenture.

Section 4. Arbitrage and Information Reporting Provisions. The Mayor, the Auditor or any other officer having responsibility for issuing the Bonds, either alone or in conjunction with the Borrower or any officer, employee, agent of or consultant to the Borrower, shall give:

(i) an appropriate certificate or certificates of the Issuer for inclusion in the transcript of proceedings for the Bonds setting forth the reasonable expectations of the Issuer regarding the amount and use of the proceeds of the Bonds and the facts, estimates and circumstances on which they are based and other facts and circumstances relevant to the tax treatment of interest on the Bonds, as provided by the Borrower, all, as of the date or dates of reissuance of the Bonds; and

(ii) the statement setting forth the information required by Section 149(e) of the Code, which shall be based on the relevant information provided by the Borrower.

Section 5. Authorization of First Amendment to Loan Agreement, First Supplemental Trust Indenture and All Other Documents to be Executed by the Issuer. The Mayor is authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, the First Amendment to Loan Agreement and the First Supplemental Trust Indenture, in substantially the forms submitted to and now on file with the Issuer which are hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officer executing the same on behalf of the Issuer. The approval of such changes by such officer, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the First Amendment to Loan Agreement and the First Supplemental Trust Indenture by such officer.

The Mayor and the Auditor are each separately authorized to take any and all actions and to execute such financing statements, assignments, certificates and other instruments that may be necessary or appropriate, in the opinion of the Issuer's bond counsel, in order to effect the amendment and reissuance of the Bonds.

Section 6. Compliance with Open Meeting Requirements. This Issuing Authority hereby finds and determines that all formal actions relative to the adoption of this Bond Legislation were

taken in an open meeting of this Issuing Authority, and that all deliberations of this Issuing Authority and of its committees, which resulted in those formal actions, were in meetings open to the public in compliance with the law.

Section 7. Effective Date. This Ordinance is declared to be an emergency measure immediately necessary for the preservation of the health, safety and welfare of the City of Massillon, Ohio and for the further reason that amendment and reissuance of the Bonds is necessary so as to maximize jobs and employment opportunities within the City of Massillon, Ohio. Provided it receives the affirmative vote of two-thirds of the elected members to Council it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS ____ DAY OF SEPTEMBER, 2001.

APPROVED: _____

Sharon Howell,
Clerk of Council

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Dennis D. Harwig,
President

APPROVED: September __, 2001

Francis H. Cicchinelli,
Jr., Mayor

I hereby certify that the foregoing Ordinance is a true copy of the original, as passed by the Council of the City of Massillon, Ohio, and approved as noted thereon:

Clerk of Council

Date: September __, 2001

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DATE September 4, 2001

CLERK SHARON HOWELL

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 201 - 2001

BY: COMMUNITY DEVELOPMENT & ANNEXATION COMMITTEE

TITLE: AN ORDINANCE amending the agreement between the City of Massillon and Weight Watchers Food Company. that was entered into under the Urban Jobs and Enterprise Zone Program, by approving the assignment and assumption to H. J. Heinz Company L.P. the interest, rights and duties under the original Enterprise Zone Agreement, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The agreement between the City of Massillon and Weight Watchers Food Company, that was entered into under the Ohio Urban Jobs and Enterprise Zone Program is hereby amended by the assignment and assumption to H. J. Heinz Company L.P. the interest, rights and duties of Weight Watchers Food Company under the original Enterprise Zone Agreement.

Section 2:

A copy of said amendment is attached hereto and made part of this Ordinance.

Section 3:

This Ordinance is hereby declared to be an emergency measure, the reason for the emergency being that said enactment is necessary for the Enterprise Zone agreement to reflect the assignment of Weight Watchers Food Company, to H. J. Heinz Company L.P. of all the interests, rights and duties under said agreement. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____, 2001

APPROVED: _____

SHARON HOWELL, CLERK OF COUNCIL

DENNIS D. HARWIG, PRESIDENT

ATTEST: _____

FRANCIS H. CICCHINELLI, JR. MAYOR

**ASSIGNMENT AND ASSUMPTION OF AGREEMENT
(WITH AGENCY CONSENT)**

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENT (the "Assignment") is made this ____ day of _____, 2001, by and among (i) H.J. Heinz Company, a Pennsylvania corporation its successors and assigns ("Assignor"); (ii) H.J. Heinz Company, L. P., a Delaware limited partnership, its successors and assigns ("Heinz L.P."); and (iii) City of Massillon, Ohio ("City").

WITNESSETH:

WHEREAS, the City and Weight Watchers Food Company, an Ohio corporation, ("Weight Watchers") which was subsequently acquired by merger by Assignor, entered into a certain Enterprise Zone Agreement dated October 23, 1995 ("Agreement"), under which it agreed to make certain investments in its facilities' located within the City in exchange for procurement of economic incentives made available by reason of such facilities location within a designated Enterprise Zone established by the City pursuant to Chapter 5709 of the Ohio Revised Code; and

WHEREAS, Assignor desires to assign all right, title and interest in and to the Agreement to Heinz L.P. and to delegate its obligations thereunder to Heinz L.P. as part of a corporate restructuring of its operations within the United States; and

WHEREAS, Section 16 of the Agreement requires the prior consent of the City to such assignment of rights and delegation of duties.

NOW, THEREFORE, in consideration of the above recitals and the terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Assignment of Agreement. Assignor assigns all of its right, title and interest in the Agreement to Heinz L.P. and delegates all of its obligations under the Agreement to Heinz L.P..
2. Assumption of Obligations. Heinz L.P., in consideration of the Assignment of the Agreement, hereby agrees to assume all duties and obligations of the Assignor under the Agreement.
3. Designation of Assignees as Approved Companies. The City, by execution of this Assignment, hereby consents to and approves of the Assignment.
4. Representations of Heinz L.P.. Heinz L.P. hereby represents that (i) it is duly organized under the laws of the State of Delaware; (ii) it is fully qualified to do

business in the State of Ohio; and (iii) after assumption of this Agreement, it is not in default thereunder.

5. Governing Law. The laws of Ohio shall govern the construction of this Assignment and the rights, remedies and duties of the parties hereto.
6. Miscellaneous. If any part, term or provision of this Assignment is unenforceable or prohibited by any law applicable to this Assignment or the Agreement, the rights and obligations of the parties shall be construed and enforced with that part, term or provision limited so as to make it enforceable to the greatest extent allowed by law, or if it is totally unenforceable, as if this Assignment did not contain that particular part, term or provision. A determination in one jurisdiction that any part, term or provision of this Assignment is unenforceable or prohibited by law shall not affect the validity of such part, term or provision in any other jurisdiction. In the event that Heinz L.P. is in default of the Agreement, the City shall furnish notice thereof to Heinz L.P. and permit the same to cure the default within thirty (30) days after notice or, if the nature of the default cannot be cured within such time period, an additional reasonable time period necessary to cure the same so long as the curing commences within said thirty (30) day period. All notices of default to Heinz L.P. must be written and shall be sent by certified or overnight mail to:

Patrick Guinee, Esq.
H. J. Heinz Company
600 Grant Street
P.O. Box 57
Pittsburgh, PA 15219

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IN WITNESS WHEREOF, the parties hereto have entered into and authorized this Assignment by their officers duly authorized as of the date first above written.

H.J. HEINZ COMPANY

By: _____

Print Name: _____

Title: _____

and

H. J. HEINZ COMPANY, L.P.

By: _____

Print Name: _____

Title: _____

and

APPROVED AS TO FORM

By: John D. Ferrell

Print Name: John D Ferrell Jr

Title: Law Director

CITY OF MASSILLON, OHIO

By: _____

Print Name: _____

Title: Mayor

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DATE: September 4, 2001

CLERK: SHARON HOWELL

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 202 - 2001

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE making certain appropriations from the unappropriated balance of the Capital Improvement Fund, Wastewater Treatment Plant Fund, and the Parks and Recreation Fund for the year ending December 31, 2001, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

There be and hereby is appropriated from the unappropriated balance of the Capital Improvement Fund for the year ending December 31, 2001, the following:

\$190,000.00 to an account entitled "Parking Deck Sublease Agreement" 1401.410.2510

Section 2:

There be and hereby is appropriated from the unappropriated balance of the Wastewater Treatment Plant Fund for the year ending December 31, 2001, the following:

\$29,771.53 to an account entitled "Woodland Creek Area Annexation" 2101.610.2393

Section 3:

There be and hereby is appropriated from the unappropriated balance of the Parks and Recreation Fund for the year ending December 31, 2001, the following:

\$ 5,000.00 to an account entitled "Gas & Oil" 1234.505.2430

Section 4:

This Ordinance is hereby declared to be an emergency measure, for the efficient operation of the various departments of the City of Massillon and for the preservation of the public health, safety and welfare of the community. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2001

ATTEST: _____
SHARON HOWELL, CLERK OF COUNCIL DENNIS HARWIG, PRESIDENT

APPROVED: _____
FRANCIS H. CICCHINELLI, JR, MAYOR