

## AGENDA

DATE: MONDAY, NOVEMBER 15, 2004  
PLACE: COUNCIL CHAMBERS  
TIME: 7:30 P.M.  
8:00 PM

THERE ARE NO PUBLIC HEARINGS TONIGHT

1. ROLL CALL *CHUCK MAIER } discussed*  
*Paul Manson*
2. INVOCATION BY COUNCILMAN GLENN GAMBER (GUEST – DR. DARRELL FILLER – INTERIM PASTOR AT ST. JOHN'S UNITED CHURCH OF CHRIST FORMER PASTOR AT FIRST CHRISTIAN CHURCH).
3. PLEDGE OF ALLEGIANCE
4. READING OF THE JOURNAL *Dorlene K. Miller – ORD 183-2004*  
*Please read 15:05 AM and.*
5. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS ON THE AGENDA
6. INTRODUCTION OF ORDINANCES AND RESOLUTIONS

### ORDINANCE NO. 179 – 2004

BY: PUBLIC UTILITIES COMMITTEE

*125*  
AN ORDINANCE authorizing the Director of Public Service and Safety to enter into a four year renewal of the contract agreement with Ohio Edison Company for the street lighting, known as The Efficiency/Safety Incentive Program (ESIP) for public streets and roads in the City of Massillon, and declaring an emergency.

### ORDINANCE NO. 180 – 2004

BY: STREETS, HIGHWAYS, TRAFFIC & SAFETY

*3*  
*Pass 7:0*  
AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into easement agreements with property owners for easements along Lincoln Way West, in the City of Massillon, and declaring an emergency.

### ORDINANCE NO. 181 – 2004

BY: FINANCE COMMITTEE

*505P 7:0*  
*Pass 7:0*  
*Target Neighborhood Street BOC. Funds in Place.*  
AN ORDINANCE making certain appropriations from the unappropriated balance of the Community Development Block Grant Program Fund, for the year ending December 31, 2004, and declaring an emergency.

### ORDINANCE NO. 182 – 2004

BY: FINANCE COMMITTEE

*505P 7:0*  
*Pass 7:0*  
AN ORDINANCE amending Ordinance No. 143 – 1976 by repealing Section 13 – “ALLOCATION OF FUNDS – INCOME TAX” and enacting a new Section 13 “ALLOCATION OF FUNDS – INCOME TAX” and repealing Ordinance No. 111 – 2004, and declaring an emergency.

### ORDINANCE NO. 183 – 2004

BY: FINANCE COMMITTEE

*505P 7:0*  
*Pass 7:0*  
AN ORDINANCE making certain transfers in the 2004 appropriations from within the General Fund for the year ending December 31, 2004, of the City of Massillon, Ohio, and declaring an emergency.



**ORDINANCE NO. 184 – 2004**

**BY: FINANCE COMMITTEE**

*5:00  
7:00  
P.M.  
1-0*  
**AN ORDINANCE** authorizing the issuance of not to exceed \$2,993,000 of notes in anticipation of the issuance of bonds for the purpose of providing funds for acquiring land and interests in land and demolition relating thereto, for the purpose of urban redevelopment in connection with the Lincoln Center Phase III Project, and retiring notes previously issued for such purpose, and declaring an emergency.

**RESOLUTION NO. 25 – 2004**

**BY: ENVIRONMENTAL COMMITTEE**

*5:00 P  
7-0  
P.M.  
7-0*  
**A RESOLUTION** approving and adopting the memorandum of understanding between the City and Anne Ragains Enterprises, LLC concerning development of the Lincoln Center Phase III area.

**7. UNFINISHED BUSINESS**

**8. PETITIONS AND GENERAL COMMUNICATIONS**

(A) LETTER FROM OHIO DIVISION OF LIQUOR CONTROL REGARDING A TRANSFER OF LIQUOR LICENSE FROM TERRY M MILLER DBA MILLERS TAVERN 1531 AMHERST RD NE 1<sup>ST</sup> FL NEW UNIT MASSILLON, OHIO 44646 TO CORMEG LLC DBA MILLERS TAVERN 1531 AMHERST RD NE 1<sup>ST</sup> FL NEW UNIT MASSILLON, OHIO 44646.

**9. BILLS, ACCOUNTS AND CLAIMS**

**10. REPORTS FROM CITY OFFICIALS**

- A). POLICE CHIEF SUBMITS MONTHLY REPORT FOR OCTOBER 2004
- B). TREASURER SUBMITS MONTHLY REPORT FOR OCTOBER 2004
- C). FIRE CHIEF SUBMITS MONTHLY REPORT FOR OCTOBER 2004.
- D). INCOME TAX DEPARTMENT SUBMITS MONTHLY REPORT FOR OCTOBER 2004
- E). MAYOR SUBMITS MONTHLY REPORT FOR OCTOBER 2004
- F). WASTE DEPARTMENT SUBMITS MONTHLY REPORT FOR OCTOBER 2004

**11. REPORTS OF COMMITTEES**

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

**13. CALL OF THE CALENDAR**

**14. THIRD READING ORDINANCES AND RESOLUTIONS**

**15. SECOND READING ORDINANCES AND RESOLUTIONS**

*Citizen's Com  
to 12/15/13/14  
11-23 @ 6:00 PM - 8:00  
McLester  
every Tues. except  
12-21-04*

**ORDINANCE NO. 164 – 2004**

**BY: COMMUNITY DEVELOPMENT COMMITTEE**

*P.H. 12-6 @ 7:20 PM*

*2ND*  
**AN ORDINANCE** amending Section 1151.02 of the Massillon Code of 1985 rezoning a certain tract of land from R-3 One Family Residential to RM-1 Multiple Family Residential.

**ORDINANCE NO. 165 – 2004**

**BY: COMMUNITY DEVELOPMENT COMMITTEE**

*P.H. 12-6 @ 7:00 PM*

*2ND*  
**AN ORDINANCE** amending Section 1151.02 of the Massillon Code of 1985 rezoning a certain tract of land from O-1 Office to RM-1 Multiple Family Residential.

**ORDINANCE NO. 174 – 2004**

**BY: STREETS, HIGHWAYS, TRAFFIC & SAFETY**

*ZNR*  
**AN ORDINANCE** vacating various streets in the City of Massillon, Ohio, and accepting a 60 foot right-of-way for Oberlin Road SW and a 50 foot right-of-way for 6<sup>th</sup> Street SW, and declaring an emergency.

*16.* **NEW AND MISCELLANEOUS BUSINESS**

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

*18.* **ADJOURNMENT**

**MARY BETH BAILEY - CLERK OF COUNCIL**



DATE: NOVEMBER 15, 2004

CLERK: MARY BETH BAILEY

*1st Reading - 11-15-04*

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

*1st Reading*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 179 - 2004

*2nd Reading 12/6*  
*Passed 8/20*

BY: PUBLIC UTILITIES COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety to enter into a four year renewal of the contract agreement with Ohio Edison Company for the street lighting, known as The Efficiency/Safety Incentive Program (ESIP), for public streets and roads in the City of Massillon, and declaring an emergency.

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

Section 1:

The Council of the City of Massillon, Ohio, hereby finds that it is necessary to enter into a four year renewal of the contract agreement with Ohio Edison Company for the street lighting, known as The Efficiency/Safety Incentive Program (ESIP), for public streets and roads in the City of Massillon.

Section 2:

That the Director of Public Service and Safety be and is hereby authorized to enter into a four year renewal of the contract agreement with Ohio Edison Company for the street lighting, known as The Efficiency/Safety Incentive Program (ESIP), for public streets and roads in the City of Massillon.

Section 3:

That this Ordinance is declared to be an emergency measure immediately necessary for the additional reason that the existing contract with Ohio Edison Company terminates on December 31, 2004. 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 \_\_\_\_\_ 2004

APPROVED: \_\_\_\_\_  
MARY BETH BAILEY, CLERK OF COUNCIL    DENNIS D. HARWIG, PRESIDENT

APPROVED: \_\_\_\_\_  
FRANCIS H. CICCHINELLI, JR., MAYOR

### ESIP Fact Sheet

- The Ohio Edison Efficiency Safety Incentive Program (ESIP) was a 10-year special contract that was offered as an incentive to communities to assist them in providing electric service to their streetlights.
- All communities served by Ohio Edison had a one-time option to participate in this special agreement when it was originally executed in January 1990. Before the expiration date in 1999, many communities chose to extend the ESIP agreement for an additional five years.
- The extended ESIP contract expires on December 31, 2004.
- When the new ESIP contract is effective on January 1, 2005, the following rates will apply:
  - 2005 – Existing Rates  $\approx$  3.5 cents/kWh (No increase in the first year)
  - 2006 - 5.7 cents/kWh
  - 2007 - 7.9 cents/kWh
  - 2008 - 10.1 cents/kWh (or the applicable tariff rate, whichever is less)
- There is no comparable tariff at this time that provides for the provisions in the ESIP contract. Specifically, the ESIP contract is designed so that the customer pays for all capital costs up front while the company owns and maintains the equipment. The rates established in the last year of the new agreement provide for recovery of the delivery and maintenance of the system.
- In the event the customer determines that existing lights shall no longer be used, the customer must notify the Company with 60 days advance written notice, and will be subject to all removal fees described in the Electric Service Agreement. In no case shall these lights be switched off prior to removal.
- If an existing ESIP customer opts not to sign the new contract, the customer will be served using the most applicable tariff rate as approved by the PUCO at that time.
- The existing streetlight tariff rate is available to the customer at any time during the term of the agreement.
- The new ESIP agreement will need to be fully executed before January 20, 2005, or the community will revert to the existing streetlight tariff.
- When your decision has been made, please mail the agreement to the Area Manager listed on the attached business card.



## ELECTRIC SERVICE AGREEMENT

This Agreement is made and entered into as of the 1st day of January 2005, by and between Ohio Edison Company, hereinafter called the "Company", and the City of Massillon, hereinafter called the "Customer".

### WITNESSETH

WHEREAS, the Council or Trustees of \_\_\_\_\_, by Ordinance or Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_, 200\_, authorized and directed the duly authorized official to make, on behalf of the Customer, a contract with the Company for lighting by electricity the public streets and roads of the Customer: and,

WHEREAS, the Customer's lights are presently served by the Company under the terms of the Contract for the Efficiency/Safety Incentive Program (Existing Agreement), which expires on December 31, 2004; and,

WHEREAS, the Parties desire to enter into this Agreement, which will commence upon the termination of the Existing Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, as well as other good and valuable consideration which is hereby acknowledged as received, the parties intending to be legally bound hereby agree as follows:

1. Electric Service. Except as provided in this Agreement, the Company shall render electric service to the Qualifying Lights (as defined below) under the applicable provisions of the General Rules and Regulations, of PUCO No. 11, and under the appropriate rates, charges, riders, terms and conditions of those schedules of PUCO No.11, as may be amended or superseded from time to time with the approval of the Public Utilities Commission of Ohio (PUCO), and that are in effect at the time of service being rendered.

2. Qualifying Lights. Qualifying Lights shall refer to all mercury, high pressure sodium or metal halide energy efficient street lights which are Company owned and served under the Existing Agreement. This term shall also include mercury, high pressure sodium or metal halide energy efficiency street lights that are Company owned and installed during the term of this Agreement. All Qualifying Lights shall at all times be and remain the exclusive property of the Company.

3. Supply of Electricity. The parties acknowledge and understand that alternatives to receiving electric service from the Company are or may become available to the Customer during the Term hereof, in accord with the Restructuring Law, subsequent legislative or regulatory actions, or through self generation, co-generation, or otherwise. In consideration of this Agreement, it is the agreement and express intent of the parties, that the Customer will acquire all of its requirements for electric service for the Qualifying Lights, including without limitation electric power and electric energy, directly and only from the Company as a retail customer thereof, and will not self-generate, co-generate, or use any other source for electricity during the Term of this Agreement.

Notwithstanding the above, at any time during this Agreement, the Customer may opt to cancel this Agreement and the applicable pricing provided for herein with 60 days advance written notice. Upon cancellation of this Agreement, the applicable streetlight tariff in existence and approved by the PUCO shall be used for service. Cancellation or termination of this Agreement shall not affect or impair the Company's ownership rights in the Qualifying Lights.

4. Electricity Pricing. Pricing of Qualifying Lights shall be as described below. The Existing Rate shall be the price per kWh that the Qualifying Lights are currently being served under.

<u>Year</u>	<u>Cents per kWh</u>
2005	Existing Rate
2006	5.7
2007	7.9
2008	10.1

5. Burn Hours. Lamps of Qualifying Lights shall burn on the established schedule for street lighting service, which means from approximately one-half hour after sunset to approximately one-half hour before sunrise each and every night in the year, for an annual operation of approximately four thousand hours.

6. Reduced Usage. The Customer is encouraged to improve the efficiency and effectiveness of its lighting facilities. In the event the Customer determines that existing lights shall no longer be used, the Customer must notify the Company with 60 days advance written notice, and will be subject to all removal fees described in Section 7.A below. In no case shall these lights be switched off prior to removal.

7. Additional Terms and Charges.

- A. In addition to the charges provided for in this Agreement, the Customer shall pay for any removal, relocation, capital repair, conversion, change or additional charges as specified herein.
- B. The Customer may, by written order, make a change in the location of any Qualifying Light. Such work shall be performed only by the Company. The total cost of making any such change shall be paid by the Customer.



- C. The Customer shall pay all capital costs associated with the repair of Qualifying Lights, such costs being all capitalized costs associated with the maintenance of Qualifying Lights. The Customer will be billed for these costs as they are incurred. Notwithstanding the above, any Qualifying Light luminaire which fails due to normal operating causes and which is replaced in lieu of in-the-field maintenance will not be billed to the Customer as a capital cost. Rather, such cost will be included in the Pricing established in Section 4 above.
- D. If the Customer desires to have any of the Qualifying Lights converted to another type of light, the Customer shall pay all costs associated with such conversion. Any new lights shall be Company approved street lights and shall be owned by the Company.
- E. Additional Qualifying Lights may be added at the request of the Customer. The Customer will obtain and install such new lights which shall be Company approved street lights. The cost of any such new Qualifying Light, including installation, shall be borne by the Customer and billed upon completion of the installation. Ownership shall at all times remain with the Company. In the event that the Customer desires to obtain and/or install any new street lighting unit, or portion thereof, or desires to have an independent contractor or developer obtain and/or install any new lighting unit, such lights shall only be allowed in the installation of an underground fed system and with the prior written approval of the Company. The Company shall make all connections to its electrical system. It is further agreed and understood that the Customer, independent contractor and/or developer must follow any safety standards regarding such work imposed by the Company and utilize only Company approved street lights. The Customer shall pay the total cost of such installation and shall reimburse the Company for any and all costs it incurs in association with such work. Upon completion of such work, the Customer shall ensure, except where prohibited by state or federal law, that ownership of potential Qualifying Lights is by the Company. Unless and until the Company takes ownership, such street lights shall not be deemed as Qualifying Lights and shall not be considered for billing under the pricing terms included herein (but rather shall be billed in accordance with the applicable tariff).
- F. The Customer agrees to reimburse the Company for any and all costs for changes in Company facilities made necessary in order to accommodate any permitted use of Company poles by the Customer.
- G. The Customer represents that it has full authority and has complied with all of the necessary and proper legal requirements, including any necessary hearings, bidding processes or proceedings, required by Ohio law in order to enter into and perform the obligations under this Agreement.

8. Notices. Any notice required to be given hereunder or desired by either party to be given shall be deemed effective when mailed by first class mail, postage prepaid, if to the Customer at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

and, if to the Company, at:

\_\_\_\_\_  
Ohio Edison Company  
76 South Main Street  
Akron, Ohio 44308

9. Rebiling Provision. In the event that the Customer should breach this Agreement during the Term, such breach will have the effect of terminating this Agreement, and the Customer agrees to promptly pay to the Company the difference between the applicable rate schedule and the pricing included in this Agreement from the commencement of this Agreement through the date of such breach (thereby resulting in a loss of all discounts provided to the Customer via application of the terms of this Agreement). The Customer shall pay such amount within thirty (30) days after the date of the receipt by the Customer of the Company's bill for such amount, and if the bill remains unpaid, interest at the rate of 1.5% per month shall be charged and paid. The parties agree that this cancellation and rebiling provision is not the exclusive remedy available to the Company. The Company may pursue all other remedies available to it for the Customer's breach, including without limitation specific performance, consequential and incidental damages.

10. Term. The term of this Agreement shall commence with the bill rendered in January 2005 and will terminate with the bill rendered in December 2008, unless earlier terminated as permitted by this Agreement ("Term"). Upon termination of this Agreement, the Customer will be served under the appropriate Company rates on file with the PUCO.

11. Rights of Company. The Company reserves and retains the right to grant to others not parties to the Agreement such rights or privileges to use any poles covered by this Agreement as are not in conflict with this Agreement. The Company shall be the sole judge of its requirements for present and future use of its poles and attachments, and the present and future use of and attachments to the Company's poles by any other licensee of the Company, and of any



interference with such use or uses. In case of circumstances which in the Company's sole judgment constitute an emergency, the Company reserves the right to remove and/or relocate any attachments of the Customer at the Customer's expense without notice.

12. Liabilities. The Company will operate, own and maintain all Qualifying Lights under the terms and conditions set forth herein. The Customer agrees to indemnify, save and hold harmless the Company from and against any and all claims, expenses or liabilities arising or in any manner growing out of the location, maintenance or condition of such Qualifying Lights, unless initiated or proximately caused by the sole negligence of the Company, or arising from or related to the Customer's use of the Company's equipment.

13. Force Majeure. If because of Force Majeure, either party shall be unable to carry out any of its obligations under this Agreement or fully to deliver or utilize the electric service of the Company contemplated herein, then the obligations of that party shall be suspended to the extent made necessary by Force Majeure. The party affected by Force Majeure shall give notice to the other party as promptly as practical of the nature and probable duration of such Force Majeure. "Force Majeure" shall mean acts of God, riots, strikes, labor disputes, labor or material shortages, act(s) by any government, governmental body or instrumentality, or regulatory agency (including delay or failure to act in the issuance of approvals, permits or licenses), fires, explosions, floods, breakdown of or damage to plants, equipment or facilities, or other causes of similar nature which are beyond the reasonable control of the party and which wholly or partially prevent the supplying of electricity by the Company or the receiving or utilization of such electricity by the Customer, provided that the effect of such Force Majeure shall be eliminated insofar as possible with all reasonable dispatch; provided further, that performance by the parties hereunder shall be excused only to the extent made necessary by the Force Majeure condition; provided further, that neither party shall be required to settle a labor dispute on terms unacceptable to the party affected; and provided further, that neither party shall be required to rebuild all or a major portion of its facilities which are destroyed or substantially impaired by a Force Majeure condition.

14. Confidentiality of Information. All information provided in, or in connection with, this Agreement, whether printed, written or oral, shall be held in confidence and used only for the business purpose for which it was provided, except to the extent made public by the law.

15. Governing Law. The validity, construction and performance of this Agreement shall be determined in accordance with the laws of the State of Ohio.

16. Clause Heading. The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they pertain.

17. Entire Agreement. This Agreement, contains the entire agreement between the parties and there are not representations, understandings or agreements, oral or written, which are not included herein. This Agreement cannot be changed except by written instrument executed by duly authorized representatives of the parties.

18. Governmental Approvals. This Agreement is subject to all applicable rules and regulations, and all necessary approvals or authorizations, of any governmental authority. The Company and the Customer shall use their best efforts to secure any approvals or authorizations from any other governmental authorities, which approvals or authorizations may be necessary at any time during the continuance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

OHIO EDISON COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

DATE: NOVEMBER 15, 2004

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

*USP 7-0  
P 7-0*  
COUNCIL CHAMBERS

*passed*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 180 - 2004

BY: STREETS, HIGHWAYS, TRAFFIC & SAFETY COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into easement agreements with property owners for easements along Lincoln Way West, in the City of Massillon, and declaring an emergency.

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

Section 1:

The Council of the City of Massillon, hereby finds that it is necessary to authorize the Director of Public Service and Safety to enter into easement agreements with property owners for easements along Lincoln Way West, in the City of Massillon.

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized to enter easement agreements with property owners for easements along Lincoln Way West, in the City of Massillon. The easement agreements would be with the following property owners:

- A) F&M Properties
- B) Charles M and Charlotte Rohn
- C) Michael J. Knobb
- D) Louis C. Hupp

Section 3:

That this Ordinance is hereby declared to be an emergency measure for the reason that these easement agreements is needed so that the construction can begin on Lincoln Way West in an timely manner time is of the essence. 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 \_\_\_\_\_ 2004

APPROVED: \_\_\_\_\_  
MARY BETH BAILEY, CLERK OF COUNCIL      DENNIS D. HARWIG, PRESIDENT

APPROVED \_\_\_\_\_  
FRANCIS H. CICCHINELLI, JR., MAYOR

DATE: NOVEMBER 15, 2004

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

*passed*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 181 - 2004

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE making certain appropriations from the unappropriated balance of the Community Development Block Grant Program Fund, for the year ending December 31, 2004, 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 Community Development Block Grant Program Fund, for the year ending December 31, 2004, the following:

\$179,290.00 to an account entitled "Target Area Street Improvements" 1203.845.2812

Section 2:

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 \_\_\_\_\_ 2004

ATTEST:

MARY BETH BAILEY, CLERK OF COUNCIL

DENNIS HARWIG, PRESIDENT

APPROVED: \_\_\_\_\_

FRANCIS H. CICCHINELLI, JR, MAYOR

DATE: NOVEMBER 15, 2004

CLERK: MARY BETH BAILEY

*5038 7-0  
Page 7-0*

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

*Passed*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 182 - 2004

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE amending Ordinance No. 143 - 1976 by repealing Section 13 - "ALLOCATION OF FUNDS - INCOME TAX" and enacting a new Section 13 "ALLOCATION OF FUNDS - INCOME TAX" and repealing Ordinance No. 111 - 2004, and declaring an emergency.

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

Section 1:

Ordinance No. 111 - 2004 be and is hereby repealed.

Section 2:

That there be and hereby is enacted a new Section 13 "ALLOCATION OF FUNDS - INCOME TAX" of Ordinance No. 143 - 1976. Said new Section 13 shall read as follows:

Section 13 - ALLOCATION OF FUNDS

(A) Effective April 1, 2004 through December 31, 2004 the funds collected under the provision of this ordinance shall be disbursed as follows:

(1) One Hundred (100) percent shall be deposited in the General Fund and Zero (0) percent shall be deposited in said "Income Tax Capital Improvements" Fund and shall be used for capital improvements to defray operating expenses of the City including such part thereof as shall be necessary to defray all costs of administering and enforcing the provisions thereof.

(B) Effective January 1, 2005 the funds collected under the provisions of this ordinance shall be disbursed as follows:

(1) Ninety-Five (95) percent shall be deposited in the General Fund and shall be used to defray operating expenses of the city including such part thereof as shall be necessary to defray all costs of administering and enforcing the provisions thereof.



- (2) There is hereby created a separate fund entitled "Income Tax Capital Improvement Fund". Five (5) percent shall be deposited in said "Income Tax Capital Improvements" and shall be used for capital improvements.
- (3) Capital Improvements are all property, assets, machinery, equipment or improvements which the City is authorized by law to acquire, construct and maintain, including plans and studies thereof with an estimated life or usefulness of five (5) years or more, including land and interests therein, and including reconstructions, enlargements and extension thereof having an estimated life or usefulness of five (5) years or more provided, however, that the purchase of motorized equipment for the various city departments and the resurfacing and resealing of public streets, including "Chip and Seal" method, shall be deemed Capital Improvement without regard to estimated life or usefulness.

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, welfare and safety and the emergency being the necessity of providing funds for the operation of necessary governmental functions imposed by law, including the proper police and fire protection, but not limited thereto, for, without said funds, said governmental functions would have to be curtailed to such an extent that the public safety and welfare would be greatly jeopardized. And 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 \_\_\_\_\_, 2004

ATTEST: \_\_\_\_\_  
MARY BETH BAILEY, CLERK OF COUNCIL

\_\_\_\_\_  
DENNIS D. HARWIG, PRESIDENT

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
FRANCIS H. CICCHINELLI, JR, MAYOR

**ATTACHMENT "A"**

937.09 ANNUAL RATES FOR SEWER SERVICE

- (b) The following rates are effective April 1, 2000, with respect to any such premises situated within the corporate limits of the City:

937.10 ADDITIONAL SURCHARGE FOR INDUSTRIAL WASTES

- (c) The surcharge shall be calculated and billed semi-annually based on the results of tests and measurements made by the City.

DATE: NOVEMBER 15, 2004

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

*505920  
pos 720*  
COUNCIL CHAMBERS

*passed*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 183 - 2004

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE making certain transfers in the 2004 appropriations from within the General Fund for the year ending December 31, 2004, of the City of Massillon, Ohio, 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 transferred from the 2004 appropriation from within the General Fund, of the City of Massillon, Ohio, the following:

FROM:	Liability Insurance	1100.905.2312	155,000.00
	Transfer – Debt Retirement	1100.905.2712	24,000.00
	State Examination	1100.905.2395	15,000.00
	Salary - Building	1100.415.2110	13,000.00
	Salary – Health	1100.705.2110	10,000.00
	Salary – Income Tax	1100.210.2110	7,000.00
	Health Services/Contracts	1100.705.2392	6,000.00
	Hosp/Eye/Den/Pres/Life	1100.210.2210	5,000.00
	PERS – Health	1100.705.2230	5,000.00
	PERS – Building	1100.415.2230	4,800.00
	Salary – Deputy Auditor	1100.205.2111	4,000.00
	PERS – Garage	1100.440.2230	4,000.00
	Hosp/Eye/Den/Pres/Life	1100.705.2210	4,000.00
	Hosp/Eye/Den/Pres/Life	1100.415.2210	3,200.00
	PERS – Income Tax	1100.210.2230	3,000.00
	Salary – Engineer	1100.405.2110	3,000.00
	Hosp/Eye/Den/Pres/Life	1100.175.2210	2,600.00
	PERS – Auditor	1100.205.2230	2,400.00
	Salary – Mayor staff	1100.110.2111	2,000.00
	PERS – EEO/MBE	1100.175.2230	1,500.00
	PERS – Engineer	1100.405.2230	1,500.00
	PERS – Mayor	1100.110.2230	1,000.00
	PERS – Service Director	1100.160.2230	900.00
	Salary – Street	1100.435.2110	800.00
	Salary – Temp Help Treasurer	1100.215.2111	700.00

	Hosp/Eye/Den/Pres/Life	1100.440.2210	650.00
	Medicare – Income Tax	1100.210.2231	600.00
	Supplies/Materials/Postage	1100.175.2410	500.00
	PERS – City Hall & Public Bldgs	1100.410.2230	230.00
	PERS – Treasurer	1100.215.2230	200.00
	Salary – EEO/MBE Director	1100.175.2112	185.00
TO	Salary – Police	1100.305.2110	278,365.00
	Salary – Council Clerk	1100.105.2110	3,400.00



Section 2

That this Ordinance is hereby declared to be an emergency measure, the reason for the emergency being that said funds are necessary for the preservation of the public health, safety and welfare of the community and for the additional reason that the funds are required in the specific accounts to pay city obligations by the end of 2004. 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 \_\_\_\_\_ 2004

APPROVED: \_\_\_\_\_  
MARY BETH BAILEY, CLERK OF COUNCIL      DENNIS D. HARWIG, PRESIDENT

APPROVED: \_\_\_\_\_  
FRANCIS H. CICCHINELLI, JR., MAYOR



5000 1-0  
1-0  
DATED: NOVEMBER 15, 2004

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

*passed*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 184 - 2004

BY: THE FINANCE COMMITTEE

AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$2,993,000 OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF PROVIDING FUNDS FOR ACQUIRING LAND AND INTERESTS IN LAND AND DEMOLITION RELATING THERETO, FOR THE PURPOSE OF URBAN REDEVELOPMENT IN CONNECTION WITH THE LINCOLN CENTER PHASE III PROJECT, AND RETIRING NOTES PREVIOUSLY ISSUED FOR SUCH PURPOSE, AND DECLARING AN EMERGENCY.

WHEREAS, the City Council (the "Council") of the City of Massillon (the "City") has issued notes dated February 26, 2004, in the amount of Two Million Nine Hundred Fifty-Seven Thousand Dollars (\$2,957,000) (the "Outstanding Notes") in anticipation of the issuance of the bonds herein described, which Outstanding Notes will mature December 8, 2004; and

WHEREAS it appears advisable in lieu of issuing bonds at this time to issue new notes in anticipation of the issuance of bonds and to retire the Outstanding Notes; and

WHEREAS, the City Auditor (the "City Auditor") of the City has certified to the Council of the City (the "Council") that the estimated life of the improvement stated in the title of this ordinance (the "Project") which is to be financed with the proceeds of bonds and notes hereinafter referred to exceeds five (5) years, the maximum maturity of bonds being thirty (30) years and notes being eighteen (18) years;

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

Section 1. It is hereby declared necessary to issue bonds (the "Bonds") of the City in the principal sum of not to exceed \$2,993,000 for the purpose of paying the cost of financing the Project.

Section 2. The Bonds shall be dated prior to the maturity date of the Notes (as defined hereinbelow), shall bear interest at the maximum average annual interest rate presently estimated to be five per centum (5.00%) per annum, payable semiannually until the principal sum is paid and shall mature in thirty (30) annual installments.

Section 3. It is necessary to issue and this Council hereby determines that notes shall be issued in anticipation of the issuance of the Bonds and to retire the Outstanding Notes.

Section 4. Such anticipatory notes (the "Notes") shall be in the amount of not to exceed \$2,993,000, which sum does not exceed the amount of the Bonds. The Notes shall be dated the date established by the City Auditor and certified to this Council and shall mature on such date as shall be determined by the City Auditor and certified to this Council, provided that such maturity date shall not be later than one year after the date of issuance of the Notes. The City Auditor is authorized and directed to execute a Certificate setting forth the final terms of the Notes, consistent with the requirements of this Ordinance, and to present the same to Council after closing of the Notes.

Section 5. The Notes shall be issued as one fully registered note in book-entry only form in denominations of \$100,000 or any integral multiple of \$1,000 in excess thereof. Coupons shall not be attached to the Notes. The Notes shall be sold in a transaction exempt from the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission. Based upon the foregoing, beneficial interests in the Notes are not to be sold or transferred in principal amounts of less than \$100,000.

Section 6. The Notes shall be the full general obligation of the City, and the full faith, credit and revenue of the City are hereby pledged for the prompt payment of the same. The par value to be received from the sale of the Bonds and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used only for the retirement of the Notes at maturity, together with interest thereon, and is hereby pledged for such purpose.

Section 7. There shall be and is hereby levied annually on all the taxable property in the City, in addition to all other taxes and inside the ten mill limitation, a direct tax (the "Debt Service Levy") for each year during which any of the Notes are outstanding, in an amount which is sufficient to provide funds to pay interest upon the Notes as and when the same fall due and to provide a fund for the repayment of the principal of the Notes at maturity or upon redemption. The Debt Service Levy shall not be less than the interest and sinking fund tax required by Article XII, Section 11 of the Ohio Constitution.

Section 8. The Debt Service Levy shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of such years are certified, extended and collected. The Debt Service Levy shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from the Debt Service Levy shall be placed in a separate and distinct fund, which shall be irrevocably pledged for the payment of the premium, if any, and interest on and principal of the Notes and Bonds when and as the same fall due. Notwithstanding the foregoing, if the City determines that funds will be available from other sources for the payment of the Notes and Bonds in any year, the amount of the Debt Service Levy for such year shall be reduced by the amount of funds which



will be so available, and the City shall appropriate such funds to the payment of the Notes and Bonds in accordance with law.

Section 9. The Notes shall bear interest, based on a 360-day year of twelve 30-day months, payable at maturity, at such rate per annum as shall be determined by the City Auditor and certified to this Council, provided that such rate shall not exceed five per centum (5.00%) per annum. The Notes shall be, and hereby are, awarded and sold to Fifth Third Securities, Inc., Columbus, Ohio (the "Original Purchaser") at the par value thereof, and the City Auditor of this Council is hereby authorized and directed to deliver the Notes, when executed, to said purchaser upon payment of the purchase price and accrued interest, if any, to the date of delivery.

The proceeds of such sale, except any accrued interest or premium thereon, shall be deposited in the Treasury of the City and used for the purpose aforesaid and for no other purpose. Any accrued interest or premium on the Notes shall be transferred to the Bond Retirement Fund to be applied to the payment of the principal and interest on the Notes, and other outstanding obligations of the City, in the manner provided by law.

Section 10. The Notes shall be executed by the City Auditor and the Mayor, provided that either or both of such signatures may be a facsimile. The Notes shall be designated "City of Massillon, Ohio Lincoln Center Phase III Land Acquisition Notes, Series 2004A," or as otherwise designated by the City Auditor, and shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this ordinance. No Note shall be valid or become obligatory for any purpose of shall be entitled to any security or benefit under this ordinance unless and until a certificate of authentication, as printed on the Note, is signed by the Note Registrar (as defined in this ordinance) as authenticating agent. Authentication by the Note Registrar shall be conclusive evidence that the Note so authenticated has been duly issued and delivered under this ordinance and is entitled to the security and benefit of this ordinance. The certificate of authentication may be signed by any officer or officers of the Note Registrar or by such other person acting as an agent of the Note Registrar as shall be approved by the City Auditor on behalf of the City. It shall not be necessary that the same authorized person sign the certificate of authentication on all of the Notes.

Section 11. The City hereby covenants, pursuant to Section 133.05(B)(7), Ohio Revised Code, to appropriate annually from lawfully available municipal income taxes, and to continue to levy and collect municipal income taxes adequate to produce, amounts necessary to meet the debt charges of the Notes and the Bonds in each year until full payment is made.

Section 12. The Bank of New York Trust Company, N.A., is hereby appointed to act as the authenticating agent, note registrar, transfer agent and paying agent (collectively, the "Note Registrar") for the Notes. So long as any of the Notes remain outstanding, the City will cause to be maintained and kept by the Note Registrar, at the office of the Note Registrar, all books and records necessary for the registration, exchange and transfer of Notes as provided in this section (the "Note Register"). The person in whose name any Note shall be registered on the Note Register shall be regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any Note shall be made only to or upon the order of that person. Neither the City nor the Note Registrar shall be affected by any notice to the contrary, but the registration may be changed as herein provided. All payments shall be valid and effectual to satisfy and discharge the liability upon the Notes, including the interest thereon, to the extent of the amount or amounts so paid.

Any Note, upon presentation and surrender at the office of the Note Registrar, together with a request for exchange signed by the registered owner or by a person authorized by the owner to do so by a

power of attorney in a form satisfactory to the Note Registrar, may be exchanged for Notes of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

A Note may be transferred only on the Note Register upon presentation and surrender thereof at the office of the Note Registrar, together with an assignment executed by the registered owner or by a person authorized by the owner to do so by a power of attorney in a form satisfactory to the Note Registrar. Upon that transfer, the Note Registrar shall complete, authenticate and deliver a new Note or Notes of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

In all cases in which Notes are exchanged or transferred hereunder, the City shall cause to be executed and the Note Registrar shall authenticate and deliver Notes in accordance with the provisions of the Note Ordinance. The exchange or transfer shall be without charge to the owner; except that the City and Note Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Note Registrar may require that those charges, if any, be paid before it begins the procedure for the exchange or transfer of the Notes. All Notes issued upon any transfer or exchange shall be the valid obligations of the City, evidencing the same debt, and entitled to the same benefits under the Note Ordinance, as the Notes surrendered upon that transfer or exchange.

Section 13. For purposes of the Note Ordinance, the following terms shall have the following meanings:

"Book entry form" or "book entry system" means a form or system under which (i) the beneficial right to payment of principal of and interest on the Notes may be transferred only through a book entry and (ii) physical Notes in fully registered form are issued only to a depository or its nominee as registered owner, with the Notes "immobilized" to the custody of the Depository, and the book entry is the record that identifies the owners of beneficial interests in those Notes.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, together with its participants, a book entry system to record beneficial ownership of Notes and to effect transfers of Notes, in book entry form.

The Notes will be initially issued to a Depository for use in a book entry system, and the provisions of this section shall apply, notwithstanding any other provision of the Note Ordinance; (i) there shall be a single Note of each maturity, (ii) those Notes shall be registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (iii) the beneficial owners in book entry form shall have no right to receive Notes in the form of physical securities or certificates; (iv) ownership of beneficial interests in any Notes in book entry form shall be shown by book entry on the system maintained and operated by the Depository, and transfers of the ownership of beneficial interests shall be made only by the Depository and by book entry; and (v) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City. Note service charges on Notes in book entry form registered in the name of a Depository or its nominee shall be payable in same day funds delivered to the Depository or its authorized representative upon presentation and surrender of Notes as provided in the Note Ordinance.

The Note Registrar may, with the approval of the City, enter into an agreement with the beneficial owner or registered owner of any Note in the custody of a Depository providing for making all payments to that owner of principal and interest on that Note or any portion thereof (other than any payment of the

entire unpaid principal amount thereof) at a place and in a manner (including wire transfer of federal funds) other than as provided in the Note Ordinance, without prior presentation or surrender of the Note, upon any conditions which shall be satisfactory to the Note Registrar and to the City. That payment in any event shall be made to the person who is the registered owner of that Note on the date that principal is due, or, with respect to the payment of interest, as of the applicable date agreed upon as the case may be. The Note Registrar will furnish a copy of each of those agreements, certified to be correct by the Note Registrar, to other paying agents for Notes and to the City. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, the Note Ordinance.

The Clerk of the City is authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the City, if requested, a letter agreement among the City, the Note Registrar and The Depository Trust Company, to be delivered in connection with the issuance of the Notes to the Depository for use in a book entry system in substantially the form submitted to the City.

If any Depository determines not to continue to act as a depository for the Notes for use in a book entry system, the City and the Note Registrar may attempt to have established a securities depository/book entry relationship with another qualified Depository under the Note Ordinance. If the City and the Note Registrar do not or are unable to do so, the City and the Note Registrar, after the Note Registrar has made provision for notification of the beneficial owners by the then Depository, shall permit withdrawal of the Notes from the Depository and authenticate and deliver bond certificates in fully registered form to the assigns of the Depository or its nominee, all at the cost and expense (including costs of printing definitive Notes), if the event is not the result of action or inaction by the City or the Note Registrar, of those persons requesting such issuance.

Section 14. The City hereby covenants that it will comply with the requirements of all existing and future laws which must be satisfied in order that interest on the Notes is and will continue to be excluded from gross income for federal income tax purposes, including without limitation restrictions on the use of the property financed with the proceeds of the Notes so that the Notes will not constitute "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"). The City further covenants that it will restrict the use of the proceeds of the Notes in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations prescribed thereunder or under the Internal Revenue Code of 1954, as amended (the "Regulations").

The City Auditor, or any other officer of the City, including the Mayor, is hereby authorized and directed (a) to make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the City with respect to the Notes as permitted or required to be made or given under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or the status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing any rebate amount or any payment of penalties, or making any payments of special amounts in lieu of making computations to determine, or paying, any excess earnings as rebate, or obviating those amounts or payments, as determined by the City Auditor, which action shall be in writing and signed by the City Auditor, or any other officer of the City, including the Mayor, on behalf of the City; (b) to take any and all actions, make or obtain calculations, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes; and (c) to give an appropriate certificate on behalf of the City, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances, and reasonable expectations of the City pertaining to Section 148 and the Regulations, and the

representations, warranties and covenants of the City regarding compliance by the City with sections 141 through 150 of the Code and the Regulations.

The City Auditor shall keep and maintain adequate records pertaining to investment of all proceeds of the Notes sufficient to permit, to the maximum extent possible and presently foreseeable, the City to comply with any federal law or regulation now or hereafter having applicability to the Notes which limits the amount of Note proceeds which may be invested on an unrestricted yield or requires the City to rebate arbitrage profits to the United States Department of the Treasury. The City Auditor of the City is hereby authorized and directed to file such reports with, and rebate arbitrage profits to, the United States Department of the Treasury, to the extent that any federal law or regulation having applicability to the Notes requires any such reports or rebates.

Section 15. The officer having charge of the minutes of the Council and any other officers of the Council, or any of them individually, are hereby authorized and directed to prepare and certify a true transcript of proceedings pertaining to the Notes and to furnish a copy of such transcript to the Original Purchaser. Such transcript shall include certified copies of all proceedings and records of the Council relating to the power and authority of the City to issue the Notes and certificates as to matters within their knowledge or as shown by the books and records under their custody and control, including but not limited to a general certificate of the City Auditor and a no-litigation certificate of the Mayor and the City Auditor, and such certified copies and certificates shall be deemed representations of the City as to the facts stated therein.

Section 16. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 17. It is hereby determined that all acts, conditions and things necessary to be done precedent to and in the issuing of the Notes in order to make them legal, valid and binding obligations of the City have happened, been done and been performed in regular and due form as required by law; that the full faith, credit and revenue of the City are hereby irrevocably pledged for the prompt payment of the principal and interest thereof at maturity; and that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing the Notes.

Section 18. The Clerk is hereby directed to forward a certified copy of this ordinance to the Auditor of Stark County, Ohio.



Section 19. This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that notes heretofore issued are about to mature and it is necessary to make immediate provision for their repayment in order to preserve the credit of the City; wherefore this ordinance shall take effect and be in force from and immediately after its adoption.

Adopted in Council on this 15th day of November, 2004.

Effective this 15th day of November, 2004.

Attest:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
President of Council

Approved:

\_\_\_\_\_  
Mayor

CERTIFICATE

The undersigned Clerk hereby certifies that the foregoing is a true copy of Ordinance No. \_\_\_\_ - 2004 duly adopted by the Council of the City of Massillon, Ohio on November 15, 2004, and that a true copy thereof was certified to the County Auditor of Stark County, Ohio, on \_\_\_\_\_, 2004.

\_\_\_\_\_  
Clerk  
City of Massillon, Ohio

RECEIPT OF COUNTY AUDITOR FOR  
LEGISLATION PROVIDING  
FOR THE ISSUANCE OF  
GENERAL OBLIGATION NOTES

I, Brant A. Luther, the duly elected, qualified, and acting County Auditor in and for Stark County, Ohio hereby certify that a certified copy of Ordinance No. \_\_\_\_ - 2004 duly adopted by the City Council of the City of Massillon, Ohio on November 15, 2004, providing for the issuance of general obligation notes designated City of Massillon, Ohio Lincoln Center Phase III Land Acquisition Notes, Series 2004A in the aggregate amount of not to exceed \$2,993,000 was filed in this office on \_\_\_\_\_, 2004.

WITNESS my hand and official seal at Canton, Ohio on \_\_\_\_\_, 2004.

[SEAL]

\_\_\_\_\_  
County Auditor  
Stark County, Ohio

DATE: NOVEMBER 15, 2004

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

*passed*  
LEGISLATIVE DEPARTMENT

RESOLUTION NO. 25 - 2004

BY ENVIRONMENTAL COMMITTEE

TITLE: A RESOLUTION approving and adopting the memorandum of understanding between the City and Anne Ragains Enterprises, LLC concerning development of the Lincoln Center Phase III area.

WHEREAS, Amended Ordinance No. 149-2004 authorized the execution of a purchase agreement for the sale of land and development of an area within Lincoln Center Phase III, and

WHEREAS, Section Six (6) of said amended ordinance requires council approval of any agreements between the parties concerning sanitary and storm sewer improvements within the project area, and

WHEREAS, the parties have prepared a memorandum detailing their respective responsibilities with regard to such improvements, now, therefore,

BE IT RESOLVED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ IN THE YEAR 2004 BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO:

Section 1:

That the Massillon City Council hereby adopts and approves the memorandum of understanding by and between the City and Anne Ragains Enterprises, LLC detailing the responsibilities of each with regard to the improvements being constructed in the vicinity of the Lincoln Center Phase III development area.

Section 2:

That the memorandum attached hereto as Exhibit "A" sets forth the entire agreement between the parties and is thereby approved and adopted.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2004

ATTEST: \_\_\_\_\_  
MARY BETH BAILEY, CLERK OF COUNCIL      DENNIS D. HARWIG, PRESIDENT

APPROVED: \_\_\_\_\_  
FRANCIS H. CICCHINELLI, JR., MAYOR



# Memo

**To:** Jim Marcus, Alliance Entertainment,  
Vice President of Construction and Property Management

**From:** Steven D. Hamit, P.E., City Engineer

**CC:** Mayor Cicchinelli  
Tom Weber, Chairman of the Environmental Committee

**Date:** November 12, 2004

**Re:** Memo of understanding for the Lincoln Center Phase III Development

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Please be aware that Ordinance 149-2004 authorized the Director of Public Service and Safety to enter into the purchase agreement with Alliance Entertainment. Prior to the passage of said ordinance, City Council had amended the ordinance with in three ways. The subject of this memo is to satisfy the amendment included in Section 6.

The following is intended to be a summary of my understanding of the method of which we have agreed in principle to address Section 4.7 of the purchase agreement, entitled Access to Street & Utilities. This Section states that both parties have to reach an agreement as to the method of your proposed facility connecting into the street and the storm and sanitary sewers. Please note that all of the work denoted below will be at your expense unless otherwise noted.

## Sanitary Sewer

The recommendation of this office was outlined in the July 02, 2004 email. The third paragraph stated that the estimated floor elevation should be raised at least two feet to around 929 or higher. The sanitary sewer should have a backflow preventer and head toward the southwest corner of your site.

## Storm Sewer

The City is currently in the process of hiring an engineering firm to design the proposed drainage ponds in the right-of-way of 1st Street between Cherry Road and Tommy Henrich DR. NW, to act as a regional storm water retention pond. The proposed method is for your development to deposit your storm water directly into these ponds.

However; in the event that the ponds are not in operation by March 15, 2005 or at the time your development is ready to perform your connection, which ever is latter; the City of Massillon will, at its expense, fill in your sediment basin that will be located at the south east corner of 1<sup>st</sup> Street and Tommy Henrich.

## Drive Way Access

Per our numerous conversations, the Administration has been under the impression there would be one drive way at the intersection of Cherry Rd. NW and 1<sup>st</sup> Street NW this will be by an easement. Two other driveways would be proposed off of Tommy Henrich Dr. NW.