

DATED: 7/6/2015

CLERK: DIANE ROLLAND

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 90-2015

BY: FINANCE COMMITTEE

AMENDING ORDINANCE NO. 157-1999 PASSED ON AUGUST 2, 1999 AND RELATING TO THE MARKETPLACE DEVELOPMENT AND PUBLIC INFRASTRUCTURE IMPROVEMENTS; AUTHORIZING RELATED MATTERS; AND DECLARING AN EMERGENCY.

WHEREAS, this Council passed Ordinance No. 157-1999 on August 2, 1999 (the "Initial TIF Ordinance") and, as amended by this ordinance, the "TIF Legislation") pursuant to and in accordance with Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 (the "Act") and declared in the Initial TIF Ordinance (a) the construction of the Commercial Improvements (as defined in the Initial TIF Ordinance and comprising a shopping center located generally at the intersection of U.S. Route 30 and Erie Street), to be a public purpose benefiting the City and its residents and that the duration of that public purpose should be 30 years and (b) the Commercial Improvements to be exempt from real property taxation, commencing on the effective date of the Initial TIF Ordinance and ending on the 30<sup>th</sup> anniversary of the effective date or the date the Infrastructure Improvements (as defined originally in the Initial TIF Ordinance and more particularly described in Exhibit C attached to the Initial TIF Ordinance (the "Initial Exhibit C") and comprised generally of infrastructure improvements in the immediate vicinity of the Commercial Improvements that would directly benefit or, once made, would directly benefit the Commercial Improvements, the "Initial Infrastructure Improvements"), are paid in full;

WHEREAS, this Council committed in the Initial TIF Ordinance to construct the Initial Infrastructure Improvements, incurred general obligation indebtedness to provide financing for the construction of the Initial Infrastructure Improvements, completed the construction of the Initial Infrastructure Improvements and there remains \$980,000 aggregate principal amount of the City's Marketplace Infrastructure Bonds (General Obligation - Limited Tax) (the "Marketplace GO Bonds") to be paid at maturity, the proceeds of which were used to finance, or refund obligations previously incurred by the City to finance, the payment or reimbursement of costs of the Initial Infrastructure Improvements;

WHEREAS, DeVille – THF – Massillon Development, LLC, an Ohio limited liability company (the “Developer”) and the City made and entered into a Service Payment Agreement as of October 1, 1999 (the “Developer Agreement”) pursuant to which the Developer agreed to make payments in lieu of taxes (“Service Payments”) to the City in an amount equal to the amount that would have been payable as real property taxes with respect to the Commercial Improvements had they not been exempted by the City from real property taxation and, if necessary, to make Minimum Service Payments (as defined in the Developer Agreement);

WHEREAS, the Massillon City School District (the “Massillon CSD”) and the City made and entered into a Tax Incentive Agreement as of May 8, 2000 (the “School District Agreement”), under which the City agreed to make payments to the Massillon CSD, but solely from the Service Payments received by the City from the Developer, in an amount equal to the amount that would have been payable as real property taxes with respect to the Commercial Improvements by virtue of Massillon CSD operating levies if the Commercial Improvements had not been exempted by the City from real property taxation, excluding millage levied by the Massillon CSD for voted general obligation bond issues, emergency levies and permanent improvement levies (the “School District Payments”);

WHEREAS, by passage of the Initial TIF Ordinance and in accordance with the School District Agreement, the City (i) directed the Stark County Treasurer to pay to the Massillon CSD an amount equal to the School District Payments from the Service Payments made from time to time with respect to the Commercial Improvements, and (ii) established within the City Treasury the Tax Increment Fund (as defined in the Initial TIF Ordinance and being a municipal public improvement tax increment equivalent fund as contemplated by Section 5709.40 of the Act), into which the portion of the Service Payments received by the City after deduction of any amount required to be paid to the Massillon CSD were to be deposited (the “Net Marketplace TIF Receipts”);

WHEREAS, this Council provided in Section 7 of the Initial TIF Ordinance that money in the Tax Increment Fund (i) shall be used to finance the Initial Infrastructure Improvements, and (ii) to the extent provided in further ordinances of this Council, shall be pledged to the repayment of bonds and/or notes issued to finance the Initial Infrastructure Improvements;

WHEREAS, the principal of the outstanding Marketplace GO Bonds is payable on December 1 in each of the years 2015 through 2023 and interest thereon is payable semiannually on June 1 and December 1 of each year, and the total principal and interest payments (“Debt Service Charges”) payable in 2015 or any subsequent calendar year is not greater than \$134,720 in any year;

WHEREAS, the cash balance in the Tax Increment Fund as of December 31, 2014 was \$1,154,631.93 and Net Marketplace TIF Receipts were \$262,276.36 in 2014, and, the Mayor, the City Auditor and the Budget Director and Income Tax Administrator have advised that there is no reason to anticipate that Net Marketplace TIF Receipts would ever be less than the amount of Debt Service Charges payable on the outstanding Marketplace GO Bonds in any year in which those Debt Service Charges are payable, and that, therefore, taking into account the Net Marketplace TIF Receipts reasonably anticipated to be received through the final maturity of the outstanding Marketplace GO Bonds, the existing balance in the Tax Increment

Fund is substantially greater than the amount of that balance that is required to be retained to pay Debt Service Charges on outstanding Marketplace GO Bonds through their final maturity;

WHEREAS, more than 4,000 students attend primary and secondary schools in five Massillon CSD buildings situated across the City, school buses operate throughout the City and, on average, more than 4,000 students and more than 450 administrators, teachers and other school employees travel daily during the school year, when school is in session, to and from those schools or other Massillon CSD facilities located within the City;

WHEREAS, students from throughout the City attend classes at facilities of the R.G. Drage Joint Vocational School District (the "JVSD" and, together with Massillon CSD, the "School Districts") located in the City, and hundreds of administrators, teachers and other school employees travel daily during the school year, when school is in session, to and from facilities of the JVSD located within the City;

WHEREAS, the Commercial Improvements comprise the most active shopping area in the City, with approximately 30 stores covering more than 460,000 square feet, including the only concentration of "big box" stores, together with numerous other stores, in one location in the City, and the stores included in the Commercial Improvements attract customers on a regular basis from throughout the City and surrounding areas;

WHEREAS, the City Engineer's office maintains records as to the use and condition of the City's streets, and segments of those streets, and when repair or resurfacing of those streets or segments thereof last occurred;

WHEREAS, there are more than 174 linear miles of public streets within the City; most of the City's streets are constructed of asphaltic concrete, engineering standards for streets constructed of that material contemplate, assuming normal usage, resurfacing of that type of street at least every 15 to 20 years, and more than 45% of the City's streets has not been resurfaced in at least 20 years; the City received more than 600 complaints in 2014 regarding City street conditions; and the City regularly exhausts its supply of metal plates to cover only the most serious potholes given the general condition of City streets, so that many potholes persist until weather permits temporary patching of the most hazardous potholes;

WHEREAS, the City Engineer identifies from time to time high-traffic City streets, and segments thereof, that have not been resurfaced for at least 15 years ("Priority Street Segments");

WHEREAS, the current condition of City streets generally, and existing Priority Street Segments in particular, present hazards to vehicular and pedestrian traffic, including the travel of students, teachers and administrators to and from Massillon CSD and JVSD school facilities, of customers, employees and suppliers to and from the Commercial Improvements and of City safety forces to and from Massillon CSD and JVSD school facilities and the Commercial Improvements;

WHEREAS, the City administration has recommended to this Council that it consider the amendment of the Initial TIF Ordinance to permit money in the Tax Increment Fund to be utilized from time to time to pay or reimburse costs of resurfacing and otherwise improving

Priority Street Segments, including without limitation, related catch basins, curbing, driveway approaches and manholes and any and all planning, engineering, legal, acquisition, construction, improvement, installation, and financing costs, and any and all other direct and indirect costs of those activities, including without limitation, those costs set forth in Section 133.15(B) of the Ohio Revised Code ("Priority Street Segment Costs"), subject to a determination from time to time by this Council of the particular Priority Street Segments for which Priority Street Segment Costs may be paid or reimbursed from money in the Tax Increment Fund and the amount of money in the Tax Increment Fund that may be used for that purpose;

WHEREAS, money in a municipal public improvement tax increment equivalent fund may be used, unless its use is otherwise restricted by the ordinance pursuant to which it is established (a "5709.40 Ordinance"), to finance any specific public infrastructure improvements designated in the 5709.40 Ordinance that directly benefit the property for which "improvements" (as defined in Section 5709.40 of the Act and herein a "5709.40 Project" ), such as the Commercial Improvements, are declared to be a public purpose, and to finance specific public improvements benefiting any school district within which the 5709.40 Project is located, all as provided in Revised Code Sections 5709.40 and 5709.43 ("Permitted Infrastructure Expenditures");

WHEREAS, there has been submitted to this Council a letter of the City's bond counsel dated May 29, 2015 to the effect that the Initial TIF Ordinance is permitted by the Act to be amended to include any Permitted Infrastructure Expenditures within the purposes for which money in the Tax Increment Fund may be expended; that, based upon submission to it of evidence sufficient for it to make a reasonable determination, this Council could determine that the resurfacing and otherwise improving of Priority Street Segments would directly benefit the Marketplace and would benefit either or both of the School Districts; and that this Council could amend and restate the Initial Exhibit C in order to modify the meaning of the term "Infrastructure Improvements," as used in the Initial TIF Ordinance, to include the resurfacing and otherwise improving of Priority Street Segments, including without limitation, the payment or reimbursement of any Priority Street Segment Costs;

WHEREAS, the office of the Auditor of the State (the "State Auditor"), by letter dated June 18, 2015, a copy of which has been submitted to this Council, has concurred in bond counsel's advice;

WHEREAS, the City administration has recommended that, at this time, this Council determine the following City street segments to be Priority Street Segments for which Priority Street Segment Costs may be paid or reimbursed to the City from money in the Tax Increment Fund: Amherst Road NE from and including its intersection with Lake Avenue NE to and including its intersection with Taggart Avenue NE, Lake Avenue NE from and including its intersection with State Route 21 to and including its intersection with 1<sup>st</sup> Street NE, 17<sup>th</sup> Street NW from and including its intersection with State Route 241 (Finefrock Avenue SW) to and including its intersection with Tremont Avenue SW, 17<sup>th</sup> Street NW from and including its intersection with Tremont Avenue SW to and including its intersection with Lincoln Way W, 17<sup>th</sup> NW from and including its intersection with Lincoln Way W to and including its intersection with Cherry Road NW, 11<sup>th</sup> Street NE from and including its intersection with Lincoln Way E to and including its intersection with State Avenue NE, 11<sup>th</sup> Street NE from



and including its intersection with State Avenue NE to and including its intersection with Lake Avenue NE, and 11<sup>th</sup> Street NE from and including its intersection with Lake Avenue NE to and including its intersection with Windsor Avenue NE (the “2015 Priority Street Segments” and the resurfacing and otherwise improving of the 2015 Priority Street Segments, including without limitation, related catch basins, curbing, driveway approaches and manholes, the “2015 Priority Street Segment Project”);

WHEREAS, the respective Board of Education of the Massillon CSD and the JVSD each has adopted, and there has been submitted to this Council a certified copy of, a resolution waiving notice of and supporting the passage of this Ordinance (the “School District Resolutions”);

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Massillon, Stark County, Ohio that:

Section 1. This Council hereby determines, based on evidence and information presented by the City Engineer to this Council concerning the use and condition of the City’s streets, and when repair or resurfacing of those streets or segments thereof last occurred, Councilmembers’ independent knowledge and understanding of the use and condition of the City’s streets, and the School District Resolutions, that the 2015 Priority Street Segments are Priority Street Segments and the 2015 Priority Street Segment Project will directly benefit the Marketplace and will benefit both of the School Districts.

Section 2. The Initial Exhibit C is hereby amended and restated to read in full as set forth on Attachment I to this Ordinance, such that “Infrastructure Improvements,” as used in the Initial TIF Ordinance, shall mean street improvements, bridge improvements, drainage improvements, traffic signals, utility relocation and related infrastructure improvements as more particularly described on Exhibit C as set forth on Attachment I to this Ordinance, as Exhibit C may be supplemented by subsequent legislation passed by this City Council from time to time to designate additional Priority Street Segments that may be resurfaced and otherwise improved, including without limitation, related catch basins, curbing, driveway approaches and manholes (“Subsequently Designated Priority Street Segment Infrastructure Improvements”), for which Priority Street Segment Costs may be paid from time to time. This Council hereby designates those Infrastructure Improvements, including without limitation, any Subsequently Designated Priority Street Segment Infrastructure Improvements made, to be made or in the process of being made by the City, as public infrastructure improvements that directly benefit, or that once made will directly benefit, the Commercial Improvements and benefit both of the School Districts.

Section 3. Section 3 of the Initial TIF Ordinance is hereby amended and restated to read in full as follows:

“Section 3. The City shall construct the Infrastructure Improvements described in Exhibit C under the subheadings “Engineering,” “Construction” and “Inspection” (the “Initial Infrastructure Improvements”). The cost of the Initial Infrastructure Improvements may be paid from (i) the proceeds of debt obligations issued by the City, which may be secured, in part, by the pledge of money received by the City as Service Payments (as defined in Section 4), (ii)

money in the Tax Increment Fund (as defined in Section 7), or (iii) other money in the City treasury available therefor and appropriated by this Council from time to time for that purpose. It is hereby found and determined that the percentage exempted (100%) does not exceed the estimated percentage of the incremental demand placed on the Initial Infrastructure Improvements that is directly attributable to the Commercial Improvements.”

Section 4. Section 7 of the Initial TIF Ordinance is hereby amended and restated to read in full as follows:

“Section 7. There is hereby established within the City Treasury a municipal public improvement tax increment equivalent fund (the “Tax Increment Fund”) into which shall be deposited the portion of the Service Payments that are distributed to the City by the Stark County Treasurer after the payments to be made to the Massillon City School District as provided in Section 6 hereof. Such Fund may be combined with other funds created by ordinances of this Council authorizing other such projects. Money in the Tax Increment Fund shall be (i) used by the City to pay, or to reimburse the City for payment of, costs of Infrastructure Improvements, or (ii) to the extent provided in any subsequent ordinance of this Council providing for the issuance by the City of debt obligations to finance or refinance the payment of costs of Infrastructure Improvements, may be pledged to the repayment of bonds and/or notes issued to finance the Infrastructure Improvements, or (iii) any combination thereof.”

Section 5. This Council hereby determines that the City shall proceed with the 2015 Priority Street Segment Project and hereby appropriates from the Tax Increment Fund an amount not to exceed \$1,000,000 for the purpose of paying, or reimbursing the City for payment of, Priority Street Segment Costs with respect to the 2015 Priority Street Segment Project.

Section 6. Pursuant to Ohio Revised Code Section 5709.40, the Clerk of Council is hereby directed to deliver a copy of this Ordinance, within fifteen days after its passage, to (i) the Director of Development Services of the Development Services Agency of the State of Ohio, (ii) the Board of Education of the Massillon CSD, and (iii) the Board of Education of the JVSD.

Section 7. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 8. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that completion of the 2015 Priority Street Segment Project is urgently needed to eliminate existing hazards to vehicular and pedestrian traffic; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Attachment I

Exhibit C

**DESCRIPTION OF THE INFRASTRUCTURE IMPROVEMENTS**

Engineering:

- Interchange Justification Study (IJS)
- Signal warrants
- Environmental studies as required
- Permit fees
- Surveying
- Design plans and specifications
- Right of way plans and acquisition
- Bidding and construction services

Construction:

- Widening of the entrance/exit ramps at SR21/Erie St. interchange
- Widening of Erie Street
- Widening of Nave Street at Erie Street
- New traffic signals and associated appurtenances
- Bridge improvements
- Signing (public) and striping
- Street lights
- Guardrail modifications
- Associated drainage improvements
- Utility relocation
- Any improvements required by the Ohio Department of Transportation as a result of the IJS
- Any mitigation required as a result of the environmental studies

Inspection:

- Inspection fees
- Material testing

2015 Priority Street Segments:

- Resurfacing and otherwise improving Amherst Road NE from and including its intersection with Lake Avenue NE to and including its intersection with Taggart Avenue NE, Lake Avenue NE from and including its intersection with State Route 21 to and including its intersection with 1<sup>st</sup> Street NE, 17<sup>th</sup> Street NW from and including its intersection with State Route 241 (Finefrock Avenue SW) to and including its

intersection with Tremont Avenue SW, 17<sup>th</sup> Street NW from and including its intersection with Tremont Avenue SW to and including its intersection with Lincoln Way W, 17<sup>th</sup> NW from and including its intersection with Lincoln Way W to and including its intersection with Cherry Road NW, 11<sup>th</sup> Street NE from and including its intersection with Lincoln Way E to and including its intersection with State Avenue NE, 11<sup>th</sup> Street NE from and including its intersection with State Avenue NE to and including its intersection with Lake Avenue NE, and 11<sup>th</sup> Street NE from and including its intersection with Lake Avenue NE to and including its intersection with Windsor Avenue NE, including without limitation, related catch basins, curbing, driveway approaches and manholes and any and all planning, engineering, legal, acquisition, construction, improvement, installation, and financing costs, and any and all other direct and indirect costs of the 2015 City Priority Street Segment Project, including without limitation, those costs set forth in Section 133.15(B) of the Ohio Revised Code



Adopted in Council on July 27, 2015

Effective on July 28, 2015

Attest:

Diane Zeller  
Clerk

Tony Townsend  
President of Council

Approved:

Harry Putney  
Mayor



CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. 90-2015 passed by the Council of the City of Massillon, Ohio at a special meeting of Council held July 27, 2015 and that a true copy thereof was certified to the County Auditor of Stark County, Ohio.

Diane Zeller  
Clerk  
City of Massillon, Ohio

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:

Diane Zeller  
Clerk of Council

Date 7/29/15