

CITY COUNCIL AGENDA
March 20, 2017
7:30p.m.

The meeting will be held at City Hall, in Council Chambers, 1st Floor, 538 N. Market Street, Wooster, Ohio.

I. ROLL CALL & ORDERING OF AGENDA

Officer of the Year Presentation

II. APPROVAL OF MINUTES

III. COMMUNICATIONS FROM MAYOR/ADMINISTRATION

Vince Crawford – Waste Management, update on City Waste/Recycle Collection

IV. PETITIONS/COMMUNICATIONS FROM PUBLIC

V. COMMITTEE REPORTS; PUBLIC HEARINGS

N/A

VI. OLD BUSINESS

VII. NEW BUSINESS

1. First Reading - ORDINANCE NO. 2017- 10
AN ORDINANCE ACCEPTING APPLICATION FOR THE ANNEXATION OF TERRITORY LOCATED ON WEST HIGHLAND AVENUE AND CONTIGUOUS TO THE CORPORATION LIMITS (Knapic)
2. First Reading – RESOLUTION NO. 2017-14
A RESOLUTION AUTHORIZING THE DIRECTOR OF ADMINISTRATION TO PURCHASE A VEHICLE IN ACCORDANCE WITH THE CAPITAL PLAN FOR 2017 (Cavin)
3. First Reading – RESOLUTION NO. 2017-15
A RESOLUTION APPROVING THE REPORT OF THE ASSESSMENT EQUALIZATION BOARD ON OBJECTIONS CONCERNING THE ESTIMATED SPECIAL ASSESSMENTS FOR THE BURBANK ROAD PROJECT, AND DECLARING AN EMERGENCY (Ulbright)
4. First Reading – ORDINANCE NO. 2017-11
AN ORDINANCE DETERMINING TO PROCEED WITH THE IMPROVEMENT OF BURBANK ROAD BETWEEN CERTAIN TERMINI BY GRADING, DRAINING, WIDENING, PAVING, RESURFACING, CONSTRUCTION CURBS, GUTTERS, SIDEWALKS AND DRIVEWAY APPROACHES, INSTALLING STORM SEWERS, CATCH BASINS, MANHOLES, WATER MAINS, FIRE HYDRANTS, AND TRAFFIC CONTROL SIGNS AND DEVICES, AND ACQUIRING ANY REAL ESTATE AND INTERESTS REQUIRED, ALL TOGETHER WITH THE NECESSARY APPURTENANCES, AND DECLARING AN EMERGENCY (Ulbright)
5. First Reading – RESOLUTION NO. 2017-16
AN RESOLUTION IMPOSING A MORATORIUM ON THE GRANTING OR PROCESSING OF PERMITS FOR ANY BUILDING, STRUCTURE, USE OR CHANGE OF USE THAT WOULD ENABLE CULTIVATION, PROCESSING, OR RETAIL SALE OF MEDICAL MARIJUANA WITHIN THE CITY OF WOOSTER FOR A PERIOD NOT TO EXCEED TWELVE MONTHS FROM THE EFFECTIVE DATE OF THIS RESOLUTION, AND DECLARING AN EMERGENCY (Knapic)

6. First Reading – RESOLUTION NO. 2017-17
A RESOLUTION OPPOSING PORTIONS OF THE STATE OF OHIO PROPOSED 2017 – 2018 BUDGET (HB 49), WHICH PROPOSES CENTRALIZED COLLECTION OF NET PROFIT TAX RETURNS AND OTHER PROVISIONS RELATED TO THE MUNICIPAL INCOME TAX WHICH WILL CAUSE A SUBSTANTIOAL LOSS OF REVENUE NEED TO SUPPORT THE HEALTH, SAFETY, WELFARE AND ECONOMIC DEVELOPMENT EFFORTS OF OHIO MUNICIPALITIES, AND DECLARING AN EMERGENCY (Ansel)
7. First Reading – RESOLUTION NO. 2017-18
A RESOLUTION SUPPORTING THE CITY ADMINISTRATION’S DECISION TO BRING A LEGAL CHALLENGE TO SB 331, OHIO’S SMALL CELL STATUTE (Ulbright)
8. First Reading – ORDINANCE NO. 2017-12
AN ORDINANCE AMENDING PART NINE OF THE CODIFIED ORDINANCES OF THE CITY OF WOOSTER, OHIO TO PROVIDE FOR A NEW CHAPTER, 949, WIRELESS COMMUNICATION FACILITIES IN THE RIGHT OF WAY (Knapic)

VIII. MISCELLANEOUS

IX. ADJOURNMENT

ORDINANCE NO. 2017-10

AN ORDINANCE ACCEPTING APPLICATION FOR THE ANNEXATION OF TERRITORY LOCATED ON WEST HIGHLAND AVE., AND CONTIGUOUS TO THE CORPORTION LIMITS

(Matthew A. Long, Esq., Agent for Petitioners JC5 Properties, and Adam and Jody Rives)

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WOOSTER, OHIO:

SECTION 1. That the proposed annexation, consisting of approximately 4.492 acres on West Highland Ave., with Parcel Numbers 53-00225.000, 53-00343.000, 53-00344.000, 53-0341.00, 53-00339.000, 53-00342.000, and 53-00338.000, as applied for in the petition described above, and as approved for annexation to the City of Wooster by the Board of County Commissioners of Wayne County on December 21, 2016, is accepted. The territory to be annexed is described in the petition, a copy of which is attached and incorporated by reference.

The certified transcript of the proceedings for annexation, together with an accurate map of the territory, the petition for annexation and other papers relating to the proceedings of the Wayne County Commissioners, are on file with the Clerk of this Council, and have been for more than sixty (60) days.

SECTION 2. The Clerk of Council is directed to make three (3) copies of this Ordinance, to each of which shall be attached a copy of the map accompanying the petition for annexation, a copy of the transcript of proceedings of the Board of County Commissioners of Wayne County relating hereto, and a certificate as to the correctness. The Clerk shall then deliver one copy of these documents to the Wayne County Auditor, one copy to the Wayne County Recorder and one copy to the Secretary of State, and shall file notice of this annexation with the Wayne County Board of Elections within thirty (30) days after it becomes effective; and the Clerk shall do all other things required by law.

SECTION 3. This Council finds and declares that all formal actions concerning and relating to the adoption of this Ordinance occurred in an open meeting of this Council or its committees, in compliance of the law.

SECTION 4. This Ordinance shall take effect and be in full force from and after the earliest date allowed by law.

1st reading _____ 2nd reading _____ 3rd reading _____

Passed: _____, 2017 Vote: _____

Attest: _____
Clerk of Council President of Council

Approved: _____, 2017
Mayor

Introduced by: Barbara A. Knapic

Resolution

No. 2016-627

Board of Wayne County Commissioners
Ann M. Obrecht Sue A. Smail Scott S. Wiggam

Adopted: December 21, 2016

Subject: **Approval of a Regular Annexation from Wayne Township to the City of Wooster, Wayne County, Ohio (2016-A4 Regular ORC 709.02)**

It was moved by Mrs. Smail and seconded by Mr. Wiggam that the following resolution be adopted:

WHEREAS, on September 28, Matthew Long, on behalf of Petitioners filed with the Board of County Commissioners, Wayne County, Ohio, a Petition for Annexation to the City of Wooster, County of Wayne, pursuant to RC 709.02 which Petition was entered on the journal on October 5, 2016, pursuant to Resolution No. 2016-470; and

WHEREAS, said Petition is valid in that:

1. The Petition conforms to all of the statutory requirements outlined in Chapter 709 of the Ohio Revised Code and contains all of the matters required by RC 709.02.
2. RC 709.02(C)(1) requires signatures from at least 51% of property owner(s), this Petition is signed by 100% of the owner(s) of the territory proposed to be annexed and no signature is dated more than 180 days before the date of the filing of the Petition [RC 709.02(C)(1)].
3. The Petition includes an accurate legal description of the perimeter and an accurate map or plat of the territory proposed for annexation [RC 709.02(C)(2)].
4. The Petition names Matthew Long to act as agent for the Petitioner(s) [RC 709.02(C)(3)].
5. The Petition includes a list of all tracts, lots, or parcels proposed to be annexed; and all tracts, lots or parcels located adjacent to the territory to be annexed or directly across the road when a road is adjacent to the territory to be annexed, including the name and mailing address of the owner of each tract, lot or parcel, and the auditor's permanent parcel number for each tract or parcel [RC 709.02(D)];
6. Any owner that is a firm, trustee or corporation has been signed by a person authorized to sign for that entity [RC 709.02(E)];
7. The City of Wooster has complied with RC 709.03(D) by adopting Ordinance No. 2016-60, which indicates what services it will provide upon annexation, and the approximate date it will provide such services.

WHEREAS, Agent for the Petitioner(s), caused written notice of hearing to be sent to all owners of property adjacent to the property to be annexed and caused a notice of hearing to be published; and

WHEREAS, a hearing on this Petition was held by this Board on November 30, 2016, in the Commissioners' Meeting Room, 428 W. Liberty St., Wooster, Ohio; and

WHEREAS, the record in this matter consists of the following:

- a. The Annexation Petition;
- b. The Notice of Petition for Annexation;
- c. A certification that notice of the filing of the Petition for Annexation was served by publication and by certified mail;
- d. The Ordinance or Resolution from the municipal corporation indicating the services that will be provided;
- e. Digital Recording of Public Hearing and Minutes prepared by Clerk of the Board of County Commissioners approved by the Board on December 21, 2016;

WHEREAS, based upon a preponderance of the substantial, reliable and probative evidence found within the record, this Board finds that:

1. The requirements stated in 709.033(A)(1) – (3) have been met, as stated above.
2. The territory proposed to be annexed is contiguous to the City of Wooster.
3. The territory proposed to be annexed is not unreasonably large.
4. On balance, the general good of the territory proposed to be annexed will be served, and the benefits to the territory proposed to be annexed and the surrounding areas will outweigh the detriments to the territory proposed to be annexed and the surrounding area RC 709.033(A)(5).
5. No street or highway will be divided or segmented by the boundary line between a township and the municipality as to create a road maintenance problem.

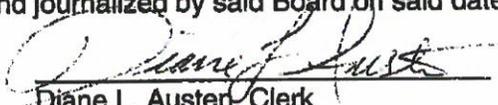
IT IS HEREBY RESOLVED that the Petition for Annexation be granted.

IT IS FURTHER RESOLVED that a certified copy of this Resolution be sent to the City of Wooster Clerk of Council, Fiscal Officer of Wayne Township and to the Agent for the Petitioner(s); and then if no appeal is filed within 30 days, certified copies of this Resolution, Petition, map, Statement of Services and all other papers on file along with the minutes of these proceedings be delivered to the City of Wooster Clerk of Council in accordance with RC 709.033.

The vote is as follows: Ann M. Obrecht yea Sue A. Smail yea Scott S. Wiggam yea

CERTIFICATE

I, Diane L. Austen, Clerk of the Board of County Commissioners, Wayne County, Ohio, hereby certify that the above is a true and correct copy of the resolution adopted and journalized by said Board on said date.


Diane L. Austen, Clerk

PETITION FOR ANNEXATION

To the Board of Commissioners of Wayne County, State of Ohio

The undersigned, being a majority of the owners of real estate in the following described territory within the County of Wayne and adjacent to the City of Wooster, Ohio, petitions the Board of Commissioners of Wayne County, Ohio, to annex the territory described below to the City of Wooster. The territory to be annexed is fully described in the attached **Exhibit A**.

The Tax Account Numbers are: 53-00225.000, 53-00343.000, 53-00344.000, 53-00341.000, 53-00339.000, 53-00342.000, and 53-00338.000.

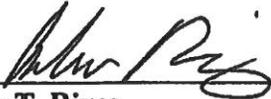
The seven parcels described herein for annexation consist of 4.492 acres.

An accurate map of this territory is attached hereto and incorporated herein as a part of this Petition as **Exhibit B**.

Matthew A. Long, 225 North Market Street, Wooster, Ohio, is hereby appointed and authorized to act as agent for the undersigned petitioners in securing such annexation with full power and authority hereby granted to said agent to amend, alter, change, correct, withdraw, refile, substitute, compromise, increase or delete the area; to substitute an agent; to do any and all things essential thereto and to take any action necessary for obtaining the granting of this petition. Said amendment, alteration, change, correction, withdrawal, refile, substituting, compromise, increase or deletion, or other actions for granting of this petition shall be made in the petition, description and/or plat by said agent without further expressed consent of petitioners.

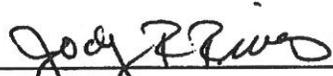
20 02 02 02 102
REGISTERED
JANUARY 10 2004
COUNTY CLERK

The total number of owners of real estate in the above-described territory is three (3). Pursuant to Ohio Revised Code Section 709.02(E), the City of Wooster is not considered an "owner" and has not been included in the total number of owners necessary to file this petition.



Adam T. Rives

Date: 9/28/16



Jody R. Rives

Date: 9-28-16

JCS Properties, LLC

By: 

Name: Jerry Craycraft
Title: Manager

Date: 9/28/16

R.W.

GASBARRE & Associates, Inc.

Professional Land Surveyors

401 South Market St. P.O. Box 44
Wooster, Ohio 44691
330.264.9499

William R. Gasbarre, P.S. (Ret.)

Edward A. Gasbarre, P.S.

gasbarresurveying@embarqmail.com

September 21, 2016

Boundary Description
4.492 Acres



Situated in the State of Ohio, County of Wayne, **Township of Wayne**, in the **northeast quarter of Section 32, T-16N, R-13W**.

Described as follows:

Beginning at the southwest corner of Lot 10 of the Nelsen Allotment No.1 recorded in volume 5, page 19 of the Wayne County plat records.

Thence with the following SIX courses:

- 1) N 1° 27' 00" E 140.00 feet to the north line of the quarter section.
- 2) S 88° 07' 00" E 1000.00 feet, along the north line of the quarter section and in Highland Avenue (County Road 106), to a point.
- 3) S 1° 27' 00" W 250.00 feet to the southeast corner of Lot 16.
- 4) N 88° 07' 00" W 500.00 feet, along a south line of the allotment, to the southwest corner of Lot 12.
- 5) N 1° 27' 00" E 110.00 feet, along a west line of the allotment, to the southeast corner of Lot 11.
- 6) N 88° 07' 00" W 500.00 feet, in part along southerly lines of the allotment, to the **Point of Beginning**.

This parcel contains 4.492 acres.

This description was prepared by Edward A. Gasbarre, P.S. 7036, from information contained in a survey drawn under his direction, in September of 2016, on behalf of R. W. Gasbarre & Associates, Inc. A copy of that survey is on file at the Wayne County map office. See survey volume __, page __.

All bearings are related and common with volume 5, page 19 of the Wayne County plat records.

 9/21/16

Edward A. Gasbarre, P.S. 7036

\\hp4\Data (F)\ADAT4\AJOB\2K16\job147UC 5 Properties legal.docx



Request for Agenda Item
Authorization for Bid or Purchase of Capital Item

Division Fire

Project Name EMS Medic Purchase

Requested Meeting Date 3-20-2017

- Approved for Agenda
 Full Amount is Budgeted

If not, how is purchase to be funded?

Full amount is budgeted in the 2017 Capital Improvement budget.

Description of Purchase

Authorization to purchase a new Horton Ambulance on an International 4300 Chassis for \$250,000.
This purchase is to replace a 2007 MedTec Ambulance that is past its regular replacement schedule, worn, and replacement parts are no longer available.
This unit is the same manufacture and chassis type as our primary Medic Units. This purchase will allow us to maintain continuity for training, equipment storage, and preventative maintenance.

Justifications / Benefits

In 2015 and 2016, the Fire Division experienced multiple mechanical issues with our Medic Units. Multiple Medics were out of service for weeks at a time for brakes, engine and electrical issues. This situation left the Fire Division without sufficient ambulances to service the City. During these periods, the Fire Division had to borrow a back-up ambulance from Wooster Twp. Fire and Central Fire or operate without an ambulance for a period of time. This situation allowed us to continue to provide service to our community but highlighted the fact that we are in need of updating our EMS apparatus.
This purchase will ensure that the Fire Division has a fleet of front-line Medics that are dependable and able to respond at a moments notice for emergency incidents.
The new chassis will allow our PPM staff to utilize their current tools and software but we are changing the engine manufacture (International to Cummins) to eliminate the mechanical issues that have occurred in the past. This update should reduce the amount of time any one of our Medic units are out of service and provide the Fire Division with a stable "back-up" ambulance to utilize when preventative maintenance is required.
The Fire Division researched other manufactures and found utilizing the Ohio State Bid program that this Medic is the most cost effective purchase.

How will this project effect the City's operating budget?

This purchase of a new Medic Unit should reduce the number mechanical issues and reduce the cost of repairs and maintenance. It will also allow the fire division to move a front line Medic to the "reserve/back-up". Which will extend the service life of the back-up unit.

What alternatives exist, and what are the implications of the alternatives?

Maintain current EMS apparatus. Which will increase repair cost, as they continue to age. It will also minimize the Fire Division's ability to ensure that an emergency response vehicle is ready and available to respond to incidents in the City.

- Sole Source Bid or Non-Bid Situation?

If Yes, explain the circumstances

Using the State Bid Contract.

- Requesting suspension of the rules?

If Yes, explain reasons.

Division Manager



Date

3-13-17

RESOLUTION NO. 2017-15

A RESOLUTION APPROVING THE REPORT OF THE ASSESSMENT EQUALIZATION BOARD ON OBJECTIONS CONCERNING THE ESTIMATED SPECIAL ASSESSMENTS FOR THE BURBANK ROAD PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, the Assessment Equalization Board appointed by Resolution No. 2017-09 to hear and determine all objections to the estimated special assessments for the improvement known as the Burbank Road Project, the necessity for which was declared in Resolution No. 2016-54, has filed its report with this Council as to its determination of the objections;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WOOSTER, WAYNE COUNTY, OHIO, that:

SECTION 1. The report of the Assessment Equalization Board referred to in the preamble to this resolution is approved. The estimated special assessments as reported and approved by that Board shall be filed in the office of the Clerk of Council.

SECTION 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this resolution were taken in an open meeting of this Council 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 3. This resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety of the City, and for the further reason that this resolution is required to be immediately effective in order to provide for the construction of the improvement, which is necessary to eliminate existing hazards to the traveling public and provide for adequate drainage and utility services to the residents of this City; wherefore, this resolution shall be in full force and effect immediately upon its adoption and approval by the Mayor, provided it receives the affirmative vote of at least three-fourths of the members of the Council, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

1st reading _____ 2nd reading _____ 3rd reading _____

Passed: _____, 2017

Vote:

Attest: _____
Clerk of Council

President of Council

Approved: _____, 2017

Mayor

Introduced by: Jon E. Ulbright

**Request for Agenda Item
Authorization for Bid or Purchase Capital Item**

Division Engineering	Meeting Date Requested March 20, 2017
Project Name Approval of Burbank Road's Equalization Board Report	Approved for Agenda
Estimated Total Funds/Cost \$0.00	
Is Full Amount Budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If No, How Is The Purchase To Be Funded?	
Description Of Request This is a request to approve the report as presented by the Equalization Board assembled to hear objections to the estimated special assessments for the Burbank Road Reconstruction Project.	
Justification / Benefits Council has already passed 4 pieces of legislation previously; authorizing an OPWC funding application, resolution of necessity, ROW acquisition and establishing an Equalization Board.	
Will This Project Effect the City's Operating Costs This project will lower operation and maintenance costs due to the reconstruction of the roadway.	
What Alternatives Exist and What Are The Implications of The Alternatives We can do nothing and continue maintenance on the existing roadway.	
Is This A Sole Source Bid or Non-Bid Situation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A If Yes, Explain The Circumstances	
Are You Requesting Suspension Of The Rules <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Note Reasons While suspension of the rules is not necessary, earlier passage would allow the opportunity to bid this project as early as possible.	
Division Manager Roger Kobilarcsik	Date March 14, 2017

REPORT OF ASSESSMENT EQUALIZATION BOARD
BURBANK ROAD RECONSTRUCTION

TO; The Council of the City of Wooster, Ohio

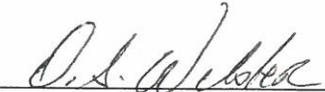
Gentlepersons:

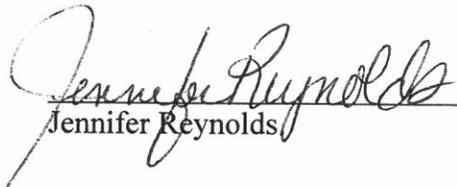
We, the undersigned members of the Assessment Equalization Board appointed and acting pursuant to your Resolution 2017-09, passed March 7, 2017, to hear and determine objections to the estimated special assessments filed pursuant to Resolution No. 2016-54, with respect to Burbank Road Reconstruction, as described in that Resolution and the supporting documents thereto, respectfully report:

- 1) We met at the time and place established in Resolution 2017-09, and took an oath of office as provided by law; and
- 2) We considered all of the objections of the property owners who filed objections to the estimated special assessments, or to the amount and apportionment of those special assessments, and, except to the extent of the reductions recommended in this report, find that those objections are not well taken, and therefore overrule and deny them; and
- 3) A total of four objections were timely filed. The objections were considered individually by the Board, and none were found to have merit. As a consequence, no equalizations were made to the estimated assessments.
- 4) We also find that the estimated special assessments of this improvement, on file with the Clerk of Council, are in accordance with the provisions of Resolution 2016-54; that they are limited, with respect to each lot and parcel of land to be assessed, to the special benefits conferred thereon by the improvement.
- 5) We have completed all hearings on the objections and have concluded our deliberations with the submission to you of this report; and
- 6) We find and determine that all formal actions of this Board concerning and relating to the rendering of this report were adopted in an open meeting of this Board, and all deliberations of this Board that resulted in those formal actions were conducted in compliance with the law.

Respectfully submitted,


Bob Metze, Chair 3/15/17
Date


Steve Webster 3-15-17
Date


Jennifer Reynolds 3/15/17
Date

I certify that: (i) the foregoing is a true and correct copy of the Report of the Assessment Equalization Board; (ii) the Report is filed with me as Clerk of Council on March 16, 2017; (iii) the total amount of the estimated special assessments remain as approved by Resolution 2016-54 and totals \$170,982.52 and; (iv) the Board has not recommended increasing the estimated special assessment against any lot or land or assessing a lot or land not included in the originally filed estimated special assessments, the owner of which has not filed an objection with respect to that lot or land.

Dated: 3-16-17, 2017



Lynne DePaulo
Clerk of Council
City of Wooster, Ohio

ORDINANCE NO. 2017-11

AN ORDINANCE DETERMINING TO PROCEED WITH THE IMPROVEMENT OF BURBANK ROAD BETWEEN CERTAIN TERMINI BY GRADING, DRAINING, WIDENING, PAVING, RESURFACING, CONSTRUCTING CURBS, GUTTERS, SIDEWALKS AND DRIVEWAY APPROACHES, INSTALLING STORM SEWERS, CATCH BASINS, MANHOLES, WATER MAINS, FIRE HYDRANTS, AND TRAFFIC CONTROL SIGNS AND DEVICES, AND ACQUIRING ANY REAL ESTATE AND INTERESTS REQUIRED, ALL TOGETHER WITH THE NECESSARY APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, this Council has adopted Resolution No. 2016-54 on November 7, 2016, declaring the necessity of making the improvement described in Section 1 (the Resolution of Necessity); and

WHEREAS, pursuant to the Resolution of Necessity, the City Engineer prepared and filed in the office of the Clerk of Council the estimated special assessments for that improvement, notices were thereafter served on the owners of all lots and lands to be assessed; and

WHEREAS, Council has adopted a resolution approving the report of the Assessment Equalization Board appointed by Resolution No. 2017-15 adopted on March 20, 2017;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WOOSTER, WAYNE COUNTY, OHIO, that:

SECTION 1. It is determined to proceed with the improvement of Burbank Road, from Highland Avenue to Kinney Street, by grading, draining, widening, paving, resurfacing, constructing curbs, gutters, sidewalks and driveway approaches, installing storm sewers, catch basins, manholes, water mains, fire hydrants, and traffic control signs and devices, and acquiring any real estate and interests required, all together with the necessary appurtenances.

SECTION 2. The improvement shall be made in accordance with the provisions of the Resolution of Necessity, and with the plans, specifications, profiles and estimate of cost previously approved and now on file in the office of the Clerk of Council.

SECTION 3. Any claims for damages resulting from the improvement that have been legally filed shall be inquired into after completion of the improvement, and the Director of Law is authorized and directed to institute legal proceedings in a court of competent jurisdiction to inquire into those claims.

SECTION 4. The portion of the cost of the improvement to be assessed in accordance with the Resolution of Necessity, less the amount to be assumed and paid by the City as an additional part of the City's portion of the cost of the improvement in accordance with the report of the Assessment Equalization Board referred to in the preambles, shall be assessed in the manner and pursuant to the schedule set forth, and on the lots and lands described, in the Resolution of Necessity.

SECTION 5. The estimated special assessments previously prepared and filed in the office of the Clerk of Council, and as equalized by the Assessment Equalization Board, are adopted.

SECTION 6. The Clerk of Council shall deliver a certified copy of this ordinance to the County Auditor within 15 days after its passage.

SECTION 7. Subject to the provisions of Section 727.24 of the Revised Code, the Director of Administration is authorized and directed, as soon as the funds are available, to make and execute a contract for the improvement with the lowest and best bidder after advertising according to law, and the improvement shall be financed as provided in the Resolution of Necessity; provided, however, that the amount to be

**Request for Agenda Item
Authorization for Bid or Purchase Capital Item**

Division Engineering	Meeting Date Requested March 20, 2017
Project Name Burbank Road Reconstruction – Notice to Proceed	Approved for Agenda
Estimated Total Funds/Cost \$1,885,000 Construction costs, \$500,000 OPWC, \$450,000 Water Fund, \$65,000 Sanitary Sewer Fund, \$250,000 Storm Sewer Fund, \$171,732 Assessments and \$448,268 Capital Funds	
Is Full Amount Budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If No, How Is The Purchase To Be Funded?	
Description Of Request This is a request to advertise and enter into a contract with the lowest and best bidder for the reconstruction of Burbank Road from Highland Avenue to Kinney Street, as described in the Resolution of Necessary, 2016-54.	
Justification / Benefits The need for this project has been previously established and ratified by Council. All necessary rights-of-way have been obtained; all assessments have been calculated and equalized by the equalization board.	
Will This Project Effect the City's Operating Costs This project should lower the City's operating costs by reducing maintenance costs of the existing road.	
What Alternatives Exist and What Are The Implications of The Alternatives We can do nothing and forfeit the OPWC funding, continue maintenance on the existing road, and not address the safety issues resulting from the narrow lanes and ditches.	
Is This A Sole Source Bid or Non-Bid Situation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
If Yes, Explain The Circumstances	
Are You Requesting Suspension Of The Rules <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If Yes, Note Reasons While suspension of the rules is not necessary, earlier passage would allow the opportunity to bid this project as early as possible.	
Division Manager Roger Kobilarcsik	Date March 14, 2017

RESOLUTION NO. 2017-16

AN RESOLUTION IMPOSING A MORATORIUM ON THE GRANTING OR PROCESSING OF PERMITS FOR ANY BUILDING, STRUCTURE, USE OR CHANGE OF USE THAT WOULD ENABLE CULTIVATION, PROCESSING, OR RETAIL SALE OF MEDICAL MARIJUANA WITHIN THE CITY OF WOOSTER FOR A PERIOD NOT EXCEED TWELVE MONTHS FROM THE EFFECTIVE DATE OF THIS RESOLUTION, AND DECLARING AN EMERGENCY

WHEREAS, Substitute House Bill 523, legalizing the cultivating, processing, and dispensing of medical marijuana in the State of Ohio, became effective September 8, 2016; and

WHEREAS, this law, among other things, permits patients in Ohio to use medical marijuana on the recommendation of physicians, creates state regulatory oversight of the cultivation, processing, retail sale, use and physician recommendation of medical marijuana; authorizes the legislative authority of a city to adopt regulations to prohibit or limit the number of retail medical marijuana dispensaries; and prohibits a cultivator, processor, retail dispensary or laboratory from being located or relocating within 500 feet of a school, church, public library, public playground or public park; and

WHEREAS, as such, Council requires additional time to undertake a review of all applicable codes statewide and within the City in order to formulate a local response to House Bill 523; and to determine whether to limit or entirely prohibit the cultivation, processing, and/or retail dispensing of medical marijuana in accordance with Ohio Revised Code Section 3796.29; and

WHEREAS, it is immediately necessary to impose a temporary moratorium on the granting and processing of permits for medical marijuana-related businesses in the City in order to ensure the public health, peace, property, safety, and welfare; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WOOSTER, OHIO:

SECTION 1. Council of the City of Wooster imposes a twelve month moratorium on the granting of permits for any building, structure, use or change of use that would enable the cultivation, processing, or retail sale of medical marijuana for a period not to exceed twelve months from the effective date of this Resolution, in order to allow Council to review applicable Ohio statutes, criminal codes, and City of Wooster Zoning Code relative to such use.

SECTION 2. That for purposes of this Resolution, "medical marijuana" shall have the same meaning as that term is defined in Section 3796.01(A)(2) of the Ohio Revised Code, effective September 8, 2016.

RESOLUTION NO. 2017-17

A RESOLUTION OPPOSING PORTIONS OF THE STATE OF OHIO PROPOSED 2017 – 2018 BUDGET (HB 49), WHICH PROPOSES CENTRALIZED COLLECTION OF NET PROFIT TAX RETURNS AND OTHER PROVISIONS RELATED TO THE MUNICIPAL INCOME TAX WHICH WILL CAUSE A SUBSTANTIAL LOSS OF REVENUE NEEDED TO SUPPORT THE HEALTH, SAFETY, WELFARE AND ECONOMIC DEVELOPMENT EFFORTS OF OHIO MUNICIPALITIES, AND DECLARING AN EMERGENCY

WHEREAS, the Mayor and the Director of Finance have been advised of a proposal by the Governor and his administration to institute a state-operated program for the centralized collection of Ohio Municipal Income Tax; and

WHEREAS, the proposal for a state takeover of collection of the municipal income taxes of municipal corporations such as the City of Wooster is a clear weakening of the home rule powers granted to municipal corporations by the Ohio Constitution; and

WHEREAS, the proposal charges a 1-percent administrative fee with tax collections distributed on a quarterly basis; and

WHEREAS, this proposed language also includes a provision that would eliminate portions of the sales factor, known as “throwback”, substantially reducing reportable tax revenue to municipalities with warehouses, distribution centers, and any business providing online sales; and

WHEREAS, The City of Wooster objects to this latest attempt to weaken municipal home rule under consideration by the State of Ohio and urges all municipal corporations to communicate to the Governor and General Assembly that his proposed usurpation of constitutionally-granted local municipal power shall not take place without a vigorous challenge by affected municipal corporations; and

WHEREAS, the municipal income tax accounts for over 70% of Wooster’s annual general fund revenue, which provides funding for essential municipal services, promoting a positive quality of life that residents, businesses, and visitors alike rely upon, and any forced reduction in this revenue will have a negative impact on residents, businesses, and visitors, creating an environment detrimental to retaining and attracting business in Ohio.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WOOSTER, OHIO:

SECTION 1. That the Ohio General Assembly should request the immediate removal of

ORDINANCE NO. 2017-12

AN ORDINANCE AMENDING PART NINE OF THE
CODIFIED ORDINANCES OF THE CITY OF WOOSTER,
OHIO TO PROVIDE FOR A NEW CHAPTER 949, WIRELESS
COMMUNICATION FACILITIES IN THE RIGHT OF WAY

WHEREAS, with the passage of Ohio Senate Bill 331, effective March 21, 2017, new regulations require that the City permit wireless “small cell” facilities in the right-of-way; and

WHEREAS, Council desires to minimize and control the adverse effects of the new regulations in order to protect the health, safety, and welfare of the citizenry; preserve the quality of life; preserve the character of surrounding neighborhoods and historic districts; and

WHEREAS, Council also desires to provide new regulations for (1) standards for the construction and installation of wireless communication facilities in the City’s right-of-way, (2) provide for a fee structure, (3) ensure that the facilities will conform to applicable health and safety regulations, (4) provide for incentives, (5) preserve the character of the City’s neighborhoods and historic districts, and (6) comply with all state and federal laws; and

WHEREAS, the Council recognizes its constitutional duty to interpret, construe, and amend its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the City and the Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Ohio Constitutions, Ohio Revised Code, and the Ohio Rules of Civil and Criminal Procedure; and

WHEREAS, Council has determined that it is in the best interests of the City of Wooster and its residents to enact and codify the proposed additional chapter to part nine of the Streets, Utilities, and Public Service Code, as described below.

NOW, THEREFORE, be it ordained by the Council of the City of Wooster, Ohio:

SECTION 1. Chapter 949 shall be added as a new chapter with the following language:

CHAPTER 949

**CHAPTER 949 WIRELESS COMMUNICATIONS FACILITIES IN THE
RIGHT OF WAY**

949.01 PURPOSE AND GOALS

The purpose of this chapter is to establish general procedures and standards, consistent with all applicable federal and state laws, for the siting, construction, installation,

collocation, modification, operation, and removal of wireless communications facilities in the right of way. The goals of this chapter are to:

- (a) Establish the general application and review process for the siting, construction, installation, collocation, modification, operation, and removal of wireless communications facilities in the City's right of way and for payment of fees and charges to be uniformly applied to all applicants and owners of wireless communications facilities or support structures for such facilities.
- (b) Establish basic criteria for applications to site wireless communications facilities in the right of way and to authorize the City Engineer to develop, publish, and from time to time amend applications, design standards, and other associated materials to provide clear guidance to applicants.
- (c) Ensure that wireless communications facilities will conform to all applicable public health, safety, and welfare regulations and will blend into their environment to the greatest extent possible.
- (d) Preserve the character of the City's neighborhoods and historic districts.
- (e) Comply with, and not conflict with or preempt, all applicable state and federal laws, including without limitation Section 101(a) and Section 704 of the Telecommunications Act, Pub. L. 104-104, 101 Stats. 56, 70 (Feb. 8, 1996) (codified as 47 U.S.C. §§ 253(a), 332(c)(7)), as may be amended or superseded, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)), as may be amended or superseded, all FCC rules and regulations to interpret and implement applicable federal statutes, and sections 4939.01 to 4939.08 of the Ohio Revised Code.

949.02 APPLICABILITY

- (a) Existing wireless communications facilities. Wireless communications facilities for which a Right-of-Way Permit has been issued prior to the effective date of this chapter shall not be required to meet the requirements of this chapter, except as set forth in Section 949.06, Nonconforming Wireless Communications Facilities.
- (b) Exclusion for amateur radio facilities. This chapter shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.
- (c) Exclusion for certain over-the-air receiving devices. This chapter shall not govern the installation of any OTARD antennas covered under FCC regulations codified in 47 C.F.R. §§ 1.4000 et seq., as may be amended or superseded. OTARD antennas include, without limitation, direct-to-home satellite dish antennas less than one meter in diameter, television antennas and wireless cable antennas.

- (d) Exclusion for handsets and user equipment. This chapter shall not govern the use of personal wireless devices (e.g., cell phones) or other consumer-grade mobile user equipment used in the public right-of-way.
- (e) Relationship to other chapters. This chapter shall supersede all conflicting requirements of other titles and chapters of this Code regarding the locating and permitting of wireless communications facilities in the right of way.

949.03 GENERAL DEFINITIONS

General definitions as used in this chapter are as follows:

"Antenna" means any apparatus designed for the purpose of the transmission and/or reception of radio frequency ("RF") radiation, to be operated or operating from a fixed location to facilitate wireless communications services including but not limited to the transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds.

"Applicant" means any person that submits an application to the City to site, install, construct, collocate, modify, and/or operate a Wireless Communications Facility in the right of way.

"Base Station" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended and interpreted by the FCC and any other authority with competent jurisdiction, which defines that term as follows:

- (a) A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower.
 - (1) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
 - (2) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
 - (3) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section [of 47 C.F.R.], supports or houses equipment described in paragraphs

(b)(1)(i) through (ii) of this section [of 47 C.F.R.] that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(4) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section [of 47 C.F.R.], does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section [of 47 C.F.R.].

(b) As an illustration and not a limitation, the FCC's definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on utility poles and other structures in the right of way, light standards, or traffic signals when such structure is approved by the City as an appropriate support for wireless transmission equipment. An existing structure without wireless transmission equipment that is replaced with a new one designed to bear the additional weight from wireless transmission equipment constitutes a base station.

"Collocation" means the mounting or installation of a wireless communications facility, antenna, and/or transmission equipment on an existing eligible support structure or potential support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, as more specifically defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended or superseded.

"Design Standards" means those detailed design, construction, and installation guidelines and examples promulgated by the City of Wooster's Engineering Division for the design, construction, and installation of structures supporting wireless communications facilities in the right of way, which are effective insofar as they do not conflict with any federal or state rule or regulation.

"Eligible Facilities Request" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as "[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment."

"Eligible Support Structure" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as "[a]ny tower or base station as defined in this section [of 47 C.F.R.], provided that it is existing at the time the relevant application is filed with the State or local government under this section [of 47 C.F.R.]."

"Existing" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that "[a] constructed tower or base station is existing for purposes

of [the FCC's Section 6409(a) regulations] if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition."

"Person" means, without limitation, a natural person, a corporation, whether nonprofit or for profit, a partnership, a limited liability company, an unincorporated society or association, and two or more persons having a joint or common interest.

"Potential Support Structure" means an existing building or structure, other than a tower as defined in this section, that may be transformed into a base station through the mounting or installation of an antenna or transmission equipment after the City approves it as a support structure and the permittee installs transmission equipment pursuant to such approval; potential support structures include but are not limited to buildings, steeples, water towers, utility poles, light poles, City-owned structures in the right of way, and outdoor advertising signs.

"Right of Way" means real property for or devoted to (1) public transportation purposes; or (2) the placement of the city's municipal utility easements and other traditional uses along a transportation route, whether by dedication, prescription, or otherwise, as well as the spaces above and below. In addition to the foregoing, the definition of right of way includes, without limitation, public highways, streets, avenues, alleys, sidewalks, bridges, tree lawns, aqueducts, and viaducts within the city.

"Right-of-Way Permit" means a permit for any work within or occupancy of the right-of-way, issued by the City's Engineering Division.

"Site" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6) as applicable to facilities in the public right-of-way and as may be amended, which provides that "for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground."

"Substantial change" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, and as applicable to facilities in the public right-of-way, which defines that term as a modification that:

- (a) increases the overall height by more than 10% or by more than 10 feet (whichever is greater);
- (b) involves adding an appurtenance to the body of the structure that would protrude more than 6 feet from the edge of the structure;
- (c) involves the installation of any new equipment cabinets on the ground if there are no existing ground-mounted equipment cabinets associated with the structure;

- (d) involves the installation of any new ground-mounted equipment cabinets that are more than ten percent (10%) larger in height or overall volume than any existing ground-mounted equipment cabinets associated with the structure;
- (e) involves excavation or deployment of equipment outside the area in proximity to the structure and other transmission equipment already deployed on the ground;
- (f) would defeat the existing concealment elements of the support structure as determined by the Engineering Division; or
- (g) does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in 47 C.F.R. § 1.40001(b)(7)(i) through (iv).

For clarity, the definition in this chapter includes only the definition of a substantial change as it applies to facilities within the public right-of-way. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012, the date that Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation Act.

"Tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site, as more specifically defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended or superseded.

"Transmission Equipment" means any equipment that facilitates transmission of any FCC licensed or authorized wireless communications service, including but not limited to radio transceivers, antennas, and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply, as more specifically defined by the FCC in 47 C.F.R. § 1.40001(b)(8). This definition includes equipment in any technological configuration associated with any FCC authorized wireless transmission, licensed or unlicensed, commercial mobile, private mobile, fixed wireless microwave backhaul, and fixed broadband.

"Wireless Communications Facility" means any unstaffed installation for the transmission and/or reception of radio frequency signals for wireless communications services, typically consisting of a tower or base station, transmission equipment, equipment cabinets, and all materials or techniques used to conceal the installation. This term includes (but is not limited to) micro wireless facilities as defined in Ohio Revised Code Section 4939.01(F).

"Wireless Communications Service" means any FCC-licensed or authorized wireless communication service including, without limitation, any personal wireless services, as defined in 47 U.S.C. § 332(c)(7)(D).

949.04 APPLICATIONS

- (a) Requirement. Anyone seeking to site a Wireless Communications Facility in the right of way shall first duly file a written application with the Engineering Division, in accordance with the requirements in this section and the application requirements set forth in the Design Standards as modified from time to time by the City Engineer.
- (b) Single facility per application. A single application shall propose modification of no more than one existing eligible support structure, installation on a potential support structure, or construction of a new tower or base station.
- (c) Application fee. The application fee shall be in accordance with the Engineering Division's fee schedule, as modified from time to time.
- (d) Recovery of additional costs incurred in processing application. The Engineering Division is authorized to charge the applicant for recovery of additional, reasonable costs incurred in its analysis, evaluation, and response to an application under this chapter if the actual costs of review exceed the application fee. Nothing in the reasonableness limitation on additional costs shall be construed to bar or limit the City's authority to incur costs it deems necessary or appropriate in connection with the application. Additional costs may include unforeseen City staff review costs and the costs of third-party technical experts hired to assist with review application. No Right-of-Way Permit shall be issued until and unless the applicant pays the application fee and such additional costs as are authorized to be recovered under this paragraph.
 - (1) Authorization to retain independent consultants. The City Engineer may, in his or her discretion, and at any time in the application review process, select and retain independent consultants in connection with any permit application. In the event that the Engineering Division decides to retain an independent consultant for technical review, it shall send written notice to the applicant including a nonbinding estimate of the cost for such review. The applicant shall have five business days from the date of mailing of notice to elect to withdraw the application without any liability for any costs or expenses in

connection with the independent technical review.

- (2) Scope. The Engineering Division may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Technical review issues may include, but are not limited to:
- A. permit application completeness or accuracy;
 - B. planned compliance with applicable RF exposure standards;
 - C. whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;
 - D. the applicability, reliability, and/or sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
 - E. any other issue that requires expert or specialized knowledge as identified by the Engineering Division.
- (3) No permit until payment. The applicant must pay for the cost of consultant technical review and for the technical consultant's testimony in any hearing as requested by the Engineering Division. No permit shall be issued to an applicant where that applicant has not timely paid any fee required under this chapter or if the applicant owes payment on outstanding invoices for costs recoverable by the City under this chapter.

949.05 APPLICATION REVIEW AND RIGHT-OF-WAY PERMIT

- (a) General standard of review for wireless communications facilities. All wireless communications facilities in the right of way shall conform to the Design Standards. The Engineering Division shall review and consider each application according to the application classifications, review processes, and deployment standards described in the Design Standards.
- (b) Written decision. After the Engineering Division renders a decision on an application, it shall send written notice to the applicant. Any denial shall include the reasons for the denial and information regarding the process for an appeal.
- (c) Approval. Approval of an application and issuance of a Right-of-Way Permit shall include the following permissions:
- (1) Permission to construct. Permission to construct the approved wireless communications facility, subject to any conditions established by the

Engineering Division to carry out the purposes and intent of this chapter.

- (2) Right-of-Way permission. Right-of-way occupancy permission, granting the applicant permission to occupy the right of way at the proposed site and subject to (a) the standard conditions required by Design Standards and Right-of-Way Permit and (b) any additional conditions required by the City Engineer to carry out the purposes and intent of this chapter. The Right-of-Way Permit shall not convey title, equitable or legal, in the right of way.
- (d) Restrictions on Right-of-Way Permits. A Right-of-Way Permit may be transferred upon notification to the city and acceptance by the transferee to allow the transferee to site wireless facilities in the same location on the same supporting structure as the transferor. Such a transfer may be made only to a provider who possesses a current Right-of-Way Permit from the city for siting wireless facilities elsewhere in the right of way.
- (e) Denial. The city reserves the right to deny an application if any one of the following conditions exist:
 - (1) The applicant has not demonstrated that its application conforms to the provisions of this chapter, including the Design Standards established pursuant to this chapter;
 - (2) The applicant is not authorized to conduct business in the State of Ohio;
 - (3) For any application submitted as an eligible facilities request, the applicant has failed to show that the project qualifies for approval pursuant to 47 U.S.C. § 1455(a) and the related FCC regulations at 47 C.F.R. § 1.40001 et seq.;
 - (4) For any application for a Right-of-Way Permit not involving an eligible facilities request, as defined by the FCC in 47 C.F.R. § 1.40001, the applicant has failed within the prior three years to comply or is presently not in full compliance with the requirements of this chapter with regard to another Wireless Communications Facility that is not the subject of the application in question;
 - (5) The applicant is in default of its obligation to pay to the city fees imposed by this chapter;
 - (6) The design or location does not comply with the relevant standards promulgated by the American Association of State Highway and Transportation Officials (AASHTO) or the Ohio Department of Transportation (ODOT) and utilized by the Engineering Division for construction in the right of way;

(7) The design or location does not comply with current or proposed Americans with Disabilities Act Accessibility Guidelines (ADAAG) promulgated by the United State Access Board.

(f) Appeal of denial on the merits. Upon denial of an application for failure to meet the requirements of this chapter, the applicant may appeal the decision in accordance with Ohio Revised Code Chapter 2506.

(g) Limited exemption for personal wireless service facilities. Federal law prohibits a permit denial when it would effectively prohibit the provision of personal wireless services. Due to wide variation among wireless facilities and technical service objectives, and due to changed circumstances over time, a limited exemption for proposals in which strict compliance with this chapter would effectively prohibit personal wireless services serves the public interest. Circumstances in which an effective prohibition may occur are extremely difficult to discern. Therefore, in the event that any applicant asserts that strict compliance with any provision in this chapter, as applied to a specific proposed wireless communications facility, would effectively prohibit the provision of personal wireless services, the City Engineer may grant a limited, one-time exemption from strict compliance, subject to the following provisions:

(1) Required findings. The City Engineer shall not grant any exemption unless the applicant provides each of the following:

- A. Evidence that the proposed wireless facility qualifies as a "personal wireless services facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii);
- B. A clearly defined and reasonable technical service objective and a clearly defined potential site search area; and
- C. A meaningful comparative analysis that includes the factual reasons why: (1) any alternative location(s) or design(s) suggested by the City or otherwise identified in the administrative record are not technically feasible, and (2) the proposed location and design deviation is the least noncompliant location and design necessary to reasonably achieve the applicant's technical service objective.

(2) Scope of exemption. The City Engineer shall limit the exemption to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its reasonable technical service objectives. The Engineering Division may adopt conditions of approval specific to a permit issued as a limited exemption pursuant to this section, as reasonably necessary to promote the purposes in this chapter and protect the public health, safety,

and welfare.

949.06 NONCONFORMING WIRELESS COMMUNICATION FACILITIES

- (a) Any wireless communications facility sited in the right of way that is legally in existence on the date of the adoption of this chapter but that does not comply with the requirements of this chapter shall be permitted to remain in the right of way but shall be considered a nonconforming wireless communications facility.
- (b) As of the effective date of the ordinance establishing this chapter, the owner of the nonconforming facility and the facility itself are subject to the standard conditions found in this chapter and the Design Standards.
- (c) If a nonconforming wireless communications facility is damaged or destroyed beyond repair, any replacement facility must be designed in accordance with all provisions of this chapter and the Design Standards.
- (d) The provisions in this section shall not be applied to prohibit or deny any collocation or modification pursuant to an application filed for an eligible facilities request, as required by FCC regulations.

949.07 SEVERABILITY

The provisions of any part of this chapter are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances, is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.

949.08 PENALTIES

- (a) Any person who shall erect, construct, reconstruct, alter, repair, convert, attach, or maintain any wireless communications facility in violation of any of the terms of this chapter, or who, being the owner or agent of the owner of any lot, tract, or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach, or maintain any such facility, shall be deemed to have violated the provisions above and shall be fined a penalty of \$750 for each day during the period such violation continues.
- (b) If any wireless communications facility is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this chapter or of any regulations made pursuant hereto, the proper officer of the City, in addition to other remedies, may institute in the name of the City any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection,

