



# City Council Agenda

Monday, October 9, 2023 at 7:00 pm

6550 N. High Street, Worthington, Ohio 43085

1. Call to Order
2. Roll Call
3. Pledge of Allegiance

## Public Hearings

### 4. Orange Township Joint Economic Development District (JEDD)

*Executive Summary:* Due to an administrative error, a new public hearing will be held in compliance with ORC 7.15.70(D)(2) regarding City Council's consideration of forming a Joint Economic Development District with Orange Township.

*Recommendation:* Hold Public Hearing per Ohio Revised Code 715.70(D)(2)

## Reports of City Officials

### 5. Policy Item(s)

#### a. Flavored Tobacco

*Executive Summary:* Information and a draft ordinance will be provided and discussed regarding a proposal to ban flavored tobacco.

*Recommendation:* If Council is supportive, provide staff direction regarding finalizing the draft ordinance for introduction at a future Council meeting.

#### b. Chickens

*Executive Summary:* Staff will provide an update on the work done regarding backyard chickens and have invited Columbus Public Health to present information regarding their backyard chicken program.

#### c. September 2023 Financial Report

*Executive Summary:* The financial report for September 2023 is attached.

*Recommendation:* Motion to accept as presented.

### 6. Discussion Item(s)

**a. Overview - Proposed 2024 Operating Budget & Five-Year Forecast**

*Executive Summary:* Staff will provide an overview of the Proposed 2024 Operating Budget and the associated five-year financial forecast, which were distributed on October 2, 2023.

**b. Vision Implementation Teams - Status Update**

*Executive Summary:* Time is provided to discuss the current status and next steps for the Vision Implementation Teams.

**c. Current Initiatives**

*Executive Summary:* Time is provided, as needed, to discuss the timeline and status of current initiatives. A document displaying the timelines for the initiatives is attached.

## **Reports of Council Members**

### **Other Business**

### **Executive Session**

### **Adjournment**

#### **7. Motion to Adjourn**



**STAFF MEMORANDUM**  
**City Council Meeting – October 9, 2023**

Date: October 4, 2023

To: Robyn Stewart, Acting City Manager  
David McCorkle, Assistant City Manager/Economic Development Director

From: Ethan Barnhardt, Management Assistant/Special Projects Coordinator

Subject: Orange Township Joint Economic Development District

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**EXECUTIVE SUMMARY**

Due to an administrative error, a new public hearing will be held in compliance with ORC 7.15.70(D)(2) regarding the City Council's consideration of forming a Joint Economic Development District with Orange Township.

**RECOMMENDATION**

Hold Public Hearing per Ohio Revised Code 715.70(D)(2)

**BACKGROUND/DESCRIPTION**

**PUBLIC HEARING REQUIREMENT**

Per ORC 715.70(D)(2), before the City of Worthington passes a resolution approving a contract to create a Joint Economic Development District (JEDD), the City is required to hold a public hearing concerning the district contract. During the thirty days prior to this public hearing, a copy of the contract designating the JEDD, a map and description of the areas to be included in the JEDD, and the economic development plan for the JEDD have been available for public inspection at City Hall.

**JOINT ECONOMIC DEVELOPMENT DISTRICTS**

In 1993, the Ohio General Assembly passed legislation enabling local jurisdictions to create special purpose districts known as Joint Economic Development Districts (JEDD) to encourage economic development, create jobs, and improve the economic welfare of citizens. JEDDs allow for levying a district-wide income tax on development within a township area that otherwise would not have the authority to do so.

The primary benefit to the township is that they do not have to annex their land, giving up property tax revenue, and they will also begin collecting a portion of the income tax revenues that otherwise would not have been collected in the unincorporated area. The primary benefit for the municipality is that the township shares a portion of the new income tax revenues with the City.

ORANGE TOWNSHIP JEDD WITH THE CITY OF WORTHINGTON

In early 2022, the City was contacted by Orange Township about the possibility of partnering together to create a new JEDD in the Township. Worthington can work with Orange Township because, under state law, municipalities and townships may create a JEDD if they are not separated by more than one other intervening municipal corporation or township. In this case, Sharon Township separates Worthington and Orange Township.

The Township has recently worked to amend its zoning overlay on the Route 23 corridor to include Commercial/Office, Mixed, and Advanced Manufacturing uses. The Township is requiring new commercial and industrial applicants to opt into joining a future JEDD as a condition of the zoning.

The proposed split for the income taxes collected would be 75/25, with the City of Worthington collecting 25%. It is projected that the initial amount of revenue projected to be generated is similar in scale to what is being collected under the JEDD with Sharon Township. However, the potential growth within the new zoning overlay could lead to significant revenue generation for both the City and Township over time as land is developed and existing properties are redeveloped.

It is important to note that as properties are being redeveloped, legislative action amending the JEDD agreement will need to be passed by both contracting entities before properties will be added, which will require staff time to administer.

**Orange-Worthington JEDD Estimated Income Tax Revenue Assumptions**

Estimated Annual Payroll (82 Employees)	\$3,610,025
Total Estimated Project Income Tax Revenue @ 2.5% <i>(Minus 5% RITA &amp; Admin Costs)</i>	\$85,738
25% Annualized City Share	<b>\$21,435</b>

NEXT STEPS

- The first step is giving 30 days’ notice and making the draft contract and exhibits available for public review before holding a public hearing in compliance with ORC 7.15.70(D)(2).
  - That public hearing is currently set for **October 9, 2023**, at the Regular

### Meeting of the Worthington City Council

- After the public hearing, a resolution may be introduced to approve a contract with Orange Township to create a Joint Economic Development District.
  - Staff anticipates bringing back a resolution to approve the JEDD contract at the **October 16, 2023**, City Council meeting.
- Under O.R.C. 715.72(P)(1)(e), the City of Worthington will be required to appoint two board members to the JEDD.
  - The first appointment shall represent the City, while the second appointment shall represent the business owners in the district.
  - Additional legislation will need to be brought before the Council to appoint representatives for the City to the JEDD board.
- Per the JEDD Contract, the City must enter into a JEDD Income Tax Agreement to provide administration, collection, and distribution of the JEDD Income Tax.
  - Additional legislation will need to be brought before Council to enter into the Income Tax Agreement

### **ATTACHMENTS**

- Orange Township & City of Worthington Joint Economic Development District (JEDD) Contract w/Exhibits

**JOINT ECONOMIC  
DEVELOPMENT DISTRICT  
CONTRACT**

By and Among

**TOWNSHIP OF ORANGE  
and  
CITY OF WORTHINGTON**

Dated as of

**\_\_\_\_\_**, 202**█**

**JOINT ECONOMIC DEVELOPMENT  
DISTRICT CONTRACT**

This Joint Economic Development District Contract (the “Contract”) is made and entered into as of [REDACTED], 202 [REDACTED], by and among the Township of Orange located in the County of Delaware, Ohio (the “Township”) and the City of Worthington, Ohio (the “City”). The Township and City are hereinafter collectively referred to as the “JEDD Parties” and individually a “JEDD Party”, in accordance with the terms and provisions set forth herein.

**RECITALS**

A. The JEDD Parties desire to create a joint economic development district pursuant to Ohio Revised Code Section 715.72 (the “JEDD Statute”) to facilitate economic development, to create jobs and employment opportunities and to improve the economic welfare of the people of the Township, the City, and the State of Ohio.

B. In accordance with Ohio Revised Code Section 715.72(C)(1), the territory of each of the JEDD Parties is contiguous to the territory of at least one other JEDD Party, or contiguous to the territory of a township or municipal corporation that is contiguous to a JEDD Party.

C. The legislative authorities of the JEDD Parties have each approved, authorized and directed the JEDD Parties to make and enter into this Contract by and through their respective officers in accordance with Ordinance No. [REDACTED], enacted by the City Council of the City on [REDACTED], 202 [REDACTED], and Resolution No. [REDACTED], adopted by the Board of Trustees of the Township on [REDACTED], 202 [REDACTED].

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Contract, the Township and the City agree as follows:

Section 1. Creation of District. The Township and the City hereby create a joint economic development district in accordance with the terms and provisions of this Contract and the JEDD Statute. The joint economic development district created by this Contract shall, initially, encompass the territory described in Exhibit A attached to this Contract, and incorporated herein by this reference, shall be known as the “Orange Township Joint Economic Development District”, and shall hereinafter be referred to as the “District.”

Each JEDD Party hereby acknowledges and agrees as follows with respect to this Contract and the District:

- A. that it is entering into this Contract freely and without duress or coercion;
- B. that the creation of the District and the levy of income tax within the District as provided herein will enable the City, the Township and the District to more efficiently provide governmental services to the area within the District and to more effectively promote economic development within the District, the City, and the Township;
- C. that the District shall, and it is the purpose of the District to, facilitate economic development to create or preserve jobs and employment opportunities and to improve the economic welfare of the people in the State, the County, the City, and the Township; and
- D. that consideration exists to support this Contract.

Subject to any applicable provisions of the Ohio Revised Code now existing or hereafter enacted, including Section 715.72(L) of the JEDD Statute, the parties may amend this Contract, including Exhibit A, from time to time by a writing approved by the legislative authorities of the contracting parties, to (a) add real property within the Township or the City to the territory of the District, or (b) to remove real property from the territory of the District; provided that the public hearing requirement of the JEDD Statute has been met with respect to such amendment.

Section 2. Term. The initial term of this Contract shall commence on the first day immediately after the occurrence of all of the following: (i) the Township's and the City's execution of this Contract, and (ii) the expiration of any statutory period permitting a referendum of the Township's resolution or the City's ordinance. Such date is hereinafter referred to as the "Effective Date." The initial term of this Contract shall terminate December 31, 2073, unless otherwise terminated prior to that date as hereinafter provided. The parties may renew for additional successive terms of twenty (20) years by written mutual consent of the parties, adopted by official legislative action from the respective bodies. Under no circumstance shall this Contract be effective prior to the 31<sup>st</sup> day after its approval in accordance with Ohio Revised Code Section 715.72, including approval by the electors of the Township if required.

This Contract may be terminated at any time by mutual consent of the Township and the City. In order for such termination to be effective, the legislative actions of the Township and the City providing for that termination must occur and be effective within a ninety (90) day period.

This Contract may be terminated by the Township or the City if it is determined in a "Terminable Final Judgment" (as defined below) that the District Income Tax is not legal or valid or that the District may not levy, collect or distribute the proceeds of the District Income Tax in accordance with this Contract.

A "Terminable Final Judgment" means a judgment by a court of competent jurisdiction for which either (i) the period of time permitted for an appeal of that judgment has expired without an appeal, or (ii) no further appeal is permitted.

If the Township or the City elects to terminate this Contract as the result of a Terminable Final Judgment, the terminating entity must deliver written notice of the termination to the other

entity and the Board. The effective date of such termination shall be not less than one hundred and eighty (180) days after the receipt of the notice by the other JEDD Parties and the Board.

Upon termination of this Contract, any property and assets of the District shall be used to reduce or settle any obligations of the District, and any remaining real or other personal property and assets shall be distributed to the Township. Upon termination of the Contract, any records or documents of the District shall be placed with the Township for safekeeping, which records and documents shall be maintained by the Township as are public records of the Township.

This Contract shall continue in existence throughout its term and shall be binding on the Township and the City and on any successors thereof, whether by annexation, merger, or otherwise.

Section 3. Provision of Services to the District.

(a) The Township shall provide, or cause to be provided, the following services to the District: all usual and customary governmental services furnished by the Township to other unincorporated portions of the Township, including, but not limited to, fire and emergency medical services, road maintenance, zoning and code enforcement. The Township will also provide accommodation for meetings of the Board, maintenance of the records of the District and any necessary staffing for the Board.

(b) The City shall provide, or cause to be provided, the following services to the District: the administration, collection and enforcement of the District Income Tax pursuant to the Tax Agreement (as hereinafter defined). The City will also engage in economic development activities which serve to complement and benefit potential economic development areas located in, adjacent to and/or around the District as determined in the sole discretion of the City. The foregoing notwithstanding, the City shall not commence or engage in said activities without

receiving a request by the Township, and shall not conduct said activities without the engagement, advisement, and/or supervision of the Township. The City is not expected or required to undertake any promotional activity to the detriment of development areas located within the boundaries of the City.

Section 4. Economic Development Plan. The Economic Development Plan for the District shall consist of that Economic Development Plan attached hereto and incorporated herein as Exhibit B to this Contract, and includes a schedule for the provision of new, expanded, enhanced or additional services, facilities and improvements to be provided in the District.

Section 5. Schedule for the Collection of the District Income Tax. A schedule for the collection of the District Income Tax within the District is attached hereto and incorporated herein as Exhibit C to this Contract.

Section 6. Board of Directors. The Township and City hereby establish the Board to govern the District in accordance with Ohio Revised Code Section 715.72(P). If there are businesses located and persons working within the area or areas to be included within the District, then the Board shall initially consist of the following five members:

- (a) one member representing the City;
- (b) one member representing the Township
- (c) one member representing owners of businesses located within the District;
- (d) one member representing the persons working within the District; and
- (e) one member selected by the above-described other members.

The Worthington City Council shall appoint the member described in (a) and (c) above. The Board of Trustees of the Township shall appoint the member described in (b) and (d) above.

If there are no businesses located or persons working within the area or areas to be included in the District, the Board shall be composed of the members as set forth in (a), (b) and (e), above. If the Board is originally composed of the members as set forth in (a), (b) and (e), above, and subsequently one or more businesses are located, or persons begin working, in the District, the Board shall be increased to five (5) members by the appointment of the members as set forth in (c) and (d), above, in accordance with the procedure for such appointments as hereinbefore set forth.

The terms of service of each member of the Board shall be established in accordance with Ohio Revised Code Section 715.72(P). A member of the Board may be reappointed to the Board, but no member shall serve more than two consecutive terms on the Board. The member of the Board described in (e), above, shall serve as Chairperson of the Board. Each Board member shall attend all meetings of the Board unless excused by action of a majority of the other members. A Board member who is absent without being excused for three (3) consecutive meetings shall be deemed to have resigned as a member of the Board. In the event of the death, disqualification, removal or resignation of any member of the Board, a new member shall be appointed in the same manner as set forth above to serve as successor for the unexpired term of such member.

The Board members described in (a), (b), (c) and (d), above shall serve at the pleasure of the entity appointing such member(s). Unless sooner removed, a member shall serve until such member's successor is appointed and qualified.

The members of the Board shall serve without compensation as such members. Necessary and authorized expenses incurred by members on behalf of the District shall be reimbursed from District funds in accordance with procedures established by the Board.

The Board shall elect the following officers (together with the Chairperson, the "Officers") from among its members: a Vice Chair and a Secretary and a Treasurer, provided that the Secretary

and Treasurer may be the same person. Such Officers shall be elected at the first meeting of the Board every year for a one-year term. The Board shall establish a procedure for conducting those elections. The Officers shall perform such duties as provided herein and such additional duties as may be provided from time to time by the Board.

Section 7. Powers, Duties, Functions. The Board shall meet at least once each calendar year on a date determined by the Board, provided that the first meeting of the Board shall occur within one hundred twenty (120) days of the Effective Date. The Board shall adopt procedures for holding and conducting regular and special meetings. Meetings may be held at the offices of the Township or at other locations within the Township as determined by the Board. The principal office and mailing address of the District and the Board shall be determined by the Board at its first meeting and may be changed by the Board from time to time. The Board may maintain an office within the Township. If the Board consists of three members, a minimum of two members shall constitute a quorum for Board meeting purposes. If the Board consists of five members, a minimum of three members shall constitute a quorum for Board meeting purposes. The Board shall act through resolutions adopted by the Board. In the case of a three-member Board, a resolution must receive the affirmative vote of at least two members of the Board to be adopted. In the case of a five-member Board, a resolution must receive the affirmative vote of at least three members of the Board to be adopted. A resolution adopted by the Board shall be immediately effective unless otherwise provided in that resolution.

The Board may adopt by-laws for the regulation of its affairs and the conduct of its business consistent with this Contract.

The Chairperson shall preside over and conduct the meetings of the Board in accordance with its by-laws or other procedures adopted by the Board. The Chairperson or any two other

members of the Board may call special meetings of the Board by giving 24-hour written notice of such meeting to each member delivered to his or her residence or place of business.

The Vice Chairperson shall act as Chairperson in the temporary absence of the Chairperson.

The Secretary shall be responsible for the records of the Board including, but not limited to, correspondence and minutes of the meetings of the Board.

The Treasurer shall be the fiscal officer of the Board and shall be responsible for all fiscal matters of the Board including, but not limited to, the preparation of the budget and the appropriations resolution, paying or providing for the payment of expenses of operation of the Board, receiving, safekeeping and investing, or providing for the receipt, safekeeping and investment of, funds of the Board and maintaining, or providing for the maintenance of, accurate accounts of all receipts and expenditures.

The Board shall designate by resolution, or in its by-laws, those Officers who may sign documents on behalf of the Board.

The Board shall adopt an annual budget for the District. The fiscal year of the District shall be the same as the fiscal year of the Township (which is currently January 1 through December 31). The budget shall estimate the revenues of the District and expenses of the operation of the District. The Board shall establish an appropriations procedure to provide for payment of the operating expenses of the District.

The Board, on behalf of the District, shall maintain a system of accounting established and administered in accordance with generally accepted accounting principles applicable to government entities and consistently applied, in such form as required by the State of Ohio. The Board shall furnish to the Worthington Director of Finance and to representatives of the Township

as soon as available and in any event within seventy-five (75) days after the end of each fiscal year the following reports:

(A) A financial report for the fiscal year then ended, together with all notes thereto, fairly presenting the financial condition and results of operations of the District for the periods covered.

(B) Copies of any State mandated audits received by the Board on behalf of the District.

It is expressly understood that the Board shall provide such items to the Worthington Director of Finance and to representatives of the Township in a timely manner. In addition, the Board shall provide the Worthington Finance Director and to representatives of the Township such other information as they reasonably request.

The Board is authorized to take such necessary and appropriate actions, or establish such programs, to facilitate economic development in the District in accordance with the purpose of this Contract.

The Board, on behalf of the District, may:

(1) purchase, receive, hold, lease or otherwise acquire, and sell, convey, transfer, lease, sublease or otherwise dispose of, real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including but not limited to, any real or personal property acquired by the District from time to time in the satisfaction of debts or enforcement of obligations, or otherwise;

(2) acquire, purchase, construct, reconstruct, enlarge, furnish, equip, maintain, repair, sell, exchange, lease or rent to others, lease or rent from others, or operate facilities for the District;

(3) make available the use or services of any District facility to one or more persons, one or more governmental agencies, or any combination thereof;

(4) apply to the proper authorities of the United States pursuant to appropriate law for the right to establish, operate, and maintain foreign trade zones within the area or jurisdiction of the District and to establish, operate and maintain such foreign trade zones;

(5) establish and maintain such funds or accounts as it deems necessary, either of its own or in conjunction with or through a JEDD Party;

(6) promote, advertise and publicize the District and its facilities, provide information relating to the District and promote the interests and economic development of the District, the JEDD Parties, the County and the State;

(7) make and enter into all contracts and agreements and authorize one or more Officers to sign all instruments necessary or incidental to the performance of its duties and the execution of its powers under this Contract;

(8) employ managers and other employees and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the purposes of this Contract, and fix the compensation thereof, which shall be payable from any available funds of the District;

(9) receive and accept from any federal agency, state agency or other person grants for or in aid of the construction, maintenance or operation of any District facility, for research and development with respect to District facilities or for programs or other projects of the District, and receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants, aid or contributions are made; and

(10) purchase fire and extended coverage and liability insurance for any District facility and for the office of the District and such other insurance protecting the District and its Board, Officers and employees against liability for damage to property or injury to or death of persons arising from its operations, and any other insurance that the Board may determine to be reasonably necessary.

The Board may enter into an agreement with a JEDD Party to administer and implement employment and discharge of, and salaries, benefits and work rules established for, employees of the District. All costs of employment, including but not limited to, compensation, salaries, benefits, taxes and insurance, shall be paid from revenues of the District. The Township and the City shall not be the employer of the employees of the District and shall not have any liability for any costs of employment or any other costs or expenses arising from such employment.

The Board may enter into an agreement with a JEDD Party to provide financial and accounting services, administrative support services, economic development consulting, or other necessary services.

The Board may provide by resolution that the purchases of real or personal property and other goods or services shall comply with applicable rules or regulations of the Township.

The Board is authorized to do all acts and things necessary or convenient to carry out the powers granted in this Contract.

Section 8. Levy of District Income Tax. The Board is hereby authorized to levy an income tax within the entire District in accordance with Ohio Revised Code Section 715.72 (the “District Income Tax”). The resolution of the Board levying the District Income Tax shall require that a percentage, not to exceed two percent (2%) of the gross amount of the District Income Tax, shall be set aside for the long-term maintenance and operation of the District (the “Maintenance Fees”).

The Board shall enact the District Income Tax authorized by this Section at or within one hundred twenty (120) days after the initial meeting of the Board. The rate of the District Income Tax shall be equal to the rate of the municipal income tax levied by the City (currently 2.5%) and shall change from time to time to remain equal to the rate of the municipal income tax levied by the City. The Board and/or the JEDD Parties shall take all actions necessary in order to effectuate such change(s). The revenues of the District Income Tax shall be used to carry out the Economic Development Plan for the District and for any other lawful purpose pursuant to the provisions of this Contract. The resolution of the Board levying the District Income Tax shall provide that the District Income Tax shall be effective as soon as legally permissible but, in any event, no later than ninety-five (95) days after the adoption of that resolution. The provisions of the District Income Tax within the Tax Agreement shall be similar to the provisions of the City's municipal income tax and acceptable to the City Director of Finance. The District Income Tax shall apply in the entire District throughout the term of this Contract notwithstanding that all or a portion of the District becomes subject to annexation, merger or incorporation.

Section 9. Administration of District Income Tax. In accordance with Ohio Revised Code Section 715.72 of the Revised Code, the Board shall enter into an agreement with the City to administer, collect and enforce the District Income Tax on behalf of the District (the "Tax Agreement"). The Tax Agreement shall provide that the City Director of Finance shall be the Administrator of the District Income Tax (the "Administrator"), who shall be responsible for the receipt and safekeeping of the District Income Tax. The Tax Agreement shall also provide that the Administrator shall make an annual report to the City, Township, and Board regarding the receipt and distribution of the District Income Tax. The Tax Agreement shall also provide for the payment of a fee by the District to the City to reimburse the City for the actual costs incurred by

the City in administering, collecting and enforcing the District Income Tax on behalf of the District (the “City Administration Fee”) in accordance with the formula contained therein, which formula shall be not less than the amount charged to the City by the Regional Income Tax Authority (“RITA”) for the administration, collection and enforcement of the City’s municipal income tax levied within the corporate limits (which rate is currently 3%).

Section 10. Distribution of District Income Tax. On the first business day of each quarter, the Administrator shall provide the District with the proceeds of the Maintenance Fee, which shall be an amount sufficient for the long-term maintenance of the District and to pay the outstanding or expected expenses of the operation of the District for that quarter (excluding the City Administration Fee which amount shall be paid first from the District Income Tax revenues in accordance with the Tax Agreement) in accordance with the budget and the appropriations resolution (as amended from time to time) of the Board. The cost of state mandated audits of the District shall first be paid from sums allocated to the District and, if insufficient, from the District Income Tax revenue. In addition, a JEDD Party may, at its option, contribute additional funds to the District to be used for District purposes.

The proceeds of the District Income Tax (including all investment earnings on such proceeds, and minus any refunds to taxpayers) in excess of those provided to the District (and those paid as a reimbursement to the City for the City Administration Fee under the Tax Agreement) shall be paid or credited by the Administrator to the JEDD Parties without need of further action by the Treasurer or the Board. On the 10<sup>th</sup> business day of each quarter, the Administrator shall allocate the remaining amount of the District Income Tax then on deposit with the Administrator into two (2) parts to be distributed to the JEDD Parties as follows:

(a) To the City, an amount equal to 25 percent of the remaining amount. That amount may be used by the City for any lawful purpose; and

(b) To the Township, an amount equal to 75 percent of the remaining amount. That amount may be used by the Township for any lawful purpose.

Section 11. Annexation; Other Revenues. No proceeding pursuant to Chapter 709 of the Ohio Revised Code that proposes the annexation to, merger of, or consolidation with a municipal corporation of any unincorporated territory within the District may be commenced at any time during the term of the Contract. This provision does not apply if the Board of Township Trustees of the Township whose territory is proposed to be annexed, merged or consolidated passes a resolution consenting to the commencement of the proceeding, which resolution, if passed, shall be filed with the Clerk of the Board of County Commissioners of the County. The Township covenants and represents that it shall not consent to the commencement of such annexation proceedings with a municipal corporation other than the City, and the Township may or may not consent to in its sole and absolute discretion.

Except as set forth in Sections 8, 9 and 10 of this Contract, as to the District Income Tax to be levied in the District, the Township shall retain all of its interest in all other tax revenues generated in the territory in the District, including, but not limited to, real estate, personal property, estate taxes, motel taxes and service levies. Pursuant to Ohio Revised Code Section 715.72(U), no JEDD Party shall grant any tax exemption under Chapter 1728 or Ohio Revised Code Sections 3735.67, 5709.62, 5709.63 and 5709.632 for any property in the District without the express written consent of the other JEDD Party. The JEDD Parties hereby agree for purposes of this Contract that Tax Increment Financing pursuant to Ohio Revised Code Chapter 5709 is not a tax exemption pursuant to the provisions of Ohio Revised Code Section 715.72(U). The City agrees

that the Township shall have the right, in its sole and absolute discretion, to grant Tax Increment Financing within the District for any purpose permitted by Ohio Revised Code Chapter 5709. The City consents to the use of Tax Increment Financing within the District by the Township and agrees that no further consent is required from the City. The City agrees not to withdraw its consent or to object to the use of Tax Increment Financing with the District by the Township even in the event it is later determined that Tax Increment Financing does come within the concept of a tax exemption as those terms are used in Ohio Revised Code Section 715.72. The Township shall also have the right to issue and reissue levies within all areas of Orange Township, including the territory in the District, for any purpose permissible under law.

Section 12. Defaults and Remedies. A failure to comply with the terms of this Contract shall constitute a default hereunder. The entity in default shall have thirty (30) days after receiving written notice from a non-defaulting entity of the event of default to cure that default. If the default is not cured within that time period, the non-defaulting entity may sue the defaulting entity for specific performance under this Contract or for damages or both. Other than as provided in Section 2 hereof, this Contract may not be canceled or terminated because of a default unless the Township and the City agree to such cancellation or termination.

Section 13. Amendments. This Contract may be amended at any time to add property to the District in the manner prescribed by the JEDD Statute and by a written agreement by and among the Township and the City. This Contract may also be amended at any time for any purpose other than adding property to the District by a written agreement by and between the Township and the City.

Section 14. Compliance with Ohio Revised Code Section 715.72(K) and 725.72(O). The Township agrees that it shall, on behalf of itself and the City send any and all notices, and make

all filings, required by Ohio Revised Code Section 715.72(K) and 715.72(O). The City agrees to cooperate with, and provide any necessary information and documents to, the Township necessary for the Township to give such notices and make such filings.

Section 15. Binding Effect. This Contract shall inure to the benefit of and shall be binding upon the Board, the District, the Township and the City and their respective successors. This Contract shall not inure to the benefit of any person or entity other than the Board, the District, the Township and the City.

Section 16. Support of Contract. The Township and the City agree to cooperate with each other and to use their best efforts to do all things necessary for the creation and continued operation of the District. The Township and the City shall support this Contract and shall defend the same against any lawsuits brought against the District or the Board or the Township or the City in conjunction with the District. The expenses and fees of the Board, the Township and the City, including reasonable attorney fees, incurred in any lawsuit brought against the District or the Board or the Township or the City shall be paid or reimbursed from the District Income Tax revenues prior to any distributions to the JEDD Parties. If the District Income Tax revenues are insufficient at any time to pay such expenses and fees, then each of the JEDD Parties shall initially pay their own respective expenses and fees, and the JEDD Parties shall each be reimbursed for the amount of such expenses and fees paid by them when the District Income Tax revenues are available for that reimbursement.

Notwithstanding the foregoing and only to the extent not otherwise covered by insurance, if the District Income Tax revenues are insufficient at any time to pay the expenses and fees of the Board incurred in the defense of a lawsuit brought by a third party within one (1) year of the Effective Date which seeks to terminate or similarly challenge this Contract, the Township shall

undertake the defense on behalf of the Board, and the Township shall be reimbursed for the amount of such expenses and fees paid by the Township when the District Income Tax revenues are available for that reimbursement. In the event of such litigation, the Township shall have the sole and unilateral authority to terminate the Contract without the consent of the other JEDD Parties; provided, however, that the Township shall provide the other JEDD Parties with thirty (30) days prior written notice of such termination. Moreover, the Township shall have the authority to control, compromise and/or settle such litigation on such terms as the Township deems satisfactory.

Section 17. Signing Other Documents. The Township and the City agree to cooperate with one another and to use their best efforts in the implementation of this Contract and to sign or cause to be signed, in a timely fashion, all other necessary instruments and documents, and to take such other actions, in order to effectuate the purposes of this Contract.

Section 18. Severability. Except as provided in Section 2 hereof, in the event that any section, paragraph or provision of this Contract, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,

(1) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,

(2) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and

(3) each section, paragraph, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Section 19. Governing Law. This Contract shall be governed exclusively by and construed in accordance with the laws of the State, and in particular the JEDD Statute. In the event that the JEDD Statute is amended or supplemented by the enactment of a new section(s) of the Revised Code relating to Joint Economic Development Districts, the JEDD Parties may agree at the time to follow either the provisions of the JEDD Statute existing on the date of this Contract or the provisions of the JEDD Statute as amended or supplemented, to the extent permitted by law.

Section 20. Notices. All notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other entity at the address set forth in this Contract or any addendum to or counterpart of this Contract, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Contract, notices shall be addressed to:

The Township at:

Orange Township Board of Trustees  
Attn: Township Administrator  
1680 E. Orange Road  
Lewis Center, Ohio, 43035

With a copy simultaneously sent or delivered to:

Brosius, Johnson & Griggs, LLC

Attn: Julia E. Donnan, Esq. 1600 Dublin Road, Suite 100  
Columbus, Ohio 43215

The City at:

City of Worthington  
Attn: Law Director  
374 Highland Avenue  
Worthington, OH 43085

With a copy simultaneously sent or delivered to:

City of Worthington  
Attn: Economic Development Director  
6550 N. High Street  
Worthington, OH 43085

Section 21. Captions and Headings. The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

Section 22. Counterparts. This Contact may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts will constitute but one and the same instrument.

Section 23. Appropriation. The financial obligations of the City and the Township, as applicable, under this Contract are expressly subject to future ordinances or resolutions of the City Council or the Township Trustees, respectively, appropriating and authorizing the expenditure of such funds as are necessary to meet their respective financial obligations occurring after the current fiscal year. Those obligations, as applicable, of the City or the Township are also subject to the certification of the Director of Finance of the City or the Township Fiscal Officer under Ohio Revised Code Sections 5705.41 and 5705.44. Notwithstanding anything to the contrary contained in this Contract, the financial obligations of the City and the Township, respectively, under this Contract shall be conditioned upon the availability of sufficient funds lawfully appropriated for such purposes.

IN TESTIMONY WHEREOF, the Township and the City have caused this Contract to be duly signed in their respective names by their duly authorized officers as of the date hereinbefore written.

**THE CITY**

By: \_\_\_\_\_  
City Manager

**Approved as to form:**

\_\_\_\_\_  
Worthington Law Director

**THE TOWNSHIP**

By: \_\_\_\_\_  
Township Trustee

**Approved as to form:**

\_\_\_\_\_  
Township Legal Counsel

**DIRECTOR OF FINANCE’S CERTIFICATE**

The undersigned, director of finance of the City, hereby certifies that the moneys required to meet the obligations of the City during the year 202\_\_ under the Contract have been lawfully appropriated by the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: \_\_\_\_\_, 202\_\_

\_\_\_\_\_  
Director of Finance  
City of Worthington, Ohio

**FISCAL OFFICER’S CERTIFICATE**

The undersigned, fiscal officer of the Township, hereby certifies that the moneys required to meet the obligations of the Township during the year 202\_\_ under the Contract have been lawfully appropriated by the Township for such purposes and are in the treasury of the Township or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: \_\_\_\_\_, 202\_\_

\_\_\_\_\_  
Township Fiscal Officer  
Township of Orange, Ohio

**EXHIBIT A-1**

**Orange Township Joint Economic Development District**

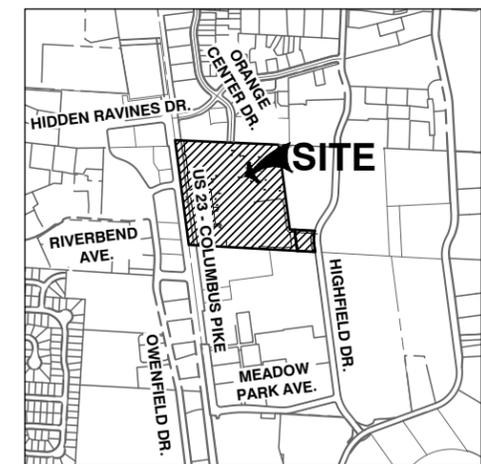
**Description of the District**

The Orange Township Joint Economic Development District (the “JEDD”) consists of:

Parcel Number(s)	Current Zoning
31832101010000	Route 23 Corridor Overlay (RCOD)
31831203005005	Route 23 Corridor Overlay (RCOD)
31832101010000	Zoning District: Planned Commercial (PC)
31831203005005	Zoning District: Planned Commercial (PC)
31823025001000	Zoning District: Planned Commercial (PC)

Except for that residential portion described on Exhibit A-1 page 2, which is attached hereto and incorporated herein by reference, the remainder of Parcel No. 31832101010000 is located within the JEDD.

The map attached as Exhibit A-2 shows the location of the parcels.



**SETBACK DATA**

<b>PARKING SETBACK</b>	6-FT FROM PROPERTY LINE ON ALL SIDES
<b>BUILDING SETBACK (ROAD CLASS A: US-23)</b>	80-FT FROM RIGHT-OF-WAY
<b>BUILDING SETBACK (ROAD CLASS C: HIGHFIELD DR)</b>	50-FT FROM RIGHT-OF-WAY
<b>BUILDING SETBACK (ROAD CLASS C: ORANGE CENTRE DR)</b>	30-FT FROM RIGHT-OF-WAY (DIVERGENCE REQUESTED)
<b>NONRESIDENTIAL USES ABUTTING RESIDENTIAL DISTRICTS</b>	100-FT FROM NORTHERN PROPERTY LINE
<b>BUILDING SETBACK (SIDE YARD)</b>	25-FT FROM PROPERTY LINES ON NORTH AND SOUTH (SETBACK REQUIRED PER NEIGHBORHOOD COMMERCIAL DISTRICT C-2 CODE AND IS SHOWN/LISTED FOR REFERENCE ONLY)
<b>BUILDING SETBACK (REAR YARD)</b>	30-FT FROM PROPERTY LINE ON EAST (SETBACK REQUIRED PER NEIGHBORHOOD COMMERCIAL DISTRICT C-2 CODE AND IS SHOWN/LISTED FOR REFERENCE ONLY)

**NOTES**

1. NO ISLANDS ARE NARROWER THAN 2-FT AT THE NARROWEST POINT TO ALLOW FOR ADEQUATE LANDSCAPING TO TAKE PLACE.
2. LIMITS OF LIGHT DUTY VERSUS HEAVY DUTY ASPHALT PAVEMENT CAN BE PROVIDED IF REQUIRED.
3. ALL SIDEWALKS AND PATHS ARE TO BE CONSTRUCTED OF CONCRETE PAVEMENT EXCEPT FOR THE 10-FT WIDE PATH ALONG ORANGE CENTRE DRIVE WHICH WILL BE ASPHALT PAVEMENT.
4. SQUARE FOOTAGE OF ANCHOR TENANT BUILDING LISTED DOES NOT INCLUDE THE BREEZEWAY

**KEY**

- Unshaded area- residential not included within the JEDD
- Green Shaded Area - Included within JEDD

**REFERENCE**  
 1. EXISTING TOPOGRAPHIC AND PARCEL INFORMATION IS BASED ON FIELD CONDUCTED SURVEY BY CIVIL & ENVIRONMENTAL CONSULTANTS, INC. MARCH 2021

**OWNER/DEVELOPER/APPLICANT**  
**JLP ORANGE, LLC.**  
 4300 EAST FIFTH AVENUE  
 COLUMBUS, OHIO 43219  
 PHONE: 614-449-4414  
 CONTACT: MARK UNGAR  
 EMAIL: MARK.UNGAR@SPGROUP.COM

**ENGINEER/SURVEYOR**  
**CIVIL & ENVIRONMENTAL CONSULTANTS, INC.**  
 250 OLD WILSON BRIDGE ROAD, SUITE 250  
 WORTHINGTON, OHIO 43085  
 PHONE: (614) 310 2075  
 CONTACT: DUSTIN DOHERTY, P.E., MS4-SCP, CPESC  
 EMAIL: DDOHERTY@CECINC.COM

**SITE PLAN**  
 SCALE: 1"=100'

NO.	DATE	DESCRIPTION

**Civil & Environmental Consultants, Inc.**  
 250 Old Wilson Bridge Road - Suite 250 - Worthington, OH 43085  
 614-540-6633 • 888-598-6808  
 www.cecinc.com

**SCHOTTENSTEIN REALTY, LLC**  
**US-23 DEVELOPMENT**  
**ORANGE TOWNSHIP**  
**DELAWARE COUNTY, OHIO**

**DEVELOPMENT PLAN**

DATE: MARCH 2022  
 DRAWN BY: [Name]  
 DWG SCALE: 1"=100'  
 CHECKED BY: [Name]  
 PROJECT NO: 305-106  
 APPROVED BY: [Signature]

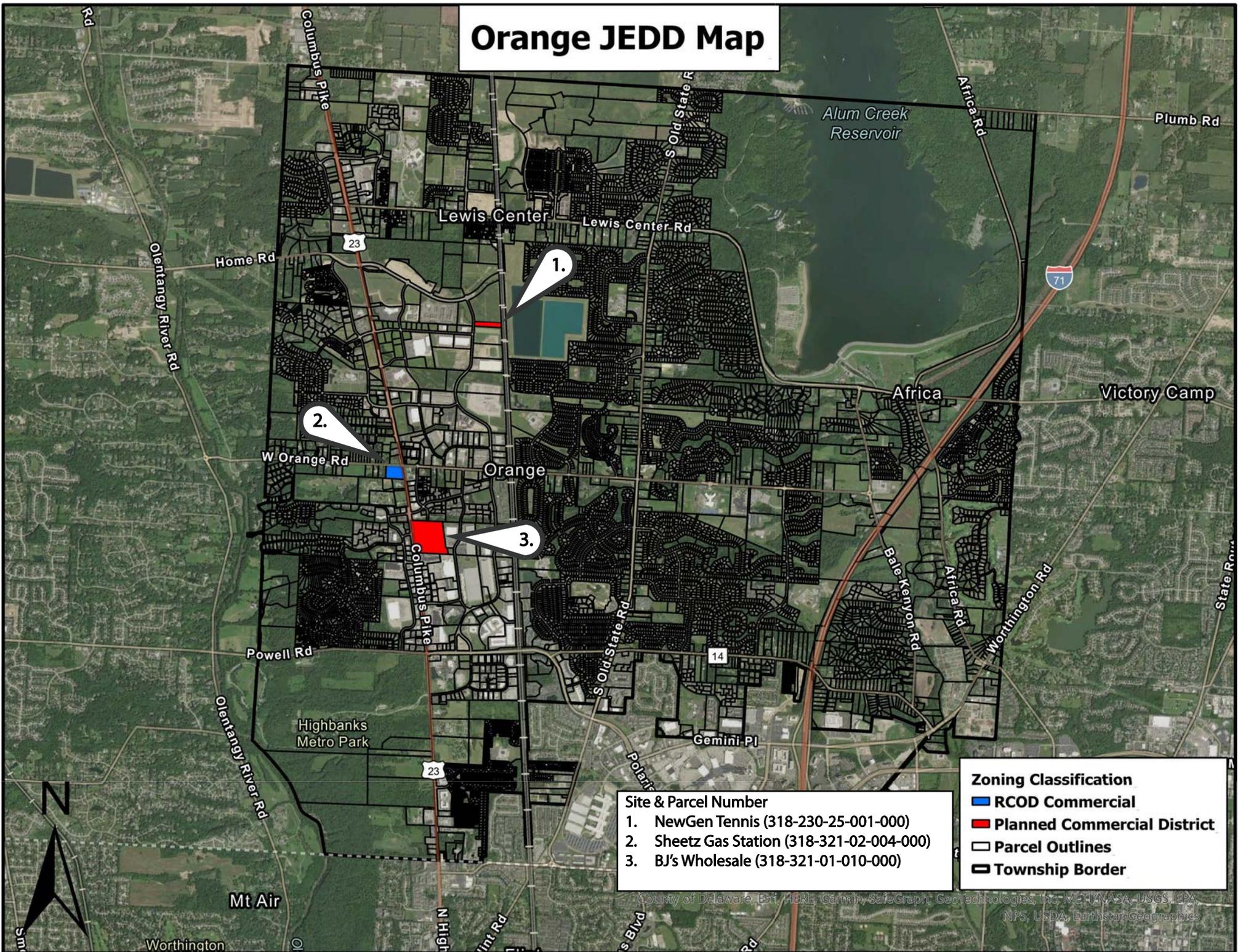
DRAFT  
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DRAWING NO.: **A-1**  
 SHEET 1 OF 1

A:\300-2001\305-106-CAD\Drawings\Development\Plan\Map\EX A-1\LS(6/10/2022 - 8:45 AM) - LP: 6/10/2022 7:45 AM

**EXHIBIT A-2**

# Orange JEDD Map



- Site & Parcel Number**
- 1. NewGen Tennis (318-230-25-001-000)
  - 2. Sheetz Gas Station (318-321-02-004-000)
  - 3. BJ's Wholesale (318-321-01-010-000)

- Zoning Classification**
- RCOD Commercial
  - Planned Commercial District
  - Parcel Outlines
  - Township Border

## **EXHIBIT B**

### **Orange Township Joint Economic Development District**

#### **Economic Development Plan**

The Orange Township Joint Economic Development District (the “District”) is created pursuant to Section 715.72 of the Ohio Revised Code (the “Act”) by Orange Township (Delaware County), Ohio (the “Township”), and the City of Worthington, Ohio (the “City”) to facilitate economic development and redevelopment in the District. The Economic Development Plan for the District will be to create or preserve jobs and employment opportunities and to improve the economic welfare of the people in the State, Delaware County (the “County”), the Township, the City and the District; and (ii) the construction of public infrastructure (the “Public Infrastructure”) to facilitate and support the commercial and residential development, in particular, surrounding the State Route 23 in the Township, which may include, but is not limited to, the construction of roadway improvements; construction and installation of public utility improvements; construction and installation of gas, electric and communication service facilities; construction and installation of stormwater and flood remediation projects and facilities; streetscape and landscaping improvements; acquisition of easements and other interests in real estate; and other public infrastructure located within the City and the Township, together with all necessary or appropriate appurtenances.

In accordance with Section 4 of the Orange Township Joint Economic Development District Contract (the “Contract”) and Section 715.72(F)(3) of the Act, this Economic Development Plan outlines the goals for the District and the schedule for the provision of new, expanded, enhanced or additional services, facilities and/or improvements:

- a. Upon approval of the Contract and creation of the District, the Township and the City will provide services, as agreed upon by the parties, to assist the District with planning, marketing, promotion and related activities to facilitate economic development and redevelopment in the District. The District will cooperate with the Township and the City in activities that promote, complement and benefit economic development in the District and to further the economic development and redevelopment of the District.
- b. The District will cooperate with the Township and the City and regional entities to attract to and retain businesses that will drive economic development in the District.
- c. The District will encourage public and private partnerships to benefit the District and the region.
- d. The District will cooperate with the Township and the City and/or Delaware County to utilize other economic incentives to attract to and retain businesses in the

District, including (without limitation) tax increment financing, property tax incentives, Ohio Job Creation Tax Credits, Ohio 629 funds, Ohio Public Works funds, and developer contributions.

e. The Township shall provide all usual and customary governmental services furnished by the Township to similarly situated properties located in the unincorporated area of the Township outside of the District, including, but not limited to, fire and emergency medical services, road maintenance, zoning and code enforcement.

f. The City shall furnish additional services if allowed by law and mutually agreed upon by the City and the Board.

## **EXHIBIT C**

### **Orange Township Joint Economic Development District**

#### **Schedule for the Collection of the District Income Tax**

The Orange Township Joint Economic Development District (the “District”) to be created pursuant to the Joint Economic Development District Contract (the “Contract”) by and between the City of Worthington, Ohio (the “City”) and Orange Township (Delaware County), Ohio (the “Township”) authorizes and anticipates the levy by the board of directors of the JEDD (the “Board”) of a tax on the income of persons working or residing in the District and the net profits of businesses located in the District at the same rate currently levied by the City (currently 2.5%) for distribution to the Board, the City and the Township.



**STAFF MEMORANDUM**  
**City Council Meeting – October 9, 2023**

Date: October 5, 2023

To: Robyn Stewart, Acting City Manager

From: Tom Lindsey, Law Director  
Ethan Barnhardt, Management Assistant/Special Projects Coordinator

Subject: Flavored Tobacco

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**EXECUTIVE SUMMARY**

Information and a draft ordinance will be provided and discussed regarding a proposal to ban flavored tobacco.

**RECOMMENDATION**

If Council is supportive, provide staff direction regarding finalizing the draft ordinance for introduction at a future Council meeting.

**BACKGROUND/DESCRIPTION**

The City of Columbus has taken steps to ban flavored tobacco products beginning in 2024. Staff has prepared a draft ordinance based on the ordinance adopted by Columbus City Council last year and amendments to the Columbus Health Code adopted by Columbus Public Health earlier this year. This approach is similar to the process we utilized when adopting Tobacco 21 which banned tobacco sales to individuals under the age of 21.

A representative from Columbus Public Health will be available to answer any questions from Council. If Council is supportive of moving forward with this action, legislation will be prepared for consideration by Council at a future meeting.

**ATTACHMENTS**

Research Memo – Flavored Tobacco Ban  
Worthington Draft Ordinance – Flavored Tobacco  
Columbus Board of Health Resolution 23-08 Environmental Health Tobacco Flavor Legislation



## **MEMORANDUM**

TO: Robyn Stewart, Acting City Manager  
Ethan Barnhardt, Management Assistant/Special Projects Coordinator

FROM: Sam Roberts, City of Worthington Public Policy Intern

DATE: May 11, 2023

SUBJECT: Flavored Tobacco Ban

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### **Background**

The sale and consumption of flavored tobacco products in the U.S. is considered a major health crisis that particularly effects youth and African American populations. These products include vaporable nicotine solutions that are sold in thousands of flavors that appeal to young people, and menthol cigarettes that have historically targeted certain populations in their marketing. Tobacco use remains the leading cause of preventable death in the U.S. and between 2011-2015, the Centers for Disease Control and Prevention (CDC) estimated an 800% increase in e-cigarette use among middle and high school students.<sup>1</sup> Of the two million U.S. students estimated to be consuming flavored cigarettes in 2021, 8/10 of those students were smoking flavored products.<sup>1</sup>

Of all U.S. African American smokers, 85% of them smoke menthol.<sup>2</sup> Menthol tobacco products have historically targeted certain minority populations and lead to issues of social equity and health. While some historians note that it is somewhat of a mystery as to how exactly menthol cigarettes became so heavily targeted towards these populations in their advertising, in terms of whether targeted advertising efforts were made before or after consumer trends in African Americans, the facts are that menthol cigarette marketing is significantly more prevalent in predominantly African American neighborhoods and media. This can be seen in the form of proportionally higher rates of exterior advertisements and price discounts for menthol cigarettes at retailers in these communities, and with African American media sources like Ebony and Jet

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<sup>1</sup> Columbus, OH., AMENDED ORDINANCES, Ch. 715 (2022)

<sup>2</sup> Biddle, M. The historical 'messy, moral dilemma' of marketing menthol cigarettes to black communities.  
<https://why.org/articles/fda-menthol-ban-history-marketing-menthol-cigarettes-black-communities/>

magazine running only menthol brand advertisements instead of other non-menthol brands and flavors.

The inclusion of menthol products in a flavored tobacco ban would help address these issues of social equity by reducing the consumption and exposure of these products. It is projected that menthol bans would lead to reductions in overall smoking in African Americans by ~35% by 2026, and ~25% by 2060.<sup>3</sup> Social justice and health organizations have already fought and called for the ban of menthol cigarettes to address issues of social equity surrounding affected populations, and the proposed ban would not target individuals, only retailers.

In 2022 the FDA proposed bans on flavored cigar and menthol cigarette products, marking a major win for public and societal health. Other states and municipalities have been implementing their own bans on flavored tobacco products. The City of Columbus voted to institute its own ban starting January 1<sup>st</sup>, 2024. This policy is aimed at reducing the harm to city residents created by flavored tobacco products and address social equity concerns as the City of Columbus considers racism to be a public health crisis. While smoking rates among African Americans has declined overall, Columbus Public Health recorded an 8% increase in smoking rates among African American residents in Franklin County.

In 2019 it was estimated that ~29% of Ohio high schoolers and ~12% of middle schoolers reported to using an e-cigarette tobacco product.<sup>4</sup> Last year in 2022, smoking illnesses cost Ohio Medicaid \$1.8 billion dollars, pointing to some of the fiscal implications of enacting a ban.<sup>5</sup> California as a state has similarly banned flavored tobacco products and while they are projected to see losses in tobacco product and cigarette tax revenues, these losses are offset by savings in state MediCal activity and increases in economic activity.<sup>6</sup>

In February, the United States Supreme Court declined to hear a case challenging a ban on flavored tobacco products in Los Angeles County.<sup>7</sup> Similarly, in January Governor DeWine vetoed a bill proposed by the Republican-led state legislature that called for a ban on communities' ability to ban flavored tobacco products, demonstrating his own stance on the issue. DeWine called vaping among young Ohioans an epidemic with long-term consequences, and called for a State-wide ban, but stopped short of demanding one. Columbus is the third city in Ohio to institute its own ban, following the cities of Toledo and Bexley. Other central Ohio cities are following suit, with the

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<sup>3</sup> Issabakhsh, M., Meza, R., Li, Y., Yuan, Z., Sanchez-Romero, L. M., & Levy, D. T. (2022, June 13). *Public health impact of a US menthol cigarette ban on the non-Hispanic black population: A simulation study*. Tobacco Control. <https://tobaccocontrol.bmj.com/content/early/2022/06/12/tobaccocontrol-2022-057298>

<sup>4</sup> Tobacco Use Among Youth in Ohio, 2019. ohio.gov. <https://odh.ohio.gov/know-our-programs/youth-risk-behavior-survey/high-school-data/2019-yrbs-survey-summary>

<sup>5</sup> The Statehouse News Bureau | By Karen Kasler. DeWine vetoes Bill Banning Ohio communities from banning flavored tobacco. statenews.org. <https://www.statenews.org/government-politics/2023-01-05/dewine-vetoes-bill-banning-ohio-communities-from-banning-flavored-tobacco>

<sup>6</sup> Tobacconomics. Potential effects of a ban on the sale of flavored ... <https://www.tobacconomics.org/files/research/671/ca-flavor-ban-and-revenues-27-feb-2022.pdf>

<sup>7</sup> Fritze, J. Supreme Court declines challenge to flavored tobacco ban, leaving prohibition in place. USA Today. <https://www.usatoday.com/story/news/politics/2023/02/27/supreme-court-flavored-tobacco-ban/11354548002/>

cities of Grandview Heights and Westerville working to discuss potential legislation at future council meetings.<sup>8</sup>

Like the recent Tobacco 21 legislation, this policy aims to prohibit the sale and distribution of products and not target the individual consumer. This legislation does not include a ban on hookah bars or their associated flavored tobacco products so long as the retailers are compliant with state and local laws and licensing and the customers purchase and consume any tobacco products on site. The Columbus Board of Health was tasked with promulgating the rules and regulations relating to the ban.

### **Flavored Tobacco Ban – City of Columbus**

- On December 5th, 2022, the City Council of Columbus voted unanimously to enact the ban starting January 1<sup>st</sup>, 2024.
  - Columbus Public Health held a period of ongoing public feedback regarding the ban from November to December.
  - The start date of 1/1/2024 is to allow time for affected retailers to transition their stock and mitigate the impending economic effects from sales prohibitions.
  - In addition to the ban, the council announced \$1 million to go to a smoking cessation education and awareness program.
    - “The 2023 Comprehensive Tobacco Cessation Education and Awareness Campaign would provide access to resources and programs through community events, youth education, and training for medical professionals”.<sup>9</sup>
    - Additional funds will be invested into cessation programs for youth and targeted communities. This will include disseminating information to middle schools and high schools. Local community health organizations, low-cost health clinics, and other providers will be engaged to ensure they have sufficient information and materials.
- No Licensee, agent, employee, or representative shall do any of the following at a Retail Tobacco Establishment:<sup>10</sup>
  - Give, sell, or distribute tobacco products to anyone under the age of 21.
  - Give, sell, or distribute tobacco products to anyone under the age of 30 without checking for proof of age.
  - Give, sell, or distribute tobacco products while under a license suspension.
  - Give, sell, or distribute flavored tobacco products.
  - Give, sell, or distribute tobacco products out of a vending machine.

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<sup>8</sup> Landers, A. K.. As Columbus plans to ban flavored tobacco, where do other Central Ohio Cities Stand? <https://www.10tv.com/article/news/local/as-columbus-plans-ban-flavored-tobacco-where-do-other-central-ohio-cities-stand/530-8c75196d-20d1-40f3-b435-1a7eab019461>

<sup>9</sup> City of Columbus - City Council and Community Partners Announce Proposal for \$1 Million Tobacco Cessation Effort. <https://www.columbus.gov/Templates/Detail.aspx?id=2147528329>

<sup>10</sup> Columbus, OH., Columbus Public Health Codes, RESOLUTION No. 23-08, (2023)

- Columbus Public Health may conduct inspections, which may include underage buy attempts and/or Flavored Tobacco Product buy attempts for all Temporary and annual Retail Tobacco Establishments that have retail sales licenses.
- If Columbus Public Health observes a violation(s) at a Retail Tobacco Establishment with either an annual or temporary license, the following civil penalties shall be imposed, in addition to the sanctions specified in Section 248.03 of the Columbus Public Health Codes:
  - A fine of **\$1,000** for a first-time violation.
  - A fine of **\$5,000** for a second violation within two years of the first.
  - For a third and any subsequent violations within two years of the first violation:
    - A fine of **\$10,000** per violation and revocation of any existing Retail Tobacco Product Sales license and the imposition of a two-year period of ineligibility to obtain a new one.
- Civil penalties may be appealed to Columbus Public Health.

### **Products Included in Flavored Tobacco Ban Legislation**

- **Electronic Smoking Device** refers to any device that can be used to deliver aerosolized or vaporized nicotine or other products to the user. Includes, but not limited to, electronic cigarettes, electronic hookahs, or vape pens.
- **Flavored Tobacco Product** refers to any tobacco product that imparts a taste or smell other than that of tobacco. Includes, but not limited to tastes like chocolate, vanilla, mint, or candy. It shall be assumed that a tobacco product is flavored if:
  - The product uses texts or images indicating that it imparts a taste or smell other than tobacco.
  - The product has a public statement or claim associated with it reporting that it imparts a taste or smell other than tobacco.
  - There are actions directed at the consumer indicating that the product imparts a taste or smell other than tobacco.
- **Flavored Shisha Tobacco Product** refers to any flavored tobacco product that is smoked out of a Hookah and can include Hookah tobacco, waterpipe tobacco, and maassel. These products are not included in the flavored tobacco ban when appropriately consumed.
  - **Hookah** refers to a type of waterpipe used to smoke flavored shisha tobacco products.
  - **Hookah Bar** refers to an establishment that derives revenue from the consumption of on-site flavored shisha tobacco products. Must be compliant with state and local laws and regulations.

### **Flavored Tobacco Bans in Ohio**

- *City of Toledo*
  - Was the first city in Ohio to pass flavored tobacco related legislation.

- On December 10<sup>th</sup>, 2019, the City Council enacted a ban on the sale and distribution of flavored tobacco products from any business/retailer NOT designated as a “Retail Vapor Product Specialty Business”.<sup>11</sup>
  - These are considered businesses that derive at least 60% of their gross receipts from e-cigarette and vapor product sales.
  - This bans many retailers from selling and distributing flavored tobacco products but does not ban those products in totality.
- Penalties for individuals/businesses that violate this policy:
  - First time offenders receive a misdemeanor of the fourth degree, subsequent offenses lead to a misdemeanor of the 3<sup>rd</sup> degree.
  - Minimum fines shall be fixed by the courts as follows:
    - Offenses from organizations:
      - First time offenses result in a \$250 fine.
      - Subsequent offenses result in a \$500 fine.
    - Offenses from individuals:
      - First time offenses result in a \$50 fine.
      - Subsequent offenses result in a \$100 fine.
- *City of Bexley*
  - Was the first city in Ohio to pass a flavored tobacco ban, which did not initially include menthol cigarettes.<sup>12</sup>
  - Amended ordinance #48 - 22 passed on March 7<sup>th</sup>, 2023, introducing chapter 837 to their codes. Purpose is to ensure that retailers comply with federal, state, and local tobacco control laws and standards to protect the public health. This resolution also removed section 636.16 of their codified ordinances, which related to the illegal distribution of tobacco products.
    - Amended ordinance #48 – 22 updated the definitions and penalties associated with the licensing and sale of tobacco products. These are similar to the promulgated rules and regulations made by CPH regarding their flavored tobacco ban.
      - “Flavored tobacco product” refers to any product imparting a smell or taste other than that of tobacco. Includes but is not limited to fruit, **menthol**, mint, etc.
      - Flavored Tobacco Product Sales Prohibition
        - “It shall be unlawful for a tobacco retailer ... to sell or offer for sale any flavored tobacco product.”
  - Penalties for violating this policy:
    - Any tobacco retailer found to have violated this ordinance shall be subjected to:
      - First time offence results in a fine of no less than \$1,000.
      - For a second violation within a 36-month period there is a fine of no less than \$2,500 and the retailer shall be prohibited from distributing their products for a minimum of 30 days.

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<sup>11</sup> Toledo, OH., AMENDED ORDINANCES, Ch. 537, (2019)

<sup>12</sup> Bexley, OH., AMENDED ORDINANCE No. 48 – 22, Ch. 837, (2023)

- For a third violation within a 36-month period there is a fine of no less than \$5,000, revocation of their retail sales license, and a prohibition from distributing their products for a period of three years.

**Implementation Discussion with City of Columbus Public Health** – April 27<sup>th</sup>, 2023, at 12:30pm

In attendance from City of Worthington: *Acting City Manager Robyn Stewart, Management Assistant and Special Projects Coordinator Ethan Barnhardt, and Public Policy Intern Sam Roberts*

In attendance from CPH: *Assistant Health Commissioner for Public Affairs Edward Johnson, and Environmental Health Administrator Luke Jacobs*

- Columbus Public Health inspectors are already in place and will continue making routine inspections at Worthington retailers.
  - Would include a minimum of two visits and one “buy attempt” per year. Buy attempt would include a secret shopper visit where the retailer is prompted to sell to an underage person or sell a flavored tobacco product.
  - Penalties will not be “double-stacked” i.e., a retailer cannot be simultaneously charged for selling to an underage person and selling a flavored tobacco product.
- Columbus Public Health will be working with retailers over the next six months to help them transition by 1/1/2024.
  - Any concerns that retailers have can be directed to CPH.
  - Something that retailers should note is that Columbus has instituted some major tobacco related ban once every decade for the last 20+ years (indoor smoking ban, tobacco 21, now flavored tobacco). These policies are not novel to the city and haven’t driven all the business out of it.
- Licensing system is much stricter with its fines than was incorporated at the time Tobacco 21 was launched.
  - Previously fines started at \$500 and maxed out at \$1000 for subsequent violations.
  - A primary goal of this policy is to get compliance from tobacco retailers to ~90%. Compliance is currently around ~75% in Columbus.
  - Worthington is doing fine regarding its own compliance according to CPH.
    - According to CPH, compliance is 100% for 2023 year to date.
- There is an accompanying 2023 Smoking Cessation and Education Program.
  - Program has a particular minority focus and can coordinate to have informational resources distributed to Worthington via booths at community events, for example.
  - This is a potential avenue for addressing Worthington’s youth on this issue.
- There will be updated signage that will be required to be displayed by retailers.

- Signage updated to include the prohibition of selling electronic smoking devices.
- The intention would be for Worthington to adopt the regulations to maintain consistency in its language and definitions.

**Affected Tobacco Retailers in Worthington**

DUCHESS WORTHINGTON	7141	HIGH	WORTHINGTON	OH	43085
GURU WINES	2285	DUBLIN GRANVILLE	WORTHINGTON	OH	43085
HOUSE OF CIGAR	7099	HUNTLEY	COLUMBUS	OH	43229
KROGER #273	60	WORTHINGTON MALL	WORTHINGTON	OH	43085
WORTHINGTON MARATHON	911	HIGH	WORTHINGTON	OH	43085

ORDINANCE NO. \_\_-2023

To Amend Various Sections of Chapter 765  
“Tobacco Sales” of the Codified Ordinances of the  
City of Worthington.

WHEREAS, in 2018 City Council adopted Ordinance Nos. 24-2018 and 44-2018 which enacted and amended Chapter 765 “Tobacco Sales” of the Codified Ordinances regarding the sale of tobacco to individuals under the age of twenty-one; and,

WHEREAS, the Centers for Disease Control and Prevention estimates that more than 2 million U.S. middle and high school students reported currently using electronic cigarettes in 2021, with more than 8 in 10 of those youth using flavored electronic cigarettes; and,

WHEREAS, 81 percent of youth who have ever used a tobacco product report that the first tobacco product they used was flavored; and,

WHEREAS, nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in flavors that appeal to youth, such as cotton candy, bubble gum, banana smash, and mango ice; and,

WHEREAS, data from the 2019 Ohio Youth Tobacco Survey indicates that nearly one out of four Ohio high school students and nearly 13 percent of Ohio middle school students report having used a flavored tobacco product; and,

WHEREAS, while cigarette smoking among American adults has generally declined nationwide, Columbus Public Health has seen an 8 percent increase in smoking rates for African American adults in Franklin County; and,

WHEREAS, flavored tobacco products contribute to minority health inequities and disproportionately impact the 85 percent of African American smokers and the 36 percent of LGBTQ smokers who smoke menthol flavored tobacco as result of targeted marketing practices; and,

WHEREAS, the Columbus Board of Health, the City’s contracted health agency, recently adopted Resolution No. 23-08 prohibiting the sale of flavored tobacco products; and,

WHEREAS, the Columbus Board of Health, pursuant to contract with the City of Worthington, administers the licensing and civil enforcement provisions of Chapter 765; and,

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That Section 765.01 “Definitions” is hereby amended to read as follows:

#### 765.01 DEFINITIONS

As used in this chapter:

(a) “Department” means the Columbus City Health Department and its authorized employees and agents.

(b) “Electronic Smoking Device” means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an ~~e-cigarette~~ electronic cigarette, ~~e-cigar~~ electronic cigar, ~~e-pipe~~ electronic pipe, ~~vape~~ vaping pen or ~~e-hookah~~ electronic hookah. “Electronic Smoking Device” includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. “Electronic Smoking Device” does not include drugs, devices, or combination products authorized for sale as a cessation product by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(c) “Flavored Shisha Tobacco Product” means a Flavored Tobacco Product smoked or intended to be smoked in a Hookah. “Flavored Shisha Tobacco Product” includes, and may be referred to as, Hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh.

(d) “Flavored Tobacco Product” means any Tobacco Product that imparts a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a Tobacco Product, including, but not limited to, any taste or smell relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. There shall be a rebuttable presumption that a Tobacco Product is a “Flavored Tobacco Product” if:

(1) The Tobacco Product uses text or images, or both, on the Tobacco Product’s labeling or packaging to explicitly or implicitly indicate that the Tobacco Product imparts a taste or smell other than tobacco; or

(2) A public statement or claim made or disseminated by the manufacturer or retailer of a Tobacco Product, or by any person authorized or permitted by the manufacturer or retailer to make or disseminate public statements concerning such Tobacco Product, that such Tobacco Product has or produces a taste or smell other than tobacco; or

(3) There are actions directed to consumers that would reasonably be expected to cause consumers to believe that the Tobacco Product imparts a taste or smell other than tobacco.

(e) "Hookah" means a type of water pipe that is used to smoke Shisha Flavored Tobacco Products or any other Tobacco Product, which has a long, flexible tube to draw aerosol through water. This device has components that may include heads, stems, bowls, and hoses.

(~~e~~f) "Licensee" means a ~~person~~ Retailer that ~~applied for and was~~ has been issued a Retail Tobacco ~~and paraphernalia~~ Product Sales license or Temporary Retail Tobacco Product ~~and paraphernalia~~ Sales license for a Retail Tobacco Establishment by the Department.

(~~d~~) "Product Paraphernalia" means any product that is used to assist in chewing, smoking, absorbing, dissolving, inhaling, or any other consumption of nicotine to include, but not limited to pipes, and rolling papers.

(~~e~~) "Retail Paraphernalia Sales" means the act of giving, selling or otherwise distributing product paraphernalia in a retail setting, including but not limited to, gas stations, convenience stores, carry out markets, groceries, supermarkets, retail warehouse clubs, drug stores, vape shops and hookah bars.

(g) "Person" means any individual, firm, corporation, business trust, estate, trust, association, syndicate, partnership, cooperative, governmental agency or any other entity recognized by law. "Person" does not include a wholesale dealer as defined in section 5743.01(B) of the Ohio Revised Code, a distributor as defined in section 5743.01(K)(2) or (K)(3) of the Ohio Revised Code, or a vapor distributor as defined in section 5743.01(V)(1), (V)(4) or (V)(5) of the Ohio Revised Code when the dealer or distributor is acting in a dealer or distributor capacity.

(h) "Proof of Age" means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under Sections 4507.50 to 4507.52 of the Ohio Revised Code demonstrating that the recipient or purchaser is at least twenty-one (21) years of age.

(i) "Retailer" means any person engaged in the business of Retail Tobacco Product Sales or Temporary Retail Tobacco Product Sales.

(j) "Retail Tobacco Establishment" means the location of any physical place of business or section of a physical place of business where Retail Tobacco Product Sales or Temporary Retail Tobacco Product Sales are made. The term shall also include those portions of any physical place of business where Vending Machines that dispense Tobacco Products are located.

(~~k~~) "Retail Tobacco Product Sales" means the act of giving, selling or otherwise distributing Tobacco Products in a retail setting, including but not limited to gas stations, convenience stores, carry out markets, groceries, supermarkets, retail warehouse clubs, drug stores, liquor stores, vape shops, and hookah bars or lounges.

(~~g~~l) "Temporary Retail Tobacco Product ~~and Paraphernalia~~ Sales" means the act of

giving, selling or otherwise distributing Tobacco Products ~~and/or product paraphernalia~~ at an event for not more than thirty consecutive days.

~~(hm)~~ “Tobacco Product” means any product that is made from or derived from tobacco or that contains any form of nicotine, natural or synthetic, and that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, an electronic smoking device, a cigar, pipe tobacco, chewing tobacco, smokeless tobacco, snuff, or snus. The term “Tobacco Product” also includes, but is not limited to, an electronic smoking devices and means any component or accessory used in the consumption of a Tobacco Product, such as filters, rolling papers, pipes, blunt or hemp wraps, Hookahs, flavor enhancers, mouthpieces, and pipes and substances or liquids used in Electronic Smoking Devices, whether or not they contain nicotine. “Tobacco Product” does not include drugs, devices, or combination products authorized for sale as a cessation product by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

~~(n)~~ "Underage Buy Attempt" means an individual, authorized by the Department, who is 1) under the age of 21 and requests purchase of Tobacco Products at a Retail Tobacco Establishment; or 2) under the age of 30 and requests purchase of Tobacco Products at a Retail Tobacco Establishment without presenting proof of age as defined in section 765.05.

~~(io)~~ "Underage Buy Attempt" means a person, authorized by the Department, who is 1) under the age of 21, who and requests purchase of Tobacco Products or product paraphernalia from a retailer at a Retail Tobacco Establishment; or 2) under the age of 30 and a person under age 30 who requests purchase of Tobacco Products or product paraphernalia from a retailer at a Retail Tobacco Establishment without presenting identification proof of age as defined in subsection 765.01(.

~~(p)~~ "Vending Machine" means any mechanical or electronic device designed to do both of the following:

(1) Receive a coin, bill, token, credit card, or other electronic payment including, but not limited to, a card, code, device, or other means of access to a customer's account, made for that purpose;

(2) In return for the insertion or deposit of a coin, bill, token, credit card, or other electronic payment automatically dispenses property, provides a service, or grants a license.

SECTION 2. That Section 765.02 “License Application” is hereby amended to read as follows:

#### 765.02 LICENSE APPLICATION

~~(a) All retailers~~ A Retailer of Tobacco Products ~~and/or product paraphernalia~~ shall apply for a valid Retail Tobacco ~~and paraphernalia~~ Product Sales license or a Temporary Retail

~~Tobacco and paraphernalia Product Sales license. For the purposes of this Chapter, retailers shall include any person performing retail tobacco sales, retail paraphernalia sales, or temporary retail tobacco and paraphernalia sales. Retail Tobacco and paraphernalia Product Sales licenses shall be issued by the Department annually. Temporary Retail Tobacco and paraphernalia Product Sales licenses shall be valid for not longer than thirty consecutive days. A license shall be required for each Retail Tobacco Establishment location where Retail Tobacco Product Sales, including Temporary Retail Tobacco Product Sales, or retail paraphernalia sales are conducted and is non-transferable.~~

(b) ~~Any~~ A Retailer applying for a Retail Tobacco and paraphernalia Product Sales license or a Temporary Retail Tobacco and paraphernalia Product Sales license shall submit a current and valid vendor's license as required by the Ohio Department of Taxation to the Department. Any Retailer who distributes, stores, or sells cigarettes shall submit a current and valid Retail Cigarette Dealer's License as required by Ohio Revised Code Chapter 5743 to the Department prior to approval for licensing. Any Retailer who permits smoking inside the Retail Tobacco Establishment they are seeking to have licensed shall submit a current and valid retail tobacco store exemption issued by the Ohio Department of Health as per Ohio Revised Code §3794.03 prior to licensing. Any Retailer who permits vaping inside the Retail Tobacco Establishment they are seeking to have licensed shall provide a current and valid Ohio Department of Health affidavit stating the percentage of the establishment's gross income during the prior calendar year that was derived from the sale of vapor products, Electronic Smoking Devices, or other electronic smoking product accessories as per Ohio Revised Code §3794.03 prior to licensing.

(c) ~~The annual Retail Tobacco and paraphernalia Product Sales license fee shall be \$150~~ Three Hundred Fifty Dollars (\$350.00). The license shall be valid beginning on the first day of October of the year issued through the last day of September of the following year. A license issued to a new Licensee after the first day of July and before the first day of October shall not expire until the last day of September of the following year. A penalty equal to twenty-five percent (25%) of the applicable license fee shall be assessed by the Department for license fee payments that are not received or postmarked by the first of October.

(d) ~~The Temporary Retail Tobacco and paraphernalia Product Sales license fee shall be~~ Fifty Dollars (\$50). The license shall be valid for no longer than thirty (30) consecutive days and limited to a single event. The application shall be made at least ten days prior to the event.

(e) License fees are due at the time of application and are not refundable.

SECTION 3. That Section 765.03 “License Application Denial, Renewal Denial, Suspension, and Revocation” is hereby amended to read as follows:

765.03 LICENSE APPLICATION DENIAL, RENEWAL DENIAL, SUSPENSION, AND REVOCATION

(a) Applications for Retail Tobacco ~~and paraphernalia~~ Product Sales licenses and Temporary Tobacco ~~and paraphernalia~~ Product Sales licenses may be denied, and such licenses may be suspended or revoked, for any of the following:

(1) The applicant or Licensee, or any agent, employee, or representative thereof, is giving, selling, or offering to sell Tobacco Products by or from a Vending Machine.

(2) Observation by staff of the Department or its authorized agent that the applicant or Licensee, or any agent, employee, or representative thereof of said licensee has violated Section 765.07(A)(1) or (A)(3) provisions of Chapter 765 of the Codified Ordinances.

(2) Failure by the Licensee to post signage as required by Section 765.04 of the Codified Ordinances.

(3) The applicant or Licensee having a conviction for violating Sections 765.06 or 765.07 of the Codified Ordinances or former Sections 2329.13 or 2329.14 of the Columbus City Code; having a conviction for violating any provision of the Ohio Revised Code or Ohio Administrative Code pertaining to the regulation of Tobacco Products or to indoor smoking or vaping; or having a finding of violation of any provision of Chapter 765 of the Codified Ordinances or any provision of Chapter 248 of the Columbus City Health Code within two years prior to the date of issuance or at any time during the licensing year. In the case of licensees, convictions for violations of Sections 765.06 or Section 765.07 of the Codified Ordinances or Section 2329.13 or 2329.14 of the Columbus City Code shall be a sufficient basis for denying a license renewal, for license suspension, or license revocation if the date of conviction is within two years of the issuance of the current retail tobacco and paraphernalia sales license or temporary retail tobacco and paraphernalia sales license.

(4) An order A finding by a court of competent jurisdiction that a Retail Tobacco Establishment and paraphernalia sales location or temporary retail tobacco and paraphernalia sales location owned and/or operated by the applicant or Licensee constitutes a public nuisance or that the location of the Retail Tobacco Establishment that is the subject of the application or license has been found, by a court of competent jurisdiction, to be a public nuisance during the period that the court retains jurisdiction over the nuisance action.

(5) Information contained in the application is misleading, inaccurate, or false.

(6) The applicant or Licensee, or any agent, employee, or representative thereof, fails to comply with U.S. Food and Drug Administration regulations, applicable federal, Ohio Revised Code, Ohio Administrative Code, and/or city codes including, but not limited relating to building, health, and fire.

(7) The applicant or Licensee has outstanding fines, issued pursuant to Section 765.05(B) Chapter 765 of the Codified Ordinances or Columbus City Health Code Chapter 248.

(b) Any ~~person~~ Licensee whose Retail Tobacco ~~and paraphernalia~~ Product Sales license

or Temporary Retail Tobacco ~~and paraphernalia~~ Product Sales license has been proposed to be suspended or revoked shall be notified in writing by the Department. Appeals of such action may be made in accordance with Columbus City Health Code Section 203.10.

(c) Any ~~person~~ applicant whose application for a Retail Tobacco ~~and paraphernalia~~ Product Sales license or Temporary Retail Tobacco ~~and paraphernalia~~ Product Sales license is denied shall be notified in writing by the Department. Appeals of such action may be made in accordance with Columbus City Health Code Section 203.08.

SECTION 4. That Section 765.04 “Sign Distribution and Posting” is hereby amended to read as follows:

#### 765.04 SIGN DISTRIBUTION AND POSTING

(a) The Department shall make signs available to all Retail Tobacco ~~and paraphernalia~~ Product Sales Licensees and Temporary Retail Tobacco ~~and paraphernalia~~ Product Sales Licensees. Signs shall be provided by the Department at the time of license approval or renewal, and upon request.

(b) The Licensee shall post the signs provided by the Department, which include notice of the legal sales age and Proof of Age verification requirement provided for in Section 765.06, in each Retail Tobacco Establishment within 6 feet of each cash register or place where payment may be made in a place conspicuous to both employees and customers and where the sign is unobstructed in its entirety. The sign shall state, “NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS INCLUDING ELECTRONIC SMOKING DEVICES.” The sign required shall be at least 6 by 4 inches and the words on the sign must be legibly printed in high contrast red color with capitalized letters at least 0.3 inches high. at the point of transaction, which may include but are not limited to, cash registers, sales counters or on any display cases of tobacco products and tobacco product paraphernalia. Signage shall be prominently displayed and not obscured.

SECTION 5. That Section 765.05 “Civil Enforcement” is hereby amended to read as follows:

#### 765.05 ~~CIVIL ENFORCEMENT~~ AND CIVIL PENALTY

(a) The Department shall enforce all applicable provisions of this Chapter and all regulations adopted pursuant hereto.

(b) The Department ~~shall~~ may conduct an inspections, which ~~shall~~ may include ~~an~~ Underage Buy Attempts and/or Flavored Tobacco Product buy attempts, for all Retail Tobacco Establishments within the City of Worthington that have Retail Tobacco Product Sales at least once per licensing period for all licenses.

~~(b)(c)~~ The Department ~~shall~~ may conduct an inspections which may include Underage Buy Attempts and/or Flavored Tobacco Product buy attempts, during Temporary Retail Tobacco Product Sales Liencee’s events. at least once during the event for all temporary retail tobacco and paraphernalia sales licenses.

~~(e)(d)~~ If the Department observes a violation(s) of this Chapter at a Retail Tobacco Establishment that has a Retail Tobacco Product Sales license or Temporary Retail Tobacco Product Sales license, and paraphernalia sales location or at a temporary retail tobacco and paraphernalia sales location, the following schedule of civil penalties shall be imposed on the Licensee, in addition to the sanctions specified in Section 765.03(A):

(1) For a first violation, ~~\$500.00~~ a fine of \$1,000.00.

~~(2) Second and additional~~ For a second violations within two years of the first violation, \$1,000 a fine of \$5,000.00 per violation.

~~(3) For a third and any subsequent violation within two years of the first violation:~~

A. a fine of \$10,000.00 per violation; and

B. revocation of any existing Retail Tobacco Product Sales license or Temporary Retail Tobacco Product Sales license and imposition of a two-year ineligibility to obtain a Retail Tobacco Product Sales license or Temporary Retail Tobacco Product Sales license.

~~Violations of this Chapter which occur more than two years after a prior violation shall not be considered a second or additional violation of this Chapter if there has been no violation during the intervening time period.~~

(4) Licensees have the right to appeal civil penalties in accordance with Columbus City Health Code 203.08.

(d) The Department of Public Safety, Division of Police, retains full authority to enforce Sections 765.06 and 765.07 of the Codified Ordinances.

SECTION 6. That Section 765.06 “Distribution of Tobacco Products Without a License” is hereby amended to read as follows:

#### 765.06 DISTRIBUTION OF TOBACCO PRODUCTS WITHOUT A LICENSE

(a) No retailer of Tobacco Products, ~~or product paraphernalia~~ shall give, sell, or otherwise distribute Tobacco Products cigarettes, other tobacco products, papers used to roll cigarettes, or other product paraphernalia without a valid license issued by the Columbus Board of Health;

(b) Whoever violates this section is guilty of distribution of Tobacco Products cigarettes, or other tobacco products, or product paraphernalia without a license, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, Section ~~265.07~~ 765.07 of the Codified Ordinances, ~~former~~ Sections 2329.13 or 2329.14 of the Columbus City Code, or Section 2927.02 of the Ohio Revised Code, then the retailer shall be denied a license for distribution Tobacco Products of cigarettes or other tobacco products or product paraphernalia for a period not to exceed 5 years.

SECTION 7. That Section 765.07 “Illegal Distribution of Tobacco Products” is hereby amended to read as follows:

#### 765.07 ILLEGAL DISTRIBUTION OF TOBACCO PRODUCTS

(a) No Licensee, manufacturer, producer, distributor, wholesaler, or retailer of Tobacco Products ~~cigarettes or other tobacco products or product paraphernalia~~, or any agent, employee, or representative of a Licensee, manufacturer, producer, distributor, wholesaler, or retailer of Tobacco Products ~~cigarettes or other tobacco products or product paraphernalia~~ shall do any of the following:

(1) Give, sell, or otherwise distribute Tobacco Products ~~cigarettes, other tobacco products, or product paraphernalia~~ to any person under twenty-one (21) years of age;

(2) Give, sell, or otherwise distribute Tobacco Products ~~cigarettes, other tobacco products, or product paraphernalia~~ in any place that does not have posted in a conspicuous place a sign stating that giving, selling or otherwise distributing Tobacco Products ~~cigarettes, or other tobacco products, or product paraphernalia~~ to a person under twenty-one (21) years of age is prohibited by law.

(3) Give, sell, or otherwise distribute Tobacco Products ~~cigarettes, other tobacco products, or product paraphernalia~~ without viewing proof of age demonstrating the recipient is at least twenty-one (21) years of age, except that no such verification is required for a recipient over the age of thirty (30). That a person appeared to be over the age of thirty (30) shall not constitute a defense to a violation of this section.

(4) Give, sell, or otherwise distribute Flavored Tobacco Products.

(5) Give, sell or offer to sell Tobacco Products by or from a Vending Machine.

(b) Subsection (a)(4) does not apply to the retail sale of Flavored Shisha Tobacco Products. No person shall give, sell or offer to sell cigarettes, other tobacco products, or product paraphernalia by or from a vending machine.

~~(c) As used in this section, "vending machine" means any mechanical or electronic device designed to do both of the following:~~

~~— (1) Receive a coin, bill, token, or credit card, including, but not limited to, a card, code, device, or other means of access to a customer's account, made for that purpose;~~

~~— (2) In return for the insertion or deposit of a coin, bill, token, or credit card, automatically dispense property, provide a service, or grant a license.~~

~~(d) As used in this section "proof of age" means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under Sections 4507.50 to 4507.52 of the Ohio Revised Code demonstrating that the recipient or purchaser is at least 21 years of age.~~

(e) Whoever violates this section is guilty of illegal distribution of Tobacco Products ~~cigarettes, other tobacco products, or product paraphernalia~~, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of this section, Section 765.06 of the Codified Ordinances, former Sections 2329.13 or 2329.14 of the Columbus City Code, or Section 2927.02 of the Ohio Revised Code, then illegal distribution of Tobacco Products ~~cigarettes or other tobacco products~~ is a misdemeanor of the third degree.

SECTION 8. The amendments to Chapter 265 shall become effective on January 1, 2024. However, no fines or penalties shall be imposed for violations related to the illegal sale or distribution of flavored tobacco products that occur on or before April 1, 2024.

SECTION 9. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

DRAFT

## **Resolution No. 23-08**

To amend Chapter 248 of the Columbus City Health Code to prohibit tobacco retailers from selling flavored tobacco products, including menthol cigarettes.

**WHEREAS**, tobacco use remains the leading cause of preventable death in the United States, killing nearly half a million people each year. It causes or contributes to many forms of cancer, as well as heart disease and respiratory diseases, among other health disorders; and

**WHEREAS**, the Centers for Disease Control and Prevention estimates that more than 2 million U.S. middle and high school students reported currently using e-cigarettes in 2021, with more than 8 in 10 of those youth using flavored e-cigarettes; and

**WHEREAS**, every day, about 2,500 children in the United States try their first cigarette, and another 400 children under 18 years of age become new regular daily smokers. 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored; and

**WHEREAS**, the Centers for Disease Control and Prevention reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015 alone; and

**WHEREAS**, nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy, bubble gum, banana smash and mango ice; and

**WHEREAS**, data from the 2019 Ohio Youth Tobacco Survey indicates that nearly one out of four Ohio high school students and nearly 13% of Ohio middle school students report having used a flavored tobacco product; and

**WHEREAS**, the Centers for Disease Control and Prevention finds that while cigarette smoking among American adults declined overall, Columbus Public Health has seen an 8% increase in smoking rates for African American adults in Franklin County; and

**WHEREAS**, the City of Columbus has declared racism to be a public health crisis and is committed to working to address minority health inequities; and

**WHEREAS**, it is in the best interest of all parties to protect young people from flavored tobacco products, these products also disproportionately impact the 85% of African American smokers and 36% of LGBTQ smokers who smoke menthols as a result of targeted marketing practices; and

**WHEREAS**, the current City Health Code does not define flavored tobacco products nor prohibit their sale; and

**WHEREAS**, Columbus Public Health is solely responsible for enforcing the City Health Code requirements pertaining to tobacco retailers; and

**WHEREAS**, amending the City Health Code to prohibit the sale of flavored tobacco products will benefit the health of the residents of the City of Columbus, particularly its youth;

**NOW, THEREFORE, BE IT RESOLVED BY THE COLUMBUS BOARD OF HEALTH:**

**SECTION 1.** That existing Sections 248.01, 248.02, 248.03, 248.04 and 248.05 of the Columbus City Health Code be replaced as follows:

### **248.01 DEFINITIONS**

As used in this Chapter:

- (A) "Department" means Columbus City Health Department and its authorized employees and agents.
- (B) "Electronic Smoking Device" means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, vaping pen or electronic hookah. "Electronic Smoking Device" includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance that may be aerosolized or vaporized during the use of the device. "Electronic Smoking Device" does not include drugs, devices, or combination products authorized for sale as a cessation product by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.
- (C) "Flavored Shisha Tobacco Product" means a Flavored Tobacco Product smoked or intended to be smoked in a Hookah. "Flavored Shisha Tobacco Product" includes, and may be referred to as, Hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh.
- (D) "Flavored tobacco product" means any Tobacco Product that imparts a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a Tobacco Product, including, but not limited to, any taste or smell relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. There shall be a rebuttable presumption that a Tobacco Product is a "Flavored Tobacco Product" if:
  - (1) The Tobacco Product uses text or images, or both, on the Tobacco Product's labeling or packaging to explicitly or implicitly indicate that the Tobacco Product imparts a taste or smell other than tobacco; or
  - (2) A public statement or claim made or disseminated by the manufacturer or retailer of a Tobacco Product, or by any person authorized or permitted by the manufacturer or

retailer to make or disseminate public statements concerning such Tobacco Product, that such Tobacco Product has or produces a taste or smell other than tobacco; or

- (3) There are actions directed to consumers that would reasonably be expected to cause consumers to believe that the Tobacco Product impairs a taste or smell other than tobacco.
- (E) "Hookah" means a type of water pipe that is used to smoke Flavored Shisha Tobacco Products, which has a long, flexible tube to draw aerosol through water. This device has components that may include heads, stems, bowls, and hoses.
- (F) "Licensee" means a Retailer that has been issued a Retail Tobacco Product Sales license or a Temporary Retail Tobacco Product Sales license for a Retail Tobacco Establishment by the Department.
- (G) "Person" means any individual, firm, corporation, business trust, estate, trust, association, syndicate, partnership, cooperative, governmental agency or any other entity recognized by law. "Person" does not include a wholesale dealer as defined in section 5743.01(B) of the Ohio Revised Code, a distributor as defined in section 5743.01(K)(2) or (K)(3) of the Ohio Revised Code, or a vapor distributor as defined in section 5743.01 (V)(1), (V)(4) or (V)(5) of the Ohio Revised Code when the dealer or distributor is acting in a dealer or distributor capacity.
- (H) "Proof of Age" means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under Sections 4507.50 to 4507.52 of the Ohio Revised Code demonstrating that the recipient or purchaser is at least twenty-one 21 years of age.
- (I) "Retailer" means any person engaged in the business of Retail Tobacco Product Sales or Temporary Retail Tobacco Product Sales.
- (J) "Retail Tobacco Establishment" means the location of any physical place of business or section of a physical place of business where Retail Tobacco Product Sales or Temporary Retail Tobacco Product Sales are made. The term shall include those portions of any physical place of business where vending machines that dispense Tobacco Products are located.
- (K) "Retail Tobacco Product Sales" means the act of giving, selling or otherwise distributing Tobacco Products in a retail setting, including but not limited to, gas stations, convenience stores, carry out markets, groceries, supermarkets, retail warehouse clubs, drug stores, liquor stores, vape shops, and hookah bars or lounges.
- (L) "Temporary Retail Tobacco Product Sales" means the act of giving, selling or otherwise distributing Tobacco Products at an event for not more than thirty consecutive days.
- (M) "Tobacco Product" means any product that is made from or derived from tobacco or that

contains any form of nicotine, natural or synthetic, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, an electronic smoking device, a cigar, little cigars, pipe tobacco, chewing tobacco, smokeless tobacco, snuff, or snus. The term "Tobacco Product" also means any component or accessory used in the consumption of a Tobacco Product, such as filters, rolling papers, pipes, blunt or hemp wraps, hookahs, flavor enhancers, mouthpieces, and pipes and substances used in Electronic Smoking Devices, whether or not they contain nicotine. "Tobacco product" does not include drugs, devices, or combination products authorized for sale as a cessation product by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- (M) "Underage Buy Attempt" means an individual, authorized by the Department, who is 1) under the age of 21 and requests purchase of Tobacco Products at a Retail Tobacco Establishment; or 2) under the age of 30 and requests purchase of Tobacco Products at a Retail Tobacco Establishment without presenting proof of age as defined in section 248.05.
- (O) "Vending Machine" means any mechanical or electronic device designed to do both of the following:
  - (1) Receive a coin, bill, token, credit card, or other electronic payment including, but not limited to, a card, code, device, or other means of access to a customer's account, made for that purpose;
  - (2) In return for the insertion or deposit of a coin, bill, token, credit card, or other electronic payment automatically dispenses product, provides a service, or grants a license.

#### **248.02 LICENSE APPLICATION**

- (A) A retailer of Tobacco Products shall apply for a valid Retail Tobacco Product Sales license or a Temporary Retail Tobacco Product Sales license. Retail Tobacco Product Sales licenses shall be issued by the Department annually. Temporary Retail Tobacco Product Sales licenses shall be valid for not longer than thirty consecutive days. A license shall be required for each Retail Tobacco Establishment where Retail Tobacco Product Sales, including Temporary Retail Tobacco Product Sales, are conducted and is non-transferable.
- (B) A Retailer applying for a Retail Tobacco Product Sales license or a Temporary Retail Tobacco Product Sales license shall submit a current and valid vendor's license as required by the Ohio Department of Taxation to the Department. Any Retailer who distributes, stores, or sells cigarettes shall submit a current and valid Retail Cigarette Dealer's License as required by Ohio Revised Code Chapter 5743 to the Department prior to approval for licensing. Any Retailer who permits smoking inside the Retail Tobacco Establishment they are seeking to have licensed shall submit a current and valid retail tobacco store exemption issued by the Ohio Department of Health as per Ohio Revised Code §3794.03 prior to licensing. Any Retailer who permits vaping inside the Retail Tobacco Establishment they are seeking to have licensed shall provide a current and valid Ohio Department of Health

affidavit stating the percentage of the establishment's gross income during the prior calendar year that was derived from the sale of vapor products, Electronic Smoking Devices, or other electronic smoking product accessories as per Ohio Revised Code §3794.03 prior to licensing.

- (C) The annual Retail Tobacco Product Sales license fee shall be Three Hundred Fifty Dollars (\$350.00). The license shall be valid beginning on the first day of October of the year issued through the last day of September of the following year. A license issued to a new Licensee after the first day of July and before the first day of October shall not expire until the last day of September of the following year. A penalty equal to twenty-five percent (25%) of the applicable license fee shall be assessed by the Department for license fee payments that are not received or postmarked by the first day of October.
- (D) The Temporary Retail Tobacco Product Sales license fee shall be Fifty Dollars (\$50.00). The license shall be valid for no longer than thirty (30) consecutive days and limited to a single event. The application shall be made at least ten days prior to the event.
- (E) License fees are due at the time of application and are not refundable.

#### **248.03 LICENSE APPLICATION DENIAL, RENEWAL DENIAL, SUSPENSION, AND REVOCATION**

- (A) Applications for Retail Tobacco Product Sales licenses and Temporary Retail Tobacco Product Sales licenses may be denied, and existing licenses may be suspended or revoked, for any of the following:
  - (1) The applicant or Licensee, or any agent, employee, or representative thereof, is giving, selling, or offering to sell Tobacco Products by or from a Vending Machine.
  - (2) Observation by staff of the Department or its authorized agent that the applicant or Licensee, or any agent, employee, or representative thereof has violated provisions of Chapter 248 of the Columbus City Health Code or provisions of Chapter 715 of the Columbus City Codes.
  - (3) Failure by the Licensee to post signage as required by Section 248.04 of the Columbus City Health Code.
  - (4) The applicant or Licensee having a conviction for violating former Section 2329.13 or Section 2329.14 of the Columbus City Codes; having a conviction for violating any provision of the Ohio Revised Code or Ohio Administrative Code pertaining to the regulation of Tobacco Products or to indoor smoking or vaping; or having a finding of violation of any provision of Chapter 248 of the Columbus City Health Code within two years prior to the date of issuance or at any time during the licensing year.
  - (5) A finding by a court of competent jurisdiction that a Retail Tobacco Establishment owned and/or operated by the applicant or Licensee constitutes a public nuisance or that the location of the Retail Tobacco Establishment that is the subject of the application or license has been found, by a court of competent jurisdiction, to be a public nuisance during the period that the court retains jurisdiction over the nuisance action.

- (6) Information contained in the application is misleading, inaccurate, or false.
- (7) The applicant or Licensee, or any agent, employee, or representative thereof, fails to comply with U.S. Food and Drug Administration regulations, Ohio Revised Code, Ohio Administrative Code, and/or city codes relating to building, health and fire.
- (8) The applicant or Licensee has outstanding fines, issued pursuant to Columbus City Health Code Chapter 248.

(B) Any Licensee whose Retail Tobacco Product Sales license or Temporary Retail Tobacco Product\_Sales license has been proposed to be suspended or revoked shall be notified in writing by the Department. Appeals of such action may be made in accordance with Columbus City Health Code §203.10.

(C) Any applicant whose application for a Retail Tobacco Product Sales license or Temporary Retail Tobacco Product Sales license is denied shall be notified in writing by the Department. Appeals of such action may be made in accordance with Columbus City Health Code §203.08.

#### **248.04 SIGN DISTRIBUTION AND POSTING**

(A) The Department shall make signs available to all Retail Tobacco Product Sales Licensees, and Temporary Retail Tobacco Product Sales Licensees. Signs shall be provided by the Department at the time of license approval or renewal, and upon request.

(B) The Licensee shall post the signs provided by the Department, which include notice of the legal sales age and Proof of Age verification requirement provided for in Section 248.05, in each Retail Tobacco Establishment within 6 feet of each cash register or place where payment may be made in a place conspicuous to both employees and customers and where the sign is unobstructed in its entirety. The sign shall state, "NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS INCLUDING ELECTRONIC SMOKING DEVICES." The sign required shall be at least 6 by 4 inches and the words on the sign must be legibly printed in high contrast red color with capitalized letters at least 0.3 inches high.

#### **248.05 ILLEGAL DISTRIBUTION**

(A) No Licensee, or any agent, employee, or representative of a Licensee shall do any of the following at a Retail Tobacco Establishment:

- (1) Give, sell, or otherwise distribute Tobacco Products to any individual under 21 years of age.
- (2) Give, sell, or otherwise distribute Tobacco Products without viewing Proof of Age demonstrating the recipient is at least 21 years of age, except that no such verification is required for a recipient over the age of 30. That an individual appeared to be over the age of 30 shall not constitute a defense to a violation of this section.
- (3) Give, sell, or otherwise distribute Tobacco Products while under a license suspension as provided for in Section 248.03.

- (4) Give, sell, or otherwise distribute flavored tobacco products.
- (5) Give, sell or offer to sell Tobacco Products by or from a Vending Machine.

(B) Subsection 4 does not apply to the retail sale of Flavored Shisha Tobacco Products.

**SECTION 2.** That existing Sections 248.01, 248.02, 248.03, 248.04 and 248.05 of the Columbus City Health Code be repealed.

**SECTION 3.** That existing Section 248.06 of the Columbus City Health Code be replaced as follows:

**248.06 ENFORCEMENT AND CIVIL PENALTY**

- (A) The Department shall enforce all applicable provisions of this Chapter and all regulations adopted pursuant hereto.
- (B) The Department may conduct inspections, which may include Underage Buy Attempts and/or Flavored Tobacco Product buy attempts, for all Retail Tobacco Establishments within the City of Columbus that have Retail Tobacco Product Sales licenses.
- (C) The Department may conduct inspections which may include Underage Buy Attempts and/or Flavored Tobacco Product buy attempts, during Temporary Retail Tobacco Product Sales Licensee's events.
- (D) If the Department observes a violation(s) of this Chapter at a Retail Tobacco Establishment that has a Retail Tobacco Product Sales license or Temporary Retail Tobacco Product Sales license, the following schedule of civil penalties shall be imposed on the Licensee, in addition to the sanctions specified in Section 248.03(A):
  - (1) For a first violation, a fine of \$1,000.00.
  - (2) For a second violation within two years of the first violation, a fine of \$5,000.00 per violation.
  - (3) For a third and any subsequent violations within two years of the first violation:
    - (a) a fine of \$ 10,000.00 per violation; and
    - (b) revocation of any existing Retail Tobacco Product Sales license or Temporary Retail Tobacco Product Sales license and imposition of a two year ineligibility to obtain a Retail Tobacco Product Sales license or Temporary Retail Tobacco Product Sales license; and
- (E) If the Department observes a violation(s) of any of the provisions of Chapter 715 of the Columbus City Codes, the following schedule of civil penalties shall be imposed:
  - (1) For a first violation, a fine of \$1000.00.
  - (2) For a second violation within two years of the first violation, a fine of \$5000.00 per violation.
  - (3) For a third and any subsequent violation within two years of the first violation, a fine of \$10,000 and the person shall not be eligible to obtain a Retail Tobacco Product Sales License or a Temporary Retail Tobacco Product Sales License for a period of three licensing-years.

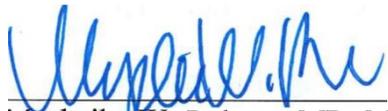
(F) Civil penalties issued pursuant to this section may be appealed in accordance with Columbus City Health Code §203.08.

**SECTION 4.** That existing Section 248.06 of the Columbus City Health Code be repealed.

**SECTION 5.** That **SECTION 1** and **SECTION 2** of this resolution shall take effect and be in full force January 1, 2024.

**SECTION 6.** That **SECTION 3** and **SECTION 4** of this resolution shall take effect and be in full force March 1, 2023.

**ADOPTED:** March 21, 2023



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Mysheika W. Roberts; MD, MPH  
Secretary



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President Pro Tempore



**STAFF MEMORANDUM**  
**City Council Meeting – October 9, 2023**

Date: October 5, 2023

To: Robyn Stewart, Acting City Manager  
Lee Brown, Director of Planning and Building

From: Ethan Barnhardt, Management Assistant/Special Projects Coordinator

Subject: Backyard Chickens Update

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**EXECUTIVE SUMMARY**

Staff will provide an update on the work done regarding backyard chickens and have invited Columbus Public Health to present information regarding their backyard chicken program.

**BACKGROUND/DESCRIPTION**

In the first half of 2023, the City Council discussed examining the City's restrictions on allowing backyard chickens. At the May 1, 2023, City Council meeting, staff was directed to bring back an ordinance to the Council to consider changing the current chicken ordinance to be less restrictive by the end of 2023.

Since then, Public Policy Intern Alex Novitski has been tasked with exploring more in-depth the approaches other communities have utilized to allow for backyard chickens and identifying key regulatory areas that should be examined further. As Worthington contracts with Columbus Public Health (CPH) to provide public health services, staff met with CPH to discuss their backyard chicken permitting process and learn more about their approach's public health rationale.

This agenda item is meant to provide an overview of the work done to date regarding backyard chickens. Additionally, staff felt it appropriate to invite CPH representatives, including staff veterinarian Dr. Aaron K. Messer, to overview their program with the City Council and to answer any questions.

**ATTACHMENTS**

None

# Department of Finance

## September 2023 Financial Report



### Quick Facts

#### All Funds

<u>09/30/2023</u> <b>Cash Balances</b> <b>\$58,323,533</b> (January 1, 2023 balance: \$47,524,866)	<u>09/30/2023</u> <b>Unencumbered                  Balance</b> <b>\$33,910,567</b>
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#### General Fund

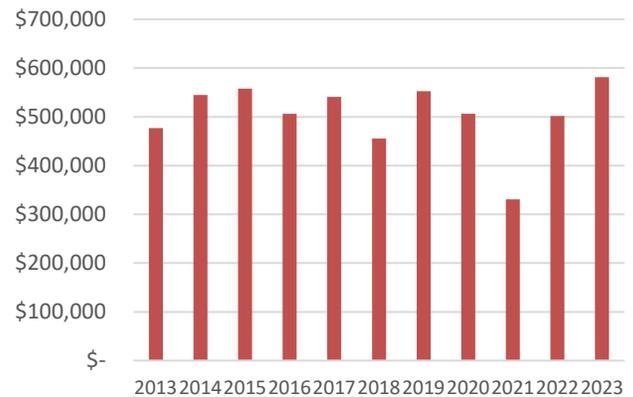
<u>09/30/2023</u> <b>Cash Balance</b> <b>\$25,477,204</b> (January 1, 2023 balance: \$23,512,622)	<u>09/30/2023</u> <b>Unencumbered                  Balance</b> <b>\$19,994,366</b> (62% of prior year expenditures)
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### Highlights & Trends for September 2023

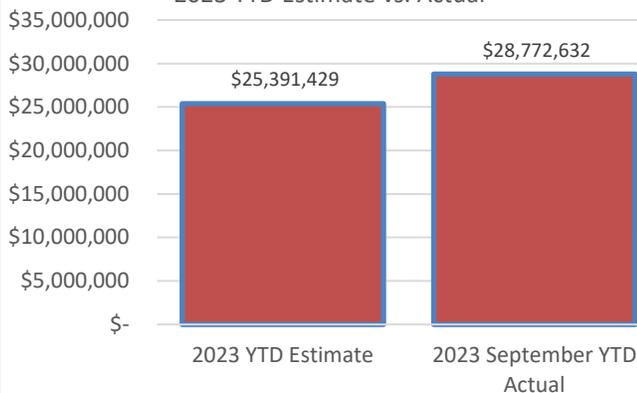
#### Income Tax Collections

- Year to Date (YTD) income tax collections are above 2022 YTD income tax collections \$283,014 or 1.12%.
- YTD Income tax collections are above estimates by \$2,123,807 or 9.11%
- Year to date refunds total \$581,308

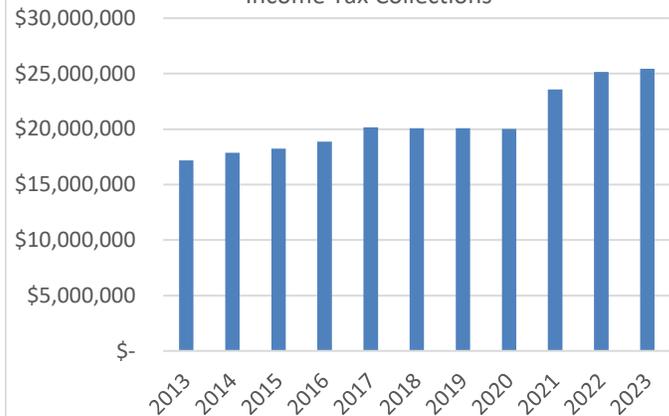
Income Tax Refunds as of September



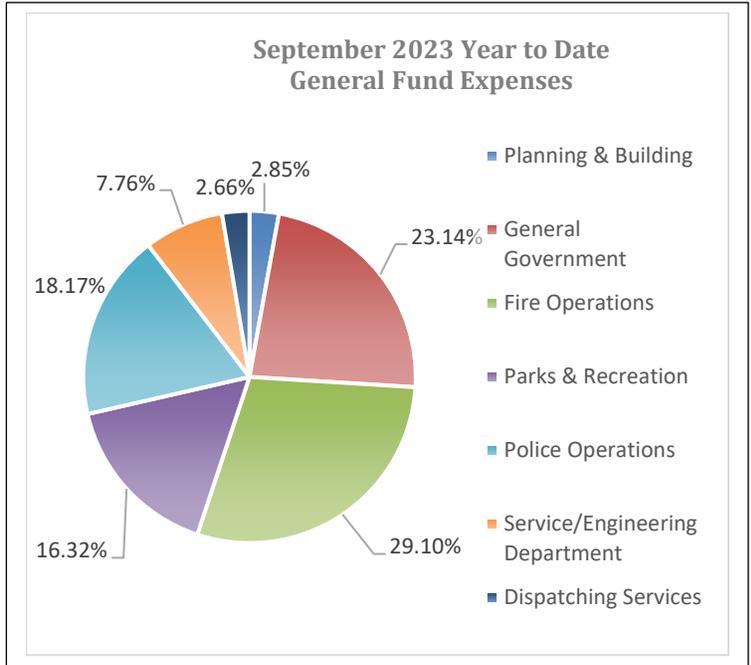
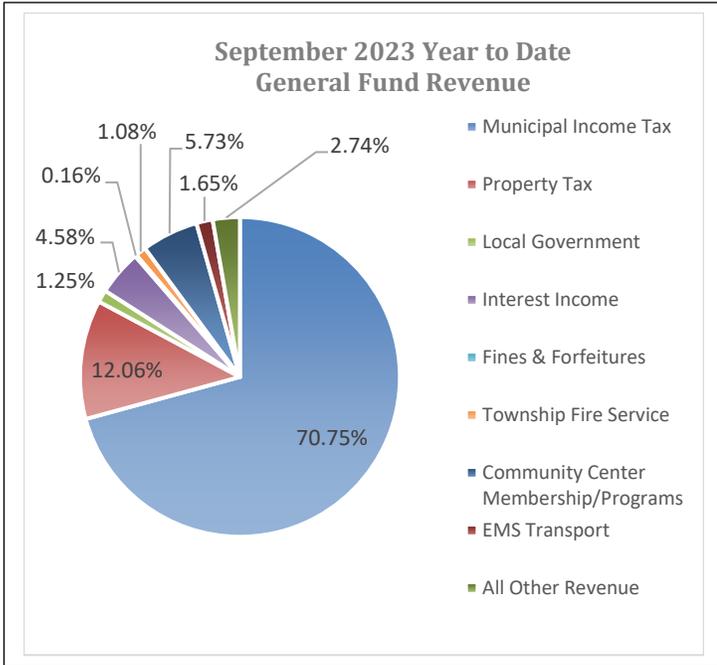
General Fund Revenue  
2023 YTD Estimate vs. Actual



September Year to Date  
Income Tax Collections



Highlights & Trends for September 2023 (continued)

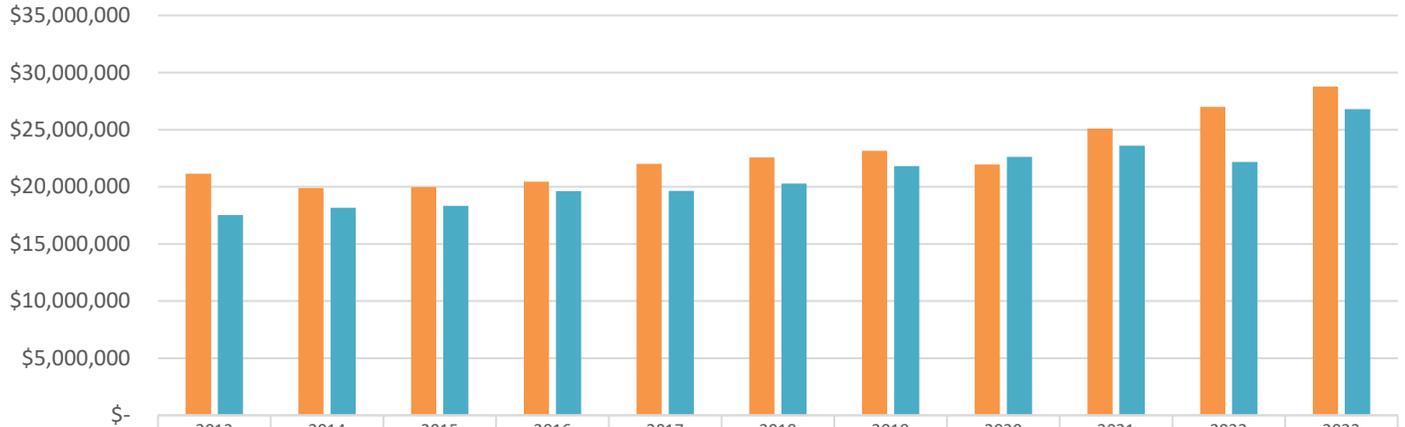


Notable Initiatives & Activities

- In April 2023, we transferred \$2.5M from the General Fund to the Capital Fund to hold as an encumbrance for the purchase of a new ladder truck and engine in the Division of Fire.
- In May 2023, the City closed on \$4,400,000 in bonds to fund McCord Park Phase 2 and Sewer Lining & Repair. The all-inclusive rate was 3.77%.
- Second half property tax distribution was received in August 2023.

Financial Tracking

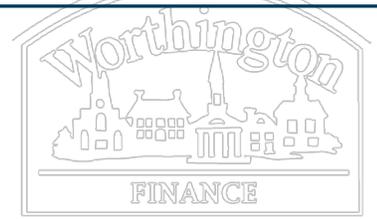
September Year to Date  
General Fund  
Cash Position



	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
REVENUE	\$21,155,508	\$19,903,039	\$19,982,946	\$20,458,138	\$22,000,027	\$22,568,905	\$23,163,096	\$21,970,965	\$25,093,783	\$26,992,252	\$28,772,632
EXPENDITURES	\$17,531,741	\$18,162,715	\$18,324,672	\$19,628,959	\$19,645,902	\$20,274,382	\$21,822,628	\$22,637,036	\$23,603,775	\$22,193,023	\$26,808,049



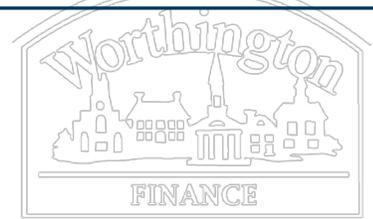
### September 2023 Cash Reconciliation



Total Fund Balances:		\$58,323,532.90
Depository Balances:		
General Account:	\$ 8,484,176.25	
Total Bank Balances:		\$8,484,176.25
Investment Accounts:		
Huntington Investment:	\$15,042,000.00	
Star Ohio/Star Plus	26,384,755.66	
Fifth Third MMKT/CDs	8,163,075.99	
FC Bank	248,000.00	
Total Investment Accounts:		\$49,837,831.65
Petty Cash/Change Fund:		1,525
Total Treasury Balance as of September 30, 2023		\$58,323,532.90
Total Interest Earnings as of September 30, 2023		\$1,316,768.75

#### Debt Statement

<u>Issuance</u>	<u>Purpose</u>	<u>Maturity</u>	<u>Rate</u>	<u>Principal Balance</u>
2017	2017 Various Purpose Bonds	December 2032	2.21%	\$ 2,570,000
2008	OPWC 0% Loan – ADA Ramps	December 2028	0%	\$ 46,860.30
2015	OPWC 0% Loan – Kenyonbrook	December 2045	0%	\$ 469,825.56
2021	2021 Various Purpose Bonds	December 2041	1.65%	\$ 9,565,000.00
2023	2023 Various Purpose Bonds	December 2043	3.77%	\$ 4,400,000.00
	Total Principal Debt Balance			\$17,051,685.86



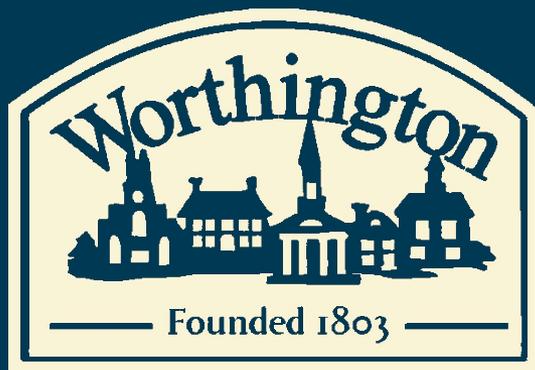
City of Worthington
Fund Summary Report
as of September 30, 2023

Table with columns: FUND, 1/1/2023 Beginning Balance, Year to Date Actual Revenue, Year to Date Actual Expenses, 9/30/2023, Encumbrances, Unencumbered Balance. Rows include various fund categories like General Fund, Street M&R, State Highway, etc., ending with a Total All Funds row.



City of Worthington, Ohio  
General Fund Overview  
as of September 30, 2023

		2022	2023	2023	2023	2023	2023	Variance	
		Year End	Original	Revised	Y-T-D	September	Variance	as % of	
Revenues		Actual	Budget	Budget	Estimates	Y-T-D Actual	Over/(Under)	Budget	
Municipal Income Tax	1	\$ 26,558,839	\$ 23,656,000	\$ 23,656,000	\$ 18,656,195	\$ 20,358,003	\$ 1,701,808	9.12%	
Property Tax	2	3,444,123	3,526,617	\$ 3,526,617	3,526,617	3,470,464	\$ (56,153)	-1.59%	
Local Government	*	474,137	450,000	\$ 450,000	337,500	358,625	\$ 21,125	6.26%	
Interest Income	*	394,819	200,000	\$ 200,000	150,000	1,316,769	\$ 1,166,769	777.85%	
Fines & Forfeitures	*	52,939	75,000	\$ 75,000	56,250	47,355	\$ (8,895)	-15.81%	
Township Fire Service	2	465,519	500,000	\$ 500,000	311,341	311,341	\$ (0)	0.00%	
Community Center Membership/Progr	*	1,591,015	1,600,000	\$ 1,600,000	1,200,000	1,648,537	\$ 448,537	37.38%	
EMS Transport	*	580,669	675,000	\$ 675,000	506,250	474,590	\$ (31,660)	-6.25%	
All Other Revenue	*	2,644,950	1,015,470	\$ 1,015,470	647,276	786,949	\$ 139,674	21.58%	
<b>Total Revenues</b>		<b>\$ 36,207,010</b>	<b>\$ 31,698,087</b>	<b>\$ 31,698,087</b>	<b>\$ 25,391,429</b>	<b>\$ 28,772,632</b>	<b>\$ 3,381,203</b>	<b>13.32%</b>	
<b>Expenditures</b>									
Planning & Building		\$ 811,823	\$ 1,164,041	\$ 1,164,041	\$ 873,031	\$ 733,750	\$ (139,281)	84.05%	
General Government		9,588,318	8,456,177	\$ 8,617,177	\$ 6,291,898	5,961,400	\$ (330,499)	94.75%	
Fire Operations		6,886,792	7,795,214	\$ 10,295,214	\$ 7,721,411	7,495,694	\$ (225,717)	97.08%	
Parks & Recreation		5,051,119	6,006,544	\$ 6,006,544	\$ 4,504,908	4,204,324	\$ (300,584)	93.33%	
Police Operations		6,057,145	7,112,096	\$ 7,148,096	\$ 5,361,072	4,681,878	\$ (679,194)	87.33%	
Service/Engineering Department		2,575,346	3,348,775	\$ 3,398,775	\$ 2,549,081	1,998,390	\$ (550,692)	78.40%	
Dispatching Services		752,799	686,000	\$ 686,000	\$ 686,000	685,205	\$ (795)	99.88%	
<b>Total Expenditures</b>		<b>\$ 31,723,342</b>	<b>\$ 34,568,847</b>	<b>\$ 37,315,847</b>	<b>\$ 27,987,401</b>	<b>\$ 25,760,640</b>	<b>\$ (2,226,760)</b>	<b>92.04%</b>	
Excess of Revenues Over (Under) Expenditures		\$ 4,483,668	\$ (2,870,760)	\$ (5,617,760)	\$ (2,595,972)	\$ 3,011,992			
Fund Balance at Beginning of Year		\$ 19,524,896	\$ 23,512,622	\$ 23,512,622		\$ 23,512,622			
Unexpended Appropriations			1,209,910	1,209,910		-			1 - Income Tax budget based on individual monthly projections.
Expenditures versus Prior Year Enc		495,941	2,039,099	2,039,099		1,047,409			2 - These revenue budgets are based on semi-annual payments.
									* - All other revenue budgets are spread equally over each month.
<b>General Fund Balance</b>		<b>\$ 23,512,622</b>	<b>\$ 19,812,673</b>	<b>\$ 17,065,673</b>		<b>\$ 25,477,205</b>			



# 2024 Operating Budget & 5-Year Forecast



# Purpose of the Budget

## **Worthington City Charter Section 4.02**

“The City Manager, at least sixty days prior to the beginning of each budget year, shall submit to Council an operating budget estimate and an explanatory budget message after consultation with the head of each department...”



# Purpose of the Budget

- The City's budget identifies funds and organizes how we pay for services, capital and personnel.
- The 2024 Operating Budget again prioritizes maintaining the robust and high level of services that our community expects.



# 2024 Proposed Budget

- Maintenance of existing services
- Significant revenue growth
- Utilization of the Fund balance to support additional Capital investment
- The addition of two and a half (2.5) new positions
  - Assistant Law Director
  - Fire Inspector
  - Part-Time Public Service Coordinator
- Funding for Vision Implementation
- Use of fund balance for large projects
  - Comprehensive Plan Update
  - Project to digitize records



# Maintenance of Existing Services

- Services Include:
  - Fire Prevention & Protection
  - Emergency Medical Services
  - Community Center & Griswold Center Programming
    - Fitness programs, Summer Camps, Programming for a range of ages, Art Classes, Swim Lessons
  - Economic Development – Attracting & Retaining businesses
  - Grants for Non-Profit Organizations (McConnell Arts Center, Worthington Partnership, Historical Society, Resource Pantry, Counseling Services)



# Maintenance of Existing Services (cont)

- Services Include:
  - Refuse collection, leaf collection, recycling
  - Park and Playground Maintenance and Safety
    - Sport Field & Court maintenance
    - Community Gardening
    - Multi-use path
  - Police – patrol/response
  - Police – crime prevention and investigation
  - Mayor’s Court operation



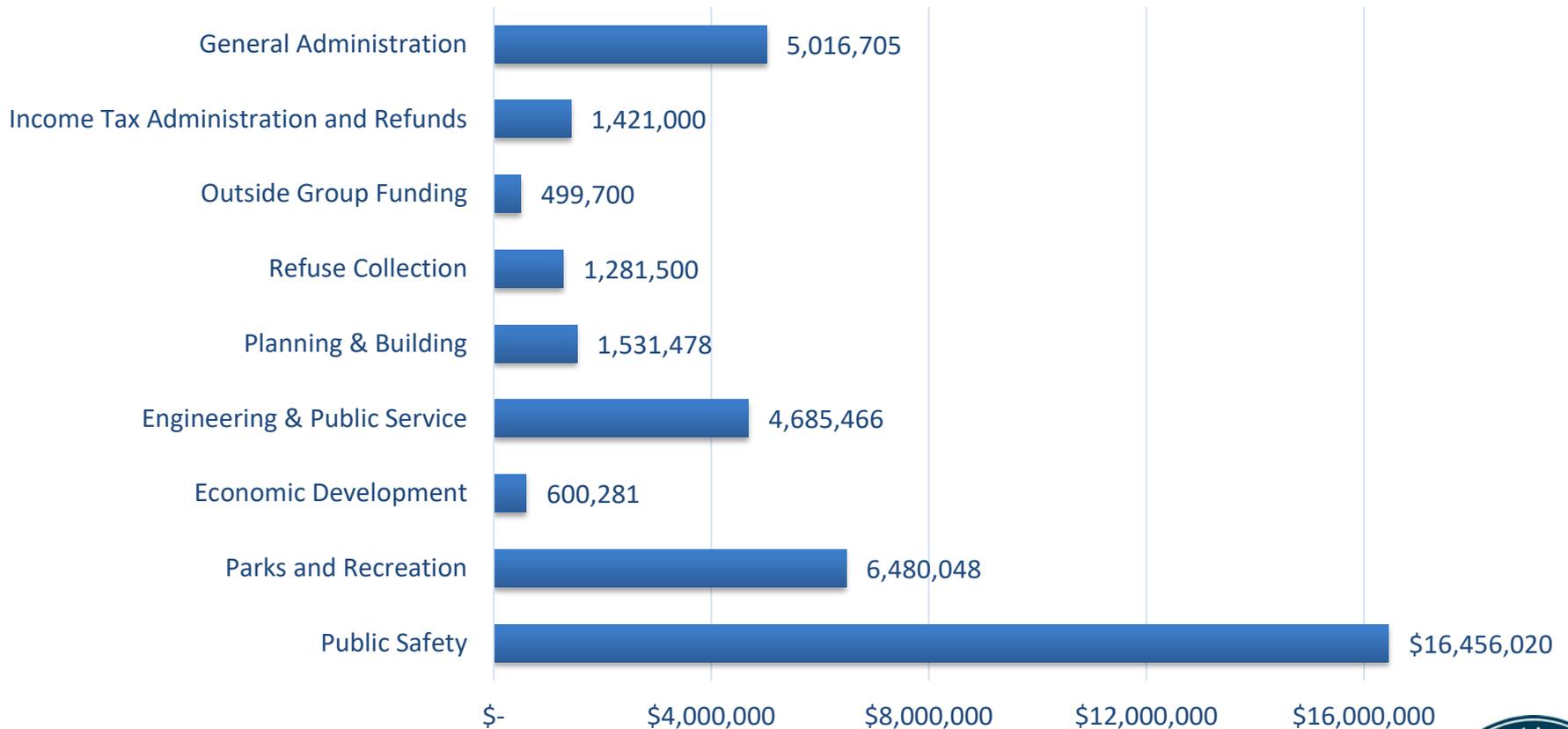
# Maintenance of Existing Services (cont)

- Services Include:
  - Snow and Ice Removal
  - Special Events (parades, festivals, etc)
  - Street Maintenance
  - Street Tree Programs
  - Winter Holiday Decorating



# What services are provided?

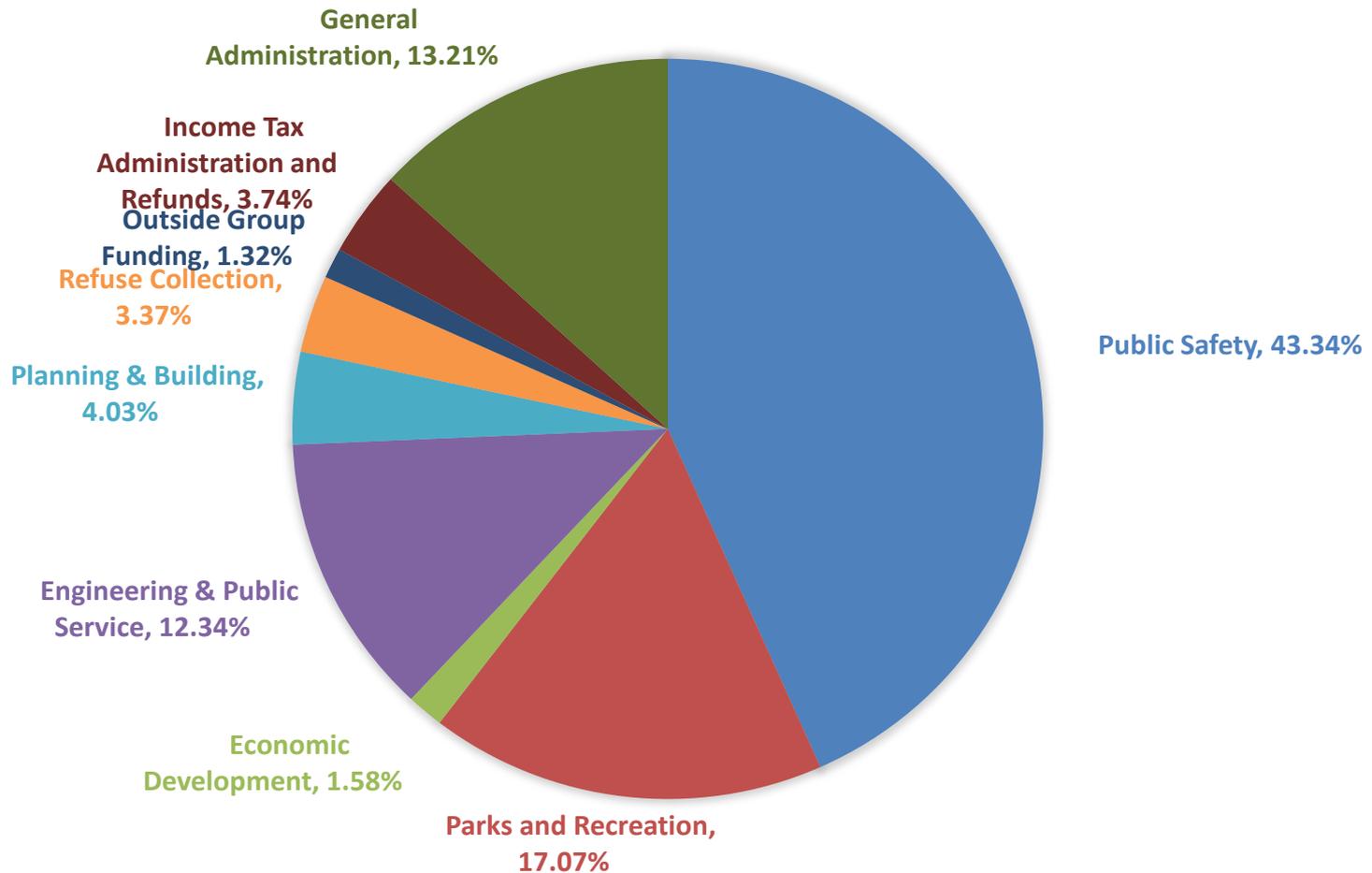
## Operating Expenditures by Major Category 2024 Proposed Budget (Consolidated - Operations)





# What services are provided?

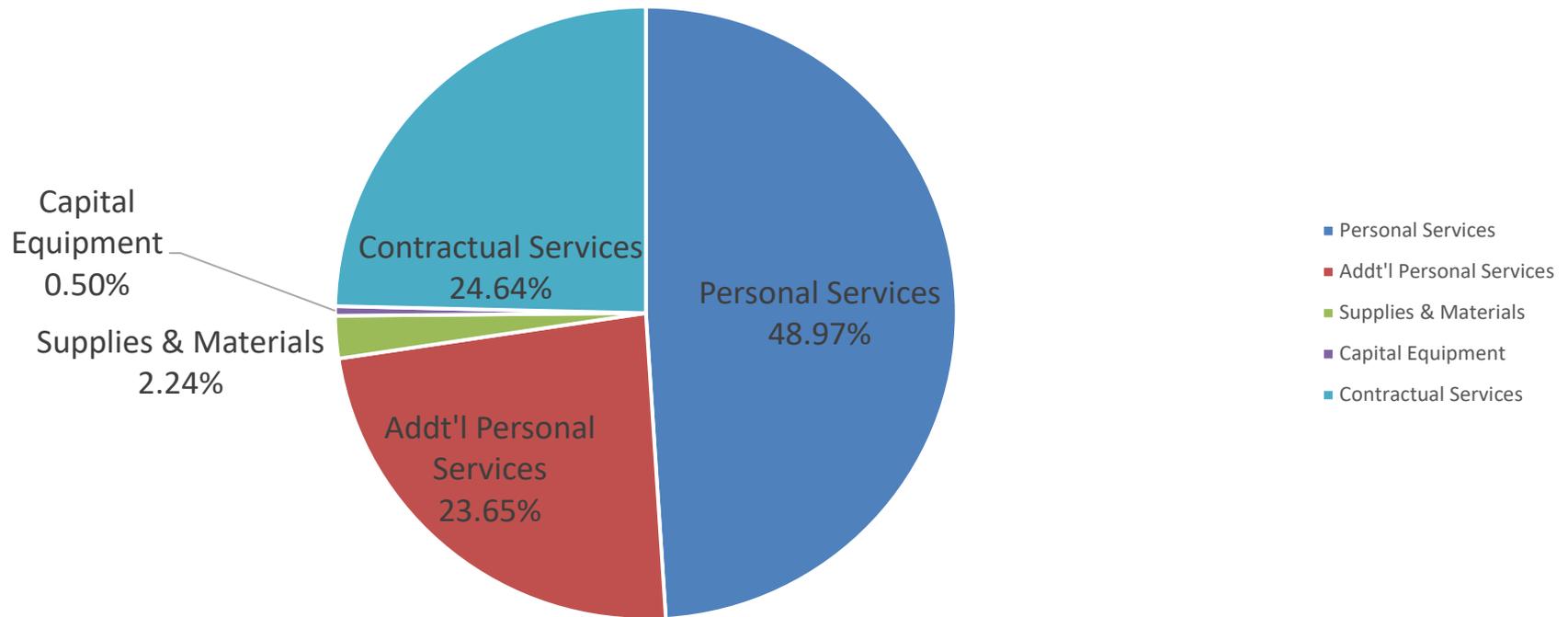
## 2024 OPERATING EXPENDITURES BY MAJOR CATEGORY





# How are these services provided?

2024 General Fund Expenses  
By Program Category





# Budget Growth

- 2024 Proposed General Fund Budget is:
  - +11.64% over 2023 Original Appropriations
    - \$1,778,000 or 44% of that increase can be attributed to transfers out of the General Fund.
    - \$1,430,771 or 36% is in wages, compensation, pensions and employee benefits.
    - Remaining increase is from a variety of sources including: Planning and Building consulting, Vision Implementation, Tax Collection Fees, and Records Management Project
    - 2024 as Proposed is a 5.75% increase from 2023 if you remove all transfers.
  - +4.11% above Amended Appropriations as of 06/30
    - Includes 2023 appropriation of \$2,500,000 for Ladder Truck and Engine Rescue.



# Budget Growth

- Preliminary 2024 Staffing Chart increases the number of full-time positions from 150.5 to 153
  - Add Assistant Law Director
  - Fire Inspector
  - Three (3) Firefighters (SAFER grant)
  - Part-Time Public Service Coordinator
- Utilization of General Fund balance to support Capital Investment.
  - \$1,775,000 in 2024 and \$500,000 in 2025-2028



# Budget Growth

- \$100,000 for Vision Implementation in both 2024 and 2025
- \$455,000 in 2024 to fund a Comprehensive Plan Update
- \$48,150 in 2024 to start the process of digitizing the City's records



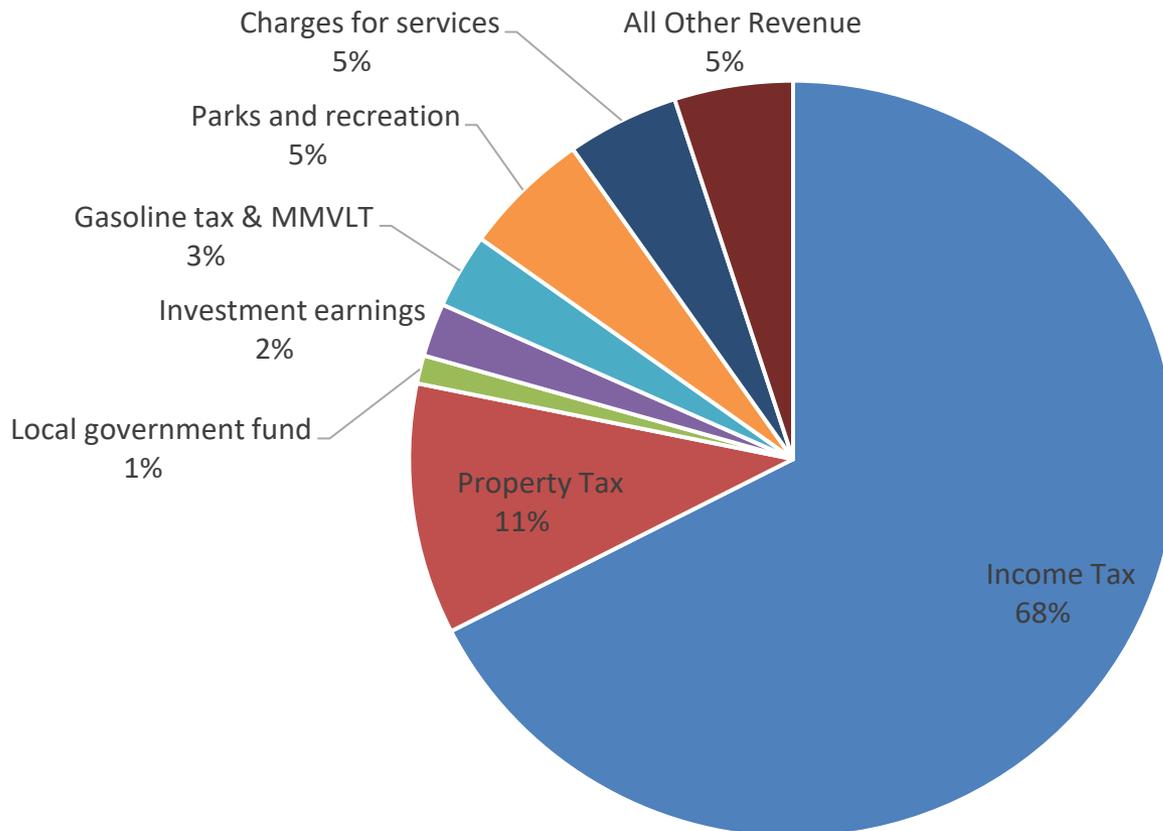
# Highlights

- 3.5% wage increase for non-union personnel
- 3.5% wage increase for Division of Police
- 7.5% increase in health insurance costs
- IAFF contract for 2024 – 2026 TBD



# How do we pay for services?

Operating Funds - 2024 Estimated Revenue





# How do we pay for services – Revenue

- **2024 General Fund revenue estimate is a 13.11% increase from the 2023 estimate.**
- 2023 Income Tax Estimate: \$31,500,000
  - 6.5% increase from the 2023 estimate
- 2025: \$32,287,500 (2.50% increase)
- 2026: \$33,094,688 (2.50% increase)
- 2027: \$33,922,055 (2.50% increase)
- 2028: \$34,770,106 (2.50% increase)



# How do we pay for services – Property Taxes

- 2024 Property Tax: \$4,630,307
  - General Fund: \$4,215,607
  - Police Pension Fund: \$262,900
  - General Bond Retirement Fund: \$151,800
- Collection year 2024 is a full reappraisal and the estimate reflects an almost 19% increase.
- Should have actual numbers in November



# How do we pay for services – Charges for services

- 2024 Parks and Recreation Fees:  
\$2,000,000
- 2024 EMS Transport Fees: \$675,000
- 2024 Fire Protection Service:  
\$1,000,000
- 2024 Riverlea Police Protection:  
\$91,391



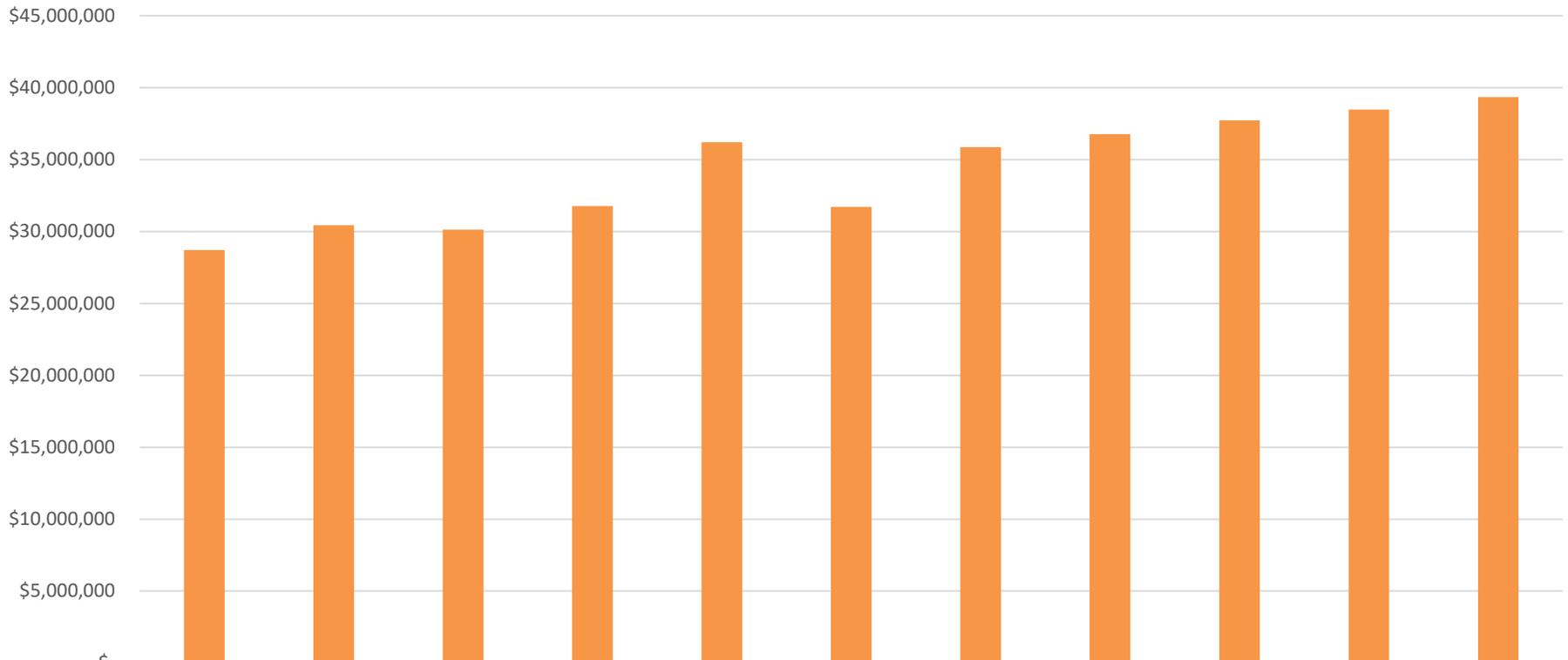
# How do we pay for services – Gas Tax & MMVLT

- 2024 Estimate: \$1,195,000
  - Gas Tax: \$925,000
  - MMVLT: \$270,000
- No change from the 2023 Estimate



# 5-Year Forecast – General Fund Revenue

General Fund Revenue  
2018-2028 (2023-2028 Estimate)



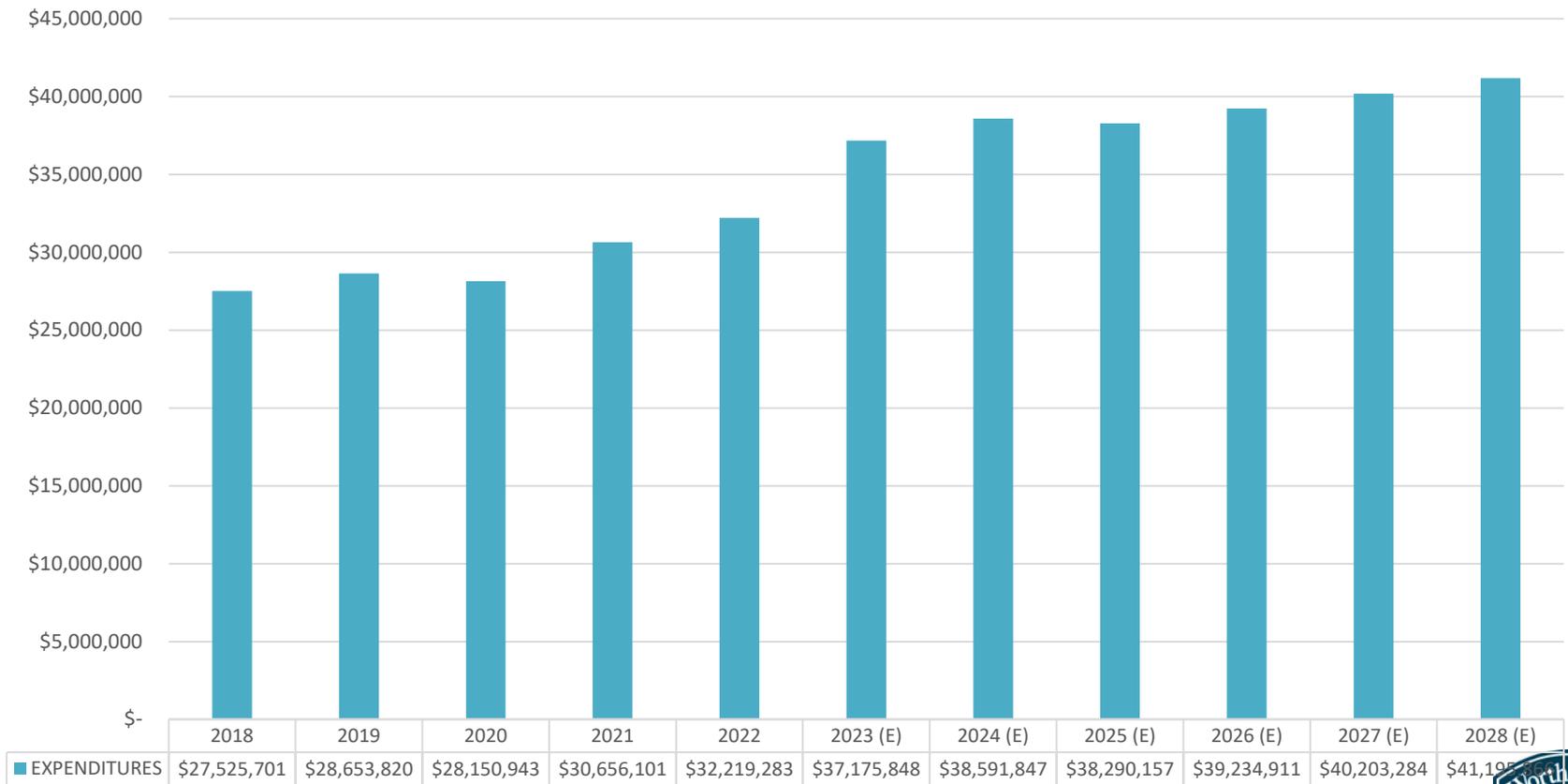
	2018	2019	2020	2021	2022	2023 (E)	2024 (E)	2025 (E)	2026 (E)	2027 (E)	2028 (E)
REVENUE	\$28,701,110	\$30,435,328	\$30,126,678	\$31,756,682	\$36,207,008	\$31,698,087	\$35,854,168	\$36,775,364	\$37,721,686	\$38,478,228	\$39,348,684





# 5-Year Forecast – General Fund Expenses

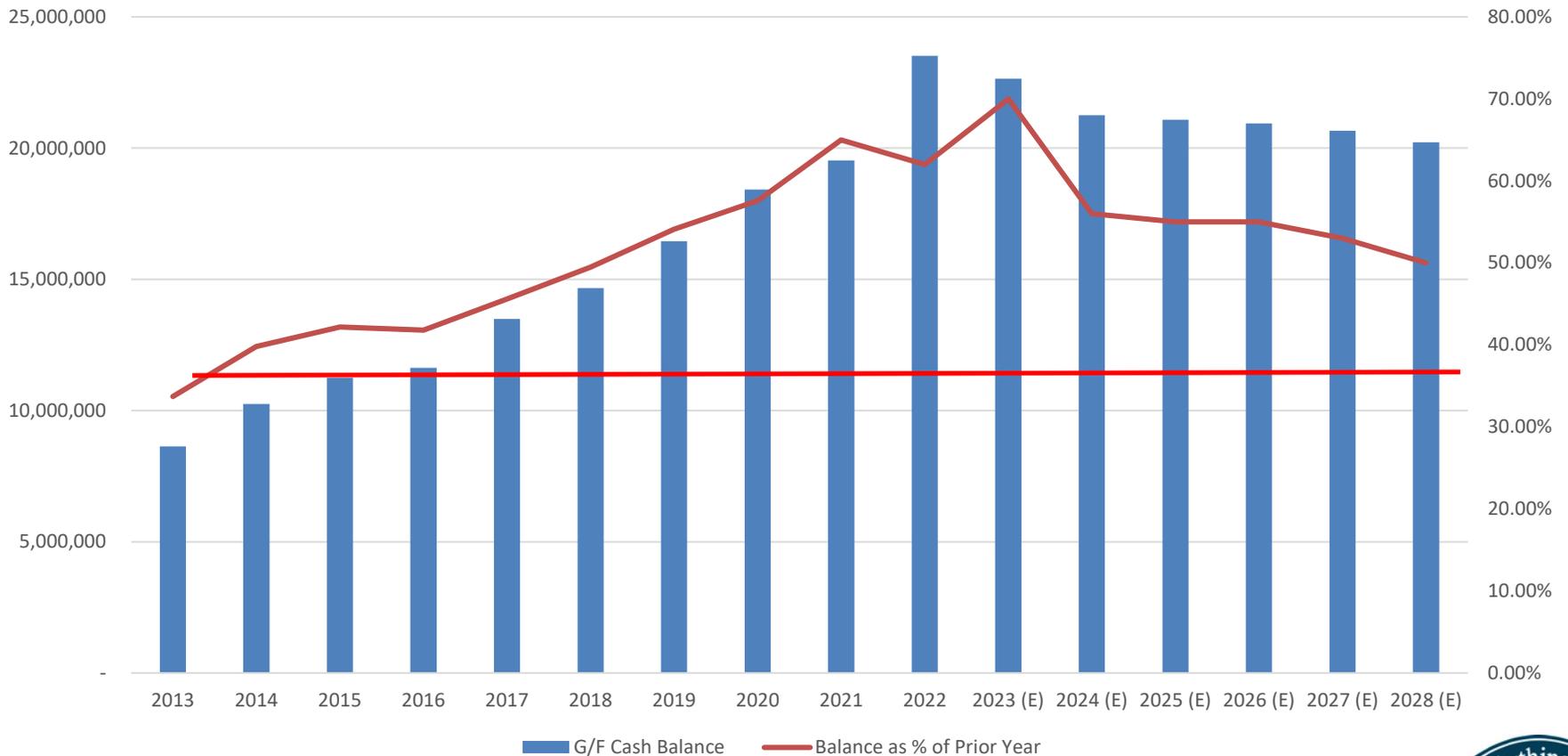
General Fund Expenditures  
2018-2028 (2023-2028 Estimate)





# 5-Year Forecast – General Fund Fund Balance

General Fund Fund Balance  
2013-2028 (2023 - 2028 Estimate)





# Budget Schedule

- City Council Meetings
  - October 9<sup>th</sup> – Operating & 5 Year Overview
  - October 16<sup>th</sup> – Capital Improvement Overview
  - November 6<sup>th</sup> – Departmental Discussion
  - November 13<sup>th</sup> –Community Groups
  - November 20<sup>th</sup> – Budget Follow Up
  - November 20<sup>th</sup> – Introduction of 2024 Budget Ordinance



# Potential Modifications & Items for Discussion

- Northwest Regional Emergency Communications Contract (NRECC): Will need to add an additional \$80,000
- SwimInc Request
- Columbus Board of Health Contract

**Projected Timelines - Initiatives**

10/5/2023

2023				2024				2025			
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4

Age Friendly Plan Development



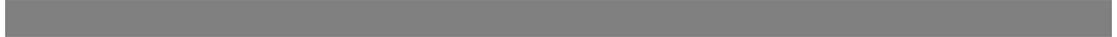
Aging Infrastructure (sewer capacity, water lines)



Backyard Chickens



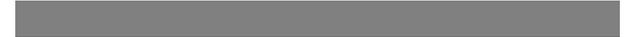
Bike & Ped - Pursuit of External Funding



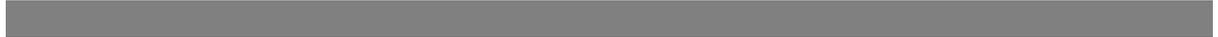
CIC Properties



Comp Plan Update



DEI



Deer Management



Flavored Tobacco



Griswold - Beer & Wine Rentals



Hiring - CM, Chief



Housing Assessment



Northeast Area Plan



Outdoor Pool



Parks Foundation



Pay to Stay



Sharon Fire Levy



Sign Code Update



Vision Implementation Teams



**Initiatives Not Scheduled/Support Undetermined**

Affordable Housing Bonds

Art in Public Spaces

Business Retention & Expansion - Expanded Efforts

Coordinated Efforts w/ Columbus in Border Areas

Designated Economic Corridors

Grants - Expanded Efforts

Parking in Downtown

Micro Transit/Trolley

Restaurant Incentives

Sidewalk Clearance Policy

Speed Limits Along Major Corridors

Sustainability - Expanded Efforts

Village Green - Enhanced Amenities