CITY OF DAYTON

COUNCIL MEETING

July 17, 2018

A regular meeting of Dayton City Council was held on Tuesday, July 17, 2018 in the board meeting room of the Dayton Independent Schools Administration Building, Third & Clay Street. Dayton, KY.

ROLL CALL:

Mayor Boruske Aye Member Haas Aye

Member Volter Aye Member Lynn Aye

Member Burns Aye City Adm. Giffen Aye

Member Neary Aye City Att. Edge Aye

Member Baker Aye

Mayor Boruske opened the meeting with a silent prayer, and led the Pledge of Allegiance.

Audience:

David Culp, Jr., addressed council on behalf of his father, David Culp, 320 Sixth Avenue. Mr. Culp is not in favor of the new program sponsored by the Campbell County Animal Shelter, which is trap, neuter and release. This has caused several cat problems in the neighborhood where his father lives. There is a colony of cats next to his dad’s home. Mr. Culp, Jr. has attended several meetings and sent a letter to Will Schroder, KY Senator. City Adm. Giffen explained this is a program the Campbell County Animal Shelter has implemented. There is nothing the city can do to change what the shelter is doing. We have no place to take the cats. The problem around Mr. Culp’s house is related to the tenant situation in the building next to his. The tenant has been evicted and hopefully the problem will be resolved. Per the county this is a two year program. The City will keep in contact with the county on these issues.

Scott Beseler, 231 Sixth Avenue, asked about the vacant property registration fee. As the ordinance now reads it’s not very complete. It does not address what happens if a home catches on fire. How long after that is the property considered vacant? The owner of the property does not have any due process to stand up against a fine. Mr. Beseler asked that council consider making this a more detailed ordinance.

Tammy Cornett, 225 Third Avenue, announced Music Fest will be held on August 31 and Sept. 1 this year. It will be a two night event from 5:00 p.m. until midnight. Currently there are 12 bands and 12 vendors. Tammy asked council to amend the occupational ordinance or get some type of approval to do away with the vendor license fee if the vendor is setting up at a city event. This will help her build the festival and make it bigger and better. The Kite Festival will not be held in the fall this year but held next year in the Spring. Last year the civic club received a $5,000 grant for the Kite Festival, and all the proceeds went to Light Up Dayton. Now we need to think of new ways to raise money. This year Tim Hall, Hometown Heroes, with help with the cooking at Music Fest. He will also give a percentage back to the Civic Club. This fall the Civic Club with the help of Bob Yoder, Economic Development Director, will sponsor a Taste of Dayton. The plan is to block off a part of the Avenue and get all the restaurants in Dayton involved. The Civic Club will sell drinks.

Kathy Gordon, 314 Fourth Avenue, reported the stop sign at Fifth & O’Fallon needs replaced. City Adm. Giffen spoke with the City of Bellevue and they agreed to put up a sign on the right side, North on O’Fallon Avenue. Both the North & South side is off-set by landscaping. City Adm. Giffen will follow-up with Bellevue tomorrow.

Jill Morenz, Catalytic Fund, noted the Catalytic Fund will once again sponsor Beyond the Curb an urban living tour. This is their fifth anniversary and will include all five cities. The event will be on September 30, from 9:00 a.m. until 5:00 p.m. and showcase housing that is available in Northern Kentucky. If anyone would like to participate please contact Ms. Morenz.

Beth Nyman, 625 Tenth Avenue, reported the Main Street Board is sponsoring “I 8 in Dayton”. Eight restaurants in Dayton are participating. Over 1500 brochures have been handed out, and the interest is increasing. On August 11 the Main Street Board will sponsor a picnic in the Park from 6:00 p.m. until 9:00 p.m. at the Town Center. Bring your own food, blanket and chair. The Eagles will be selling beer and soft drinks. All beer must stay on the Eagles property.

Mayor’s Report:

Motion by Member Burns, seconded by Member Lynn to approve the minutes from the June 5, 2018 meeting. Member Volter abstained. Motion carried—so ordered.

# CITY OF DAYTON, KENTUCKY

**ORDINANCE NO. 2018-#7**

**AN ORDINANCE AMENDING 157.04 OF THE CITY OF DAYTON CODE OF ORDINANCES FOR THE REGISTRATION OF VACANT REAL PROPERTY LOCATED WITHIN THE CITY.**

This ordinance adds to City of Dayton Code of Ordinances 157.04 requiring registration fees when registering vacant real property by allowing property owners who have listed the property for sale or attempting to rehab the property for resale or occupancy may obtain a second deferment from paying the registration fee for a period One Hundred Eighty (180) days and a third deferment from paying the registration fee for ninety (90) days from the City if the owner provides proof that a reasonable effort is being made to sell or rehab the real property.

I, Tom Edge, an attorney licensed to practice law in the Commonwealth of Kentucky, acting as attorney for the City of Dayton, Kentucky, do hereby certify that this summary was prepared by me at the direction of the Council of the City of Dayton, and that said summary is a true and accurate summary of the contents of the ordinance.

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**TOM EDGE**

Motion by Member Lynn, seconded by Member Haas to approve 2018#7 as read. Comments:

Member Volter would like to add a clause to the vacant property ordinance to allow for extenuating circumstances. In this case it could be brought to the attention of the Code Director. Member Lynn agreed. Member Lynn received an e-mail from Mr. Beseler that he received a fine from the City for $500.00. Member Lynn thought the changes in the ordinance would give people more time so they don’t have to pay $500.00 unless they go beyond the 15 months or they are not doing any improvements. If you don’t register and then get caught do you have to pay the $500.00? I’m not sure everyone knows about this ordinance. Per City Att. Edge, Mr. Liles, Code Director, sends a notice first. Member Neary felt that anyone receiving a citation should have the right to appeal to the Code Enforcement Board. City Att. Edge said yes they do, as long as they appeal within 7 days from the date of the citation. Mr. Beseler said he was given an application when he went into the office. Mr. Beseler has not completed or returned the application he was given. City Adm. Giffen said there are people in limbo from the time the first ordinance was passed until now with these new changes. Mr. Beseler’s property has been vacant for two years. The original ordinance was passed in July 2016, and he should have registered at that point. Mr. Liles noted everyone on the list he submitted to council has been sent a violation, and he has confirmed the property is vacant. Question, when does the vacant property start? Does it start when they are issued a letter or sent an application, even if the property has been confirmed vacant for five years? Per City Att. Edge, the moment the property becomes vacant the ordinance applies. Currently the city is sending a notice or application to the property owner. Mr. Liles gives 30 days to respond. If no one responds they will be sent a violation/citation. They can appeal to the Code Board.

ROLL CALL:

Member Volter Aye Member Baker Nay

Member Burns Aye Member Hass Aye

Member Neary Aye Member Lynn Aye

Motion carried—so ordered.

# CITY OF DAYTON, KENTUCKY

**ORDINANCE NO. 2018-#8**

**AN ORDINANCE CLOSING AND ABANDONING UNIMPROVED PORTIONS OF FRONT STREET AND DODD DRIVE.**

This ordinance closes and abandons the unimproved portions of Front Street and Dodd Drive and returns the property to the adjacent property owner, the City of Dayton, in accordance with Kentucky Revised Statute.

I, Tom Edge, an attorney licensed to practice law in the Commonwealth of Kentucky, acting as attorney for the City of Dayton, Kentucky, do hereby certify that this summary was prepared by me at the direction of the Council of the City of Dayton, and that said summary is a true and accurate summary of the contents of the ordinance.

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**TOM EDGE**

Motion by Member Haas, seconded by Member Burns to approve 2018#8 as read.

ROLL CALL:

Member Burns Aye Member Haas Aye

Member Neary Aye Member Lynn Aye

Member Baker Aye Member Volter Aye

Motion carried—so ordered.

# CITY OF DAYTON, KENTUCKY

**ORDINANCE NO. 2018-#9**

**AN ORDINANCE AMENDING THE CITY OF DAYTON, KENTUCKY'S ANNUAL BUDGET FOR FISCAL YEAR JULY 1, 2017 THROUGH JUNE 30, 2018, AND ESTIMATING REVENUES AND RESOURCES AND APPROPRIATING FUNDS FOR THE CITY TO THE FULL EXTENT AUTHORIZED BY KRS 82.082 AND INTERPRETATIVE CASE LAW.**

This ordinance amends the budget for Fiscal Year beginning on July 1, 2017 through June 30, 2018 for the General Fund, Municipal Aid Fund, Park Board Fund, Parks, Economic Development, TIF, and the Sargent Park Fund by authorizing $20,000.00 to be appropriated to the line item Vine Street Park.

I, Tom Edge, an attorney licensed to practice law in the Commonwealth of Kentucky, acting as attorney for the City of Dayton, Kentucky, do hereby certify that this summary was prepared by me at the direction of the Council of the City of Dayton, and that said summary is a true and accurate summary of the contents of the ordinance.

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**TOM EDGE**

Motion by Member Haas, seconded by Member Lynn to approve 2018#9 as read.

ROLL CALL:

Member Neary Aye Member Lynn Aye

Member Baker Aye Member Volter Aye

Member Haas Aye Member Burns Aye

Motion carried—so ordered.

# CITY OF DAYTON, KENTUCKY

**ORDINANCE NO. 2018-#10**

**AN ORDINANCE ADOPTS THE CITY OF DAYTON, KENTUCKY'S ANNUAL BUDGET FOR FISCAL YEAR JULY 1, 2018 THROUGH JUNE 30, 2019, AND ESTIMATING REVENUES AND RESOURCES AND APPROPRIATING FUNDS FOR THE CITY TO THE FULL EXTENT AUTHORIZED BY KRS 82.082 AND INTERPRETATIVE CASE LAW.**

This ordinance adopts the budget for Fiscal Year beginning on July 1, 2018 through June 30, 2019 for the General Fund, Municipal Aid Fund, Parks, Economic Development, TIF, Capital Outlay, and the Sargent Park Fund.

I, Tom Edge, an attorney licensed to practice law in the Commonwealth of Kentucky, acting as attorney for the City of Dayton, Kentucky, do hereby certify that this summary was prepared by me at the direction of the Council of the City of Dayton, and that said summary is a true and accurate summary of the contents of the ordinance.

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**TOM EDGE**

Donna Leger, Clerk/Treas., noted on ordinance 2018#10 the total line is blank under Capital Outlay. The total resources for appropriation is $464,000. This amount needs to be moved down to the total line also.

Motion by Member Burns, seconded by Member Volter to approve 2018#10 as read with noted change. Comments: Member Neary knows that this administration and past administrations has taken out $65,000 and to the general fund for public works to maintain the floodwall. While this may be legal I don’t think it is correct, because it is not part of the park system. Mayor Boruske responded, yes it is. The floodwall was declared a park and this also includes the park benches along the flood levee. Since it was not listed in the Park ordinance, Member Neary did not think it should apply. Member Neary suggested the $65,000 and the $12,500 be kept in the park fund and any public works expenditures should be charged against the park fund account. In the Economic Development the capital improvements and demolition were previously part of the general fund. How is demolition part of Economic Development? Capital Improvement is $200,000 with no clear definition of those projects.

City Adm. Giffen noted the Capital Improvement fund is $200,000 and it has been in the budget as long as Michael has been employed with the city. Just as we have always done anything Economic Development related comes before council before we spend any funds. In this case the demolition or $200,000 line item would come to council for approval before the funds were spent.

ROLL CALL:

Member Baker Aye Member Volter Aye

Member Haas Aye Member Burns Aye

Member Lynn Aye Member Neary Nay

Motion carried—so ordered.

CITY OF DAYTON

RESOLUTION NO. 2018-9r

**AN ORDER/RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, KENTUCKY, AUTHORIZING THE ISSUANCE OF UP TO $35,000,000 MAXIMUM AGGREGATE PRINCI­PAL AMOUNT TAXABLE INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2018, IN ORDER TO ASSIST ARLINGTON PROPERTIES, INC., OR ITS ASSIGNS, TO FINANCE THE ACQUISITION, CON­STRUC­TION AND EQUIPPING OF AN INDUSTRIAL BUILDING FACILITY LOCATED WITHIN THE CITY OF DAYTON, KENTUCKY AND TO IMPROVE SAID FACILITY; AUTHORIZING THE ISSUANCE OF ADDITIONAL BONDS; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SAID BONDS; AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF DAYTON, KENTUCKY AND ARLINGTON PROPERTIES, INC., OR ASSIGNS, WITH RESPECT TO THE FACILITY (THE “AGREE­MENT”); AUTHORIZING A TRUST INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND FURTHER TO SECURE THE PAYMENT OF SAID BONDS; AUTHORIZ­ING A BOND PURCHASE AGREEMENT; AUTHORIZ­ING A HOME OFFICE PAYMENT AGREEMENT; AND AUTHORIZING THE EXECU­TION OF AN OPEN-END LEASEHOLD MORTGAGE AND SECURITY AGREEMENT, WITH A JOINDER BY THE CITY.**

WHEREAS, the City of Dayton, Kentucky (the “Issuer”) is by virtue of the laws of the Commonwealth of Kentucky, including Chapter 103 of the Kentucky Revised Statutes, and other authorities mentioned therein, authorized and empowered, among other things, (a) to assist in the financing of costs of industrial building facilities located within the boundaries of the Issuer, (b) to enter into an agreement with the lessee of such facilities providing for revenues sufficient to pay the principal of and interest and any premium on such revenue bonds, including the issuance of refunding bonds (c) to secure such revenue bonds by a trust agreement or indenture between the Issuer and a corporate trustee, and by a pledge and assignment of such revenues, as provided for herein, and (d) to enact the Bond Legislation and enter into the Indenture and the Agreement, as hereinafter identified, upon the terms and conditions provided therein; and,

WHEREAS, by the terms of a Resolution No. 2018-4-R, the Issuer agreed to provide certain incentives to encourage Arlington Properties, Inc., an Alabama corporation, (the “Company”) to undertake a multi-family apartment building in the City referred to as the Tapestry on the River Project (the “Project”), including agreeing to issue Project Bonds pursuant to KRS Chapter 103 to pay for the cost of acquisition and construction of the Project; and

WHEREAS, it is hereby determined by this Legislative Authority that the acquisition, construction and equipping of the Project, and improvement to said Project will require the issuance, sale and delivery of the Project Bonds in the maximum aggregate principal amount of $35,000,000 and hereafter may, with the prior written consent of the Issuer, involve the Issuer’s issuance, sale and delivery of Additional Bonds on a parity therewith, all of which Project Bonds and Additional Bonds shall be equally and ratably payable and secured as provided herein and in the Indenture authorized herein;

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF DAYTON, KENTUCKY, as follows:

That the provisions hereof shall be, as follows:

# Definitions. All defined terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Trust Indenture with respect to the Project Bonds (the “Indenture”) between the Issuer and The Huntington National Bank and its successors in trust, as trustee (the “Trustee”).

Any reference herein to the Issuer, to the Legislative Authority, or to any officers thereof, shall include any person or entity which succeeds to its or their duties or responsibilities pursuant to or by operation of law. Any reference to a section or provision of the Kentucky Constitution or the Act or to a section, provision or chapter of the Kentucky Revised Statutes shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented or superseded; provided, however, that no such change in the Constitution or laws (a) shall alter the obligation to pay the Bond service charges in the amounts and manner, at the times and from the sources provided in this Bond Legislation and the Indenture, except as otherwise herein permitted or (b) shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer, the Trustee or the Company under the Agreement or the Indenture.

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

# Determinations of Legislative Authority. The Legislative Authority hereby determines that the Project is an “industrial building” as that term is defined in Section 103.200 of the Kentucky Revised Statutes, and will benefit the people of the Issuer by creating or preserving jobs and employment opportunities and promoting the commercial and economic development of the Issuer and the State.

# Authorization and Terms of Project Bonds.

## Authorization. It is hereby determined to be necessary to, and the Issuer shall issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, up to $35,000,000 maximum aggregate principal amount of Project Bonds for the purpose of providing funds to be used to finance the Project and to finance improvements to said Project and to pay costs of issuance of said Project Bonds. The Project is and shall be owned by Issuer and leased to the Company. Said Project Bonds shall be issued in a single series and shall be designated “Taxable Industrial Building Revenue Bonds, Series 2018 “Tapestry on the River Project” (the “Project Bonds”). The Issuer may also issue, sell and deliver Additional Bonds on a parity with the Project Bonds for the purposes and in the manner provided in the Indenture. The proceeds of the Project Bonds shall be applied (i) to provide funds to finance the acquisition, construction and installation of the Project and (ii) to pay reasonable and customary closing costs associated with the issuance of the Project Bonds.

## Terms. The Project Bonds shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the Indenture. The Project Bonds shall mature as provided in the Indenture, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Indenture. This Legislative Authority hereby fixes and establishes the interest rate in effect from time to time on the Project Bonds in the manner and pursuant to the provisions of the Indenture.

The form of the Project Bonds attached to the Indenture, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Indenture, in a principal amount of up to $35,000,000, shall represent the approved form of the Project Bonds of the Issuer.

## Place of Payment. Bond service charges on Project Bonds shall be payable, without deduction for services of the Paying Agent, in the manner provided in the Project Bonds.

## Execution. The Project Bonds shall be executed by the Mayor and City Clerk of the Issuer, provided that either or both of such signatures may be facsimiles.

## Maximum Rate. The per annum interest rate applicable to the Project Bonds shall at no time exceed the maximum rate allowable by the laws of the Commonwealth of Kentucky.

## Required Other Approvals. The issuance of the Project Bonds is subject to approval of the Project for the issuance of Project Bonds as required by KRS 103.2101.

## Pilot Agreement. The issuance of the Projects Bonds by the Issuer shall be conditioned upon compliance by the Company to pay certain payments in lieu of taxes as set forth in an Agreement In Lieu of Taxes by and among the Issuer, the Dayton Independent School District and the Company dated April 23, 2018.

# Terms of all Project Bonds and Additional Bonds. All Project Bonds and Additional Bonds shall bear such designation as may be necessary to distinguish them from Bonds of any other series. Bond service charges on all Project Bonds and Additional Bonds shall be payable in lawful money of the United States of America. Bonds shall be issued as fully registered bonds. All Project Bonds and Additional Bonds shall be negotiable instruments within the meaning of Chapter 103 of the Kentucky Revised Statutes, subject to applicable provisions for registration, and shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law.

All Project Bonds and Additional Bonds shall be executed in the manner provided in the Bond Legislation authorizing their issuance or in the manner provided by the applicable law in effect at the time of their issuance. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the issuance, authentication or delivery of such Project Bonds and Additional Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until that time.

Any notice of call for redemption of all Project Bonds shall be given in the manner provided in the Indenture. If Project Bonds and Additional Bonds or portions of fully registered Project Bonds and Additional Bonds are duly called for redemption and if on such redemption date moneys for the redemption of all the Project Bonds and Additional Bonds to be redeemed, together with accrued interest to the redemption date, shall be held by the Trustee or Paying Agents so as to be available therefor, then from and after such redemption date such Project Bonds and Additional Bonds or portions of fully registered Bonds shall cease to bear interest.

# Security Pledged for Project Bonds. The Project Bonds shall be payable solely from the Revenues and secured by, among other things, a pledge of and lien on moneys deposited in the Construction Fund and the Bond Fund, and a pledge and assignment of other moneys constituting Revenues, and further secured by the Indenture, and anything in this Bond Legislation, the Project Bonds, the Agreement, and Indenture to the contrary notwithstanding, neither this Bond Legislation, the Project Bonds, the Agreement, nor the Indenture shall constitute a debt or a pledge of the faith and credit of the Issuer or of the State or any political subdivision thereof and the holders or owners of the Bonds shall have no right to have taxes levied by the General Assembly of the State or the taxing authority of the Issuer or of any other political subdivision of the State for the payment of the principal of, premium, if any, or interest on the Project Bonds, but such Bonds are payable solely from the Revenues and the Bonds shall contain on the face thereof a statement to that effect.

# Sale of Project Bonds; Allocation of Purchase Price. The Legislative Authority is hereby authorized and directed to offer for sale the Project Bonds to Arlington Properties, Inc., (in its role as purchaser of the Project Bonds, the “Purchaser”), for purchase by the Purchaser at the price or prices set forth in the Bond Purchase Agreement, plus accrued interest, if any, in accordance with the terms and provisions of this Bond Legislation, and to make the necessary arrangements on behalf of the Issuer with the Purchaser to establish the date, location, procedure and conditions for the delivery of the Project Bonds to the Purchaser. The Mayor and City Clerk are further hereby authorized and directed to take all steps necessary to effect due authentication, delivery and security of the Project Bonds under the terms of this Bond Legislation, Bond Purchase Agreement and the Indenture, and it is hereby determined that the aforesaid purchase price and the interest rate for the Project Bonds and the manner of sale, as provided in this Bond Legislation, are in compliance with all legal requirements. The City Clerk shall furnish to the Purchaser a true and certified transcript of proceedings with reference to the issuance of the Project Bonds, along with such information from his or her records as is necessary to determine the regularity and validity of the issuance of said Project Bonds.

There is hereby created by the Issuer and ordered maintained as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee a trust fund to be designated “City of Dayton, Kentucky-Tapestry on the River Project Construction Fund” (herein also sometimes called the “Construction Fund”). After payment of the costs of issuance related to the Bonds, the Project Bond proceeds shall be used to fund the Construction Fund. Moneys in the Construction Fund shall be disbursed by the Trustee in accordance with the provisions of the Agreement, and the Trustee is hereby authorized and directed to issue its check, transfer funds via wire transfer or credit accounts for each disbursement required by the provisions of the Agreement. The Issuer covenants and agrees promptly to take whatever action, if any, is necessary in approving and ordering all such disbursements.

The moneys to the credit of the Construction Fund shall, pending application thereof as above set forth, be subject to a lien and charge in favor of the holders of the Project Bonds, but only to the extent of their interest therein.

# Source of Payment - Bond Fund. As provided in the Agreement, moneys sufficient in time and amount to pay the Bond service charges with respect to the Project Bonds as they come due are to be paid by the Company directly to the Trustee, including Lease Payments for the account of the Issuer and deposited in an appropriate account in the Bond Fund.

There is hereby created by the issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund to be designated “City of Dayton, Kentucky-Tapestry on the River Project Revenue Bond Fund” (herein called the “Bond Fund”). The Bond Fund (and accounts therein provided for in the Indenture or in the Agreement) and the moneys and investments therein are hereby pledged to and shall be used for the payment of Bond service charges, all as provided herein and in the Indenture and the Agreement, provided that no part thereof (except as may otherwise be provided for herein and in the Indenture or the Agreement) shall be used to redeem or purchase, prior to maturity, any Project Bonds. The Trustee is authorized and directed to create and maintain appropriate accounts in the Bond Fund with respect to each series of Project Bonds and Additional Bonds consistent with their respective payment and security (priority) provisions.

On or before each date when Bond service charges are due and payable, the Trustee shall transmit from moneys in the Bond Fund applicable thereto to any other Paying Agents, as appropriate, amounts sufficient to meet payments to be made by them of Bond service charges then to be due and payable; provided that to the extent the amount needed by any other Paying Agent is not sufficiently predictable, the Trustee may, but shall not be required to, make such credit arrangements with such Paying Agent as to permit meeting such payments.

There shall be deposited into the Bond Fund (and credited, if required by the Indenture or the Agreement, to appropriate accounts therein), as and when received, (a) all Lease Payments, to the extent not required to pay Base Rent due under the Agreement which has not been paid and (b) all other Revenues, except those amounts required by the Indenture or the Agreement to be deposited in any other separate insurance or condemnation proceeds account.

The Issuer hereby covenants and agrees that so long as any of the Project Bonds are outstanding it will deposit or cause to be deposited in the Bond Fund, amounts sufficient in time and amount to pay the Bond service charges as the same become due and payable, and to this end the Issuer covenants and agrees that, so long as any Project Bonds are outstanding, it will diligently and promptly proceed in good faith and use its best efforts to enforce the Agreement, and that, should there be an event of default under the Agreement, the Issuer shall fully cooperate with the Trustee and with the Bondholders to protect fully the rights and security of the Bondholders hereunder. Nothing herein shall be construed as requiring the Issuer to use or apply to the payment of Bond service charges any funds or revenues from any source other than revenues or to expend any of its own funds to enforce the Agreement.

Notwithstanding anything herein to the contrary, the Issuer, Company, Purchaser and Trustee may enter into agreements that vary the method of payment of bond service charges, to the extent authorized by the Indenture.

# Covenants of Issuer. In addition to other covenants of the Issuer contained in this Bond Legislation and the Indenture, the Issuer further covenants and agrees as follows:

## Payment of Bond Service Charges. The Issuer will, solely from Revenues pay or cause to be paid the Bond service charges on each and all Project Bonds on the dates, at the places and in the manner provided herein, in the applicable Bond Legislation and in the Bonds.

## Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bond Legislation, the Agreement, the Indenture, the Bond Purchase Agreement and in any and every Project Bond executed, authenticated and delivered under the Indenture, and in all proceedings of the Issuer pertaining to the Project Bonds, the Indenture, the Bond Purchase Agreement or the Agreement. The Issuer warrants and covenants that it is, and upon delivery of the Project Bonds will be, duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Project Bonds and to execute the Indenture, the Bond Purchase Agreement and the Agreement to provide the security for payment of the Bond service charges in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Project Bonds and execution and delivery of the Indenture, the Agreement and the Bond Purchase Agreement have been or will be duly and effectively taken; and that the Project Bonds in the hands of the holders thereof will be valid and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Bond Legislation, the Indenture, the Agreement, the Bond Purchase Agreement and the Bonds is binding upon each such officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any pad of the duties required by such provision; and each duty of the Issuer and of its officers undertaken pursuant to such proceedings for the issuance of the Project Bonds is established as a duty of the Issuer and of each such officer having authority to perform such duty, specifically enjoined by law and resulting from an office, trust, or station within the meaning of the Kentucky Revised Statutes, providing for enforcement by writ of mandamus.

## Revenues. Except as otherwise provided in the Bond Legislation, the Indenture and the Agreement, the Issuer will not create or suffer to be created any debt, lien or charge thereon, or make any pledge or assignment of or create any debt, lien or charge thereon, or make any pledge or assignment of or create any lien or encumbrance upon the Revenues, including the moneys in the Bond Fund and the Construction Fund other than the pledge and assignment thereof under this Bond Legislation, the Indenture and the Agreement.

## Recordings and Filings. The Issuer will, at the expense of the Company, cause (to the extent required by the laws of the State to perfect such instruments and/or the lien created thereby) all necessary financing statements, amendments thereto, continuation statements and instruments of similar character relating to the pledges and assignments made by it to secure the Project Bonds, to be recorded and filed in such manner and in such places and to the extent required by law in order to fully preserve and protect the security of the holders of the Project Bonds and the rights of the Trustee under the Indenture.

## Inspection of Project Books. All books and documents in the Issuer’s possession relating to the Project or the Revenues shall at all times be open to inspection by such accountants or other agents of the Trustee or the Purchaser as the Trustee or the Purchaser may from time to time designate.

## Rights under Agreement. The Trustee, in its name or in the name of the Issuer, may, for and on behalf of the Bondholders, enforce all rights of the Issuer and all obligations of the Company under and pursuant to the Agreement, whether or not the Issuer is in default of the pursuit or enforcement of such rights and obligations.

## Maintenance of Agreement. The Issuer shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on the part of the Issuer under the Agreement, and will take all actions within its authority to maintain the Agreement in effect in accordance with the terms thereof and to enforce and protect the rights of the Issuer thereunder, including actions at law and in equity, as may be appropriate. The Issuer shall not be required to expend its own funds for this purpose.

# Investment of Bond Fund and Construction Fund. Except as otherwise provided in the Indenture, moneys in the Bond Fund, and the Construction Fund shall be invested and reinvested by the Trustee in Eligible Investments, in accordance with and subject to the orders (if verbal, to be confirmed in writing) of the Authorized Tenant Representative with respect thereto, provided that investments of moneys in the Bond Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide moneys hereunder to pay Bond service charges as they fall due at stated maturity or by redemption or pursuant to any Mandatory Sinking Fund Requirements, and provided that each investment of moneys in the Construction Fund shall in any event mature or be redeemable at the option of the Trustee at such time as may be necessary to make timely payments from said Bond Fund. Any such investments may be purchased from the Trustee or its affiliates. In the absence of written direction from the Company with respect to investment of moneys held in the Funds, the Trustee is hereby directed to invest funds in money market mutual funds of the Trustee or its affiliates that qualify as Eligible Investments under the Indenture. The Trustee shall sell or redeem investments standing to the credit of the Bond Fund to produce sufficient moneys hereunder at the times required for the purpose of paying Bond service charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any such order. For purposes of the Indenture and this Bond Legislation, such investments shall be valued at face amount or market value, whichever is less.

# Indenture, Agreement, Home Office Payment Agreement, and Bond Pur­chase Agreement. In order better to secure the payment of the Bond service charges as the same shall become due and payable, the Mayor and City Clerk are hereby authorized and directed, on behalf of the Issuer, to execute and deliver the Indenture, the Agreement, the Home Office Payment Agreement, and the Bond Purchase Agreement in substantially the forms submitted to the Issuer, which instruments are hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the Indenture, the Agreement, the Home Office Payment Agreement, and the Bond Purchase Agreement respectively by such officers.

This Bond Legislation shall constitute a part of the Indenture as therein provided and for all purposes of said Indenture.

# Other Documents. The Mayor and City Clerk are hereby further author­ized and directed to execute financing statements, other assignments and any other agreements, documents and instruments as are, in the opinion of bond counsel to the Issuer, necessary or desirable to perfect the pledges set forth in the Indenture and to consummate the transactions provided for in the Indenture, the Agreement and the Bond Purchase Agreement. This authorization to the Mayor and City Clerk to execute other related documents necessary to close the transaction include, but are not limited to, certain documents that may be required of the Lender to the Purchaser, including a Leasehold Mortgage and Security Agreement (Ground Lessor Joinder), and other related documents.

# Compliance with Kentucky Revised Statutes. It is hereby found and determined that all formal actions of this Legislative Authority concerning and relating to the passage of this Bond Legislation were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of any of its committees, if any, that resulted in such formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements of the Kentucky Revised Statutes.

# No Personal Liability. No recourse under or upon any obligation, cove­nant, acceptance or agreement contained in this Resolution, or in any Project Bonds, or in the Agreement, the Indenture, or the Bond Purchase Agreement, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Project Bonds, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Project Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Project Bonds, or otherwise, of any sum that may remain due and unpaid upon any Project Bonds, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Agreement, Indenture, and the Bond Purchase Agreement and the issuance of the Project Bonds.

# Downtown Business District. The City hereby finds and affirms that the Project, as proposed by the Company, is located within a city-designated downtown business district, per KRS 103.200(n).

# Bond Counsel. The City hereby approves and designates Keating Muething & Klekamp, Cincinnati, Ohio, as bond counsel for the issuance of the Project Bonds.

That this Resolution shall be signed by the Mayor, attested to by the City Clerk, recorded and be effective upon adoption.

ADOPTED: July \_\_\_\_, 2018

VIRGIL BORUSKE, MAYOR

ATTEST:

DONNA LEGER, CITY CLERK

Motion by Member Haas, seconded by Member Lynn to approve 2018#9R as read. Comments:

Mr. Parson, Bond Counsel, reported the city has no responsibility. This is the debt of the project.

ROLL CALL:

Member Haas Aye Member Burns Aye

Member Lynn Aye Member Neary Aye

Member Volter Aye Member Baker Aye

Motion carried—so ordered.

City Administrator’s Report:

Bob Yoder, Economic Development Director, has been advertising an older ordinance we still have on the books. This is section 37.07, a moratorium incentive to property owners. The City received an application from the owner of 202 Berry Avenue. The owner meets the qualifications. Motion by Member Baker, seconded by Member Lynn to approve. Comments: Member Neary asked if council will be approving all the moratoriums. Yes, that is the way the ordinance is written. Member Burns noted this ordinance was written in 1997. This is great, but we should review ordinances that are 20 years or older. Member Volter abstained. Motion carried—so ordered.

Member Burns asked for an update on the sewer covers. There are two or three in the city that are safety hazards, including the one on Ervin Terrace. City Adm. Giffen has an inventory of broken sewer covers and price quotes. We’ve been trying to get people responsible for destroying some of the covers to replace them so the city does not have the expense. Member Burns wants to make sure the sewer grate at Ninth & O’Fallon is on the list.

Member Neary noted great job on the 2017.2018 budget.

Department Head’s Report:

David Halfhill, Police Chief, submitted his monthly report. Thanks to the Eagles for their donation of $2,000. The money was used to purchase bike uniforms, bike bags, a gator from Bellevue, DOK Kits (Down Officer Kits) and emergency kits.

Chris Adkins, Fire Chief, submitted a copy of his report. Mayor and Council welcomed the new Chief. Chief Adkins thanked everyone for this position, and thanked all who supported him, and had the faith & trust to appoint him to be the new Fire Chief. His previous position in the Fire Department will be advertised next week.

Robert Yoder, Economic Development Director, reported the final CCAP budget for 2017/2018 came in under budget. There is a manufacturing company in the Industrial Park who is looking to expand. This expansion will increase their square footage by about 2/3, and add 8 new employees. There is not much available land left in the Industrial Park. The property located at 620 Sixth Avenue has opened up the front of the building in hopes of adding a new business and two nice apartments on the second floor. Smitty’s Sports Bar has been purchased by an existing Dayton business. Two applications came before the Board of Architectural Review, one for 200 Sixth Avenue (residential) and 301 Sixth Avenue is looking to expand.

Phil Liles, Director of Codes, submitted a copy of his report.

Petitions:

Residents at Nine & Vine would like a no outlet sign.

Unfinished Business:

What is the timeline for the Phase one study by KZF? City Adm. Giffen said this would be in the early part of September. When this study comes back the city needs to have a public hearing to get the publics input. City Adm. Giffen said yes, this has been discussed.

Member Neary asked for an update on Jamestown Pike Park. The design is down at the State. The city cannot move forward until we hear from them. Most likely the construction will start next year.

New Business:

Member Haas thanked Rep. Dennis Keene and Will Schroder for the proclamation they gave in honor of his mother.

Member Baker would like a garbage can, and more lighting at the Vine Street Park.

Adjournment:

Motion by Member Haas, seconded by Member Volter to adjourn. Motion carried—so ordered.

Respectfully submitted,

Donna Leger

Clerk/Treas.

ATTEST:

Virgil L. Boruske

Mayor