



## SHAKER HEIGHTS

### **Safety and Public Works Committee Agenda Fire Station 2 2801 Warrensville Center Road Friday, March 6, 2020, at 8:00 am**

1. Approval of Minutes from December 6, 2019 meeting

Documents:

[120619 SPW MEETING MINUTES.DOCX](#)

2. Approval of Minutes from October 4, 2019 Meeting

Documents:

[100419 SPW MINUTES FV.DOCX](#)

3. Legislation to Amend the City's Ordinances - Food, Games and Ice Cream Trucks Regulations

Presented by: William Gruber, Law Director

Documents:

[0227FOODTRUCKS-SPW.DOCX](#)  
[REVISION TO CHAPTER 545-3-20CLEAN.DOCX](#)  
[REVISIONS TO CHAPTER 545-3-2-20.DOCX](#)

4. City Hall Fire Alarm Replacement - Additional Funds  
Presented by: Patricia Speese, Director of Public Works

Documents:

[CHFIREALARMREPLACEMENTADDFUNDS\(06MAR20\).DOCX](#)

5. 2020 Street Resurfacing Contractor Recommendation  
Presented by: Patricia Speese, Director of Public Works

Documents:

[SAFETY PUBLIC WORKS MEMO\\_RESURFACING\(06MAR2020\).DOCX](#)

6. Recommendation of Permanent Gas Pipeline Easement for Dominion Enerergy Ohio  
Presented by: Patricia Speese, Director of Public Works

Documents:

[SAFETY PUBLIC WORKS MEMO\\_DEO\(06MAR2020\).DOCX](#)  
[DOMINIONEASEMENTMAP.PDF](#)

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**Safety and Public Works Committee Minutes**  
**Friday, December 6, 2019**  
**8 A.M.**  
**City Hall Council Chambers**

Members Present: Nancy Moore, Council Chair  
Anne Williams, Council Member  
Jonathan Hren, Citizen Member  
James Sammon, Citizen Member  
Jeffrey DeMuth, Chief of Police  
Patrick Sweeney, Chief of Fire

Others Present: Christian Maier, Assistant Director of Public Works  
Kelly Baker, Administrative Coordinator  
Barbara Bradley, League of Women Voters

The meeting was called to order by Council Chair Nancy Moore at 8:03 A.M.

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Chair Moore started the meeting by thanking everyone for their service. She indicated that the Mayor will be making new committee appointments the first of the year for Chair as well as members. Obviously, Mayor Weiss solicits as well as welcomes any mention by citizens members of reappointments or services that you may care to make. Consequently, all it takes is an email to the Mayor. Council Member Julianna Senturia is not present, but it was a privilege to serve with her. This is the end of her four year term on City Council and she is moving forward to the rest of her life and professional plans and it has been a special to serve with her as a member of this Committee when she chaired it, as a Member of Council, and now as a Council Member on the Committee.

Chair Moore added last but not least, there is another member “end of chapter” today that should be mentioned, that is Deb Messing, that has decided that she will retire. Marking the special day, a token of appreciation was presented to Ms. Messing for her service on the Committee and to celebrate her retirement. Ms. Messing mentioned that it has been an honor to be a part of the Committee and to work with so many wonderful and intelligent individuals. She also mentioned that she will miss the Committee as well as working in the City of Shaker Heights.

Administrative Coordinator Kelly Baker, of the Public Works Department, was introduced to the Committee. Ms. Baker will be the recording secretary to the Safety and Public Works Committee in 2020.

Approval of the October 4, 2019, Meeting Minutes

**CITY OF SHAKER HEIGHTS**

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There were small edits to the minutes submitted by both Citizen Member Anne Williams and Chair Nancy Moore. Chair Moore asked if there were additional changes. There were no additional changes; however, the minutes could not be approved as there was not a quorum at the meeting. After the first of the year, the Committee will need to approve the October 4, 2019, minutes as well as the December 6, 2019, meeting minutes.

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**NEORS - Shaker Heights Easement**  
**Christian Maier, Assistant Director of Public Works**

Chair Moore indicated that the only agenda item at today's meeting is a sewer easement. Included with the memo was the Sewer Easement, Legal Description, and a map of the easement on Coventry Road at Shaker Boulevard. Chair Moore introduced Christian Maier.

Assistant Director Maier explained that in 1996, the Northeast Ohio Regional Sewer District (NEORS) installed a large diameter sewer as part of the Heights Interceptor within the City of Shaker Heights. A portion of the interceptor and associated access structures runs south to north within the Coventry Road Grass median. NEORS has an access shaft approximately 100 feet south of the Shaker Boulevard/Coventry Road Intersection. This parcel is owned by the City. The District has requested a permanent easement for this parcel to provide access, perform maintenance activities and conduct inspections associated with their assets. As part of the easement, the City would be limited to making repairs and/or replacement of the sidewalks and pavement adjacent to the parcels. It would not be permissible to construct any structures that would interfere with the maintenance or impact structural integrity of the interceptor.

Assistant Director Maier added that the Public Works Department takes no exception to granting a permanent easement for PPN 731-07-014 to the NEORS. Consequently, support is being sought from the Safety and Public works Committee to grant such easement.

Chair Moore stated that the sense of the Committee is to be in favor of granting the permanent easement. It was indicated that a formal vote could not be taken due to not having a quorum at the meeting.

(Please refer to the audio portion of this meeting for further discussion.)

There being no further business, the meeting was adjourned at 9:20 A.M. The next meeting will be December 6, 2019.

Debra R. Messing, Sr. Administrative Assistant  
Safety & Public Works Committee



# SHAKER HEIGHTS

**Safety and Public Works Committee Minutes  
Friday, October 4, 2019  
8 A.M.  
City Hall Council Chambers**

Members Present: Nancy Moore, Council Chair  
Anne Williams, Council Member  
Julianna Senturia, Council Member  
James Brady, Citizen Member  
Jonathan Hren, Citizen Member  
Austin McGuan, Citizen Member  
David E. Weiss, Mayor  
Jeri Chaikin, Chief Administrative Officer  
Jeffrey DeMuth, Chief of Police  
Patricia Speese, Director of Public Works

Others Present: Rob Zimmerman, Council Member  
James Mariano, Precision Wildlife Management, LTD  
Barbara Bradley, League of Women Voters

The meeting was called to order by Council Chair Nancy Moore at 8:03 A.M.

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## Approval of the September 6, 2019, Meeting Minutes

Chair Moore stated that she found one minor change to be made to the September 6, 2019, minutes. She asked the Committee for any additional modifications to the minutes. There being no additional modifications, she requested a motion to approve the September 6, 2019, Minutes into record. A motion was made by Citizen Member James Brady and seconded by Council Member Anne Williams; the motion carried.

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## **2020 Cuyahoga County Supplemental Grant: Application for C hagrín-Lynnfield Pedestrian and Bicycle Improvements** **Jeffrey N. DeMuth, Chief of Police**

Chief DeMuth explained that this request is to authorize a grant application and ultimate acceptance if the grant is funded from the Cuyahoga Department of Development under the 2020 Supplemental Grant Program, for pedestrian and bicycle improvements specifically for the Chagrin Boulevard-Lynnfield Road intersection. The application is for \$50,000 and no local match is required from the City. The CDSG will award up to twenty grants of \$50,000 each to strengthen cities, encourage regional collaboration and improve quality of life for county residents. CDSG applications are open to all 59 Cuyahoga County

Communities and 501(c)(3) community development corporations. He added that all grant projects must meet a community development need related to the health or welfare of the community. Along these lines, neighborhood residents, particularly in Sussex, have expressed safety concerns at this intersection ever since the traffic signal was removed in 2005. Chief DeMuth further stated that the City has used this grant in the past. Last year the City received \$50,000 for landscape improvements at the Van Aken District RTA area. In 2018, City engineering consultant HNTB evaluated this intersection as part of the Van Aken District Signal Study. Conditions at this time did not support re-installation of a full traffic signal; the study recommended continued monitoring as the Van Aken District builds out. In 2019, the City did allocate Capital Budget funds to this project to use to gather neighborhood feedback, reevaluate options and engineer final design documents for intersections. Grant funds, if received, will be used for construction and enhancements to the intersections. Some of the enhancements that will be evaluated are as follows:

- Mid-block crosswalks
- Curb extensions
- Pedestrian safety islands
- High visibility signage
- High visibility pavement markings
- Actuated pedestrian signals

This project was presented at a public meeting on September 23, which presented the grant program. Sussex neighborhood residents in attendance voiced support for the project. This request will also be presented to the Finance Committee on October 21 and to City Council on October 28. Grant applications and supporting legislation are due to the Cuyahoga County Department of Development on October 31. Grant recipients will be notified of awards in the spring 2020.

Chair Moore thanked Chief DeMuth for the presentation and added that as the Committee may know, 15,000 cars per day are going through this intersection. Due to several lights, traffic backs up on WCR and cars sit in the middle of the intersection as people try to cross the street while walking between cars, especially during rush hour. She added that her personal hope is that an actuated signal is viewed and the cars pay attention. Chair Moore asked how many more cars per day are needed to merit a traffic signal that the City does not have to pay for.

Chief DeMuth answered that he was not at the presentation, but he did know that it fell below the warranted number by just a few cars in the traffic study performed over a year ago.

Chair Moore asked if this will mitigate the chances of receiving a traffic signal.

Chief DeMuth stated that to determine that it would have to be reviewed again through a consultant.

Jonathan Hren (indiscernible)

Chief DeMuth answered that the money was earmarked for construction.

Chair Moore stated what she was hearing that we need to look at obtaining another traffic count soon so that if the grant comes through, we have the information.

Mayor Weiss stated that this was one of four locations that traffic studies were completed: Shaker and Warrensville Center Road (we now have money to redo that intersection); the second was Warrensville Center Road and South Woodland grant funds were applied for; the third was at Van Aken and Lee Road, which was redone through signaling; and Lynnfield is the fourth. He added that he believes there was some discussion at the time of the construction of the Van Aken District and due to the construction, people were avoiding Van Aken proper and going onto Chagrin to get to the Van Aken. Once the District was opened and Van Aken and Farnsleigh was fully operational, it was thought that the traffic may be reduced.

Chief DeMuth stated that along the lines of Mayor Weiss, he drives Van Aken every day and there are very few cars on Van Aken. There are several cars traveling Chagrin Boulevard and people try to use Winslow as a cut through. Van Aken is not widely traveled. Perhaps is it because of the Farnsleigh loop.

Mayor Weiss stated that he now takes Van Aken all the time, as it is much faster.

Chair Moore stated that historically much of the ingress streets were closed to traffic, i.e. Tolland. What is needed from the Committee is very simple—a motion to apply for and accept, if awarded, the grant with no City match for traffic calming and pedestrian and bicycle improvements at the Chagrin/Lynnfield intersection. A motion was made by Council Member Anne Williams and seconded by Citizen Member Jonathan Hren; motion carried.

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### **2019-2020 Winter Deer Culling Program - Addition**

**Jeffrey N. DeMuth, Chief of Police and James Mariano, Precision Wildlife LTD**

Chair Moore stated that prior to the next agenda item presentation she wants to preface that after the last Safety and Public Works Committee Meeting on September 6, 2019, she felt that she hurried the discussion regarding the issue of culling of deer on public land and culling deer on private land. We had very little time to present enough of the details to the Committee. However, after talking with Council Member Williams with regard to the results of the Deer Task Force and consulting with Mayor Weiss and Chief Administrative Officer Jeri Chaikin, it was decided an additional opportunity was deserved to hear all of the details and to ask additional questions. Therefore, today is an opportunity for an informational exchange and obtaining a sense of the Committee once the information is shared. I hope that Mayor Weiss will express his thoughts. Sometimes when we get an agenda item it looks like there could be a streamlined decisions, but in reality it cannot. Today, the issue is not the contract with Precision Wildlife Management, represented today by Jim Mariano, former Lieutenant and retiree of the Shaker Heights Police Department.

He is here in person so that the Committee will be able to ask him any question. At this time, what is needed is a better understanding of the issues inherent in culling deer not only on public land which has been done to date, but also on private land. Chair Moore stated that she did not understand the entire scope during the last meeting. She added that she thought we had culled on private land; however, it has not been done in Shaker Heights. Chair Moore stated that perhaps other Committee members felt they also needed more information. She added that we will start the topic over again, not on the contract, but on the issue of public and private deer culling.

To set the stage for the discussion, Mayor Weiss stated that there were two matters that came out of the Wildlife Task Force and he added he will let that be addressed in detail by Council Member Williams. These topics are worth clarification at this meeting. One was the issue of culling on private property vs. public property. To date, the culling has only been on public property. There was discussion at the Wildlife Task Force meeting about culling on private property in order for Jim Mariano to obtain deer culling numbers. What causes the confusion is that we do not know the success that Jim will ultimately have during the 2019/2020 deer culling program--\$68,000 for public property; \$58,000 for both public and private. In the approval of the contract at \$68,000 there was some confusion what the Task Force was recommending, i.e. private or public culling. Therefore, this needs to be clarified for the Committee. Per a session during the Wildlife Task Force there were protocols outlined if culling was approved and recommended on private property. There were a set of protocols that Chief DeMuth and Jim Mariano presented and there was discussion about them at the Task Force meeting. One of the points of discussion that came out of the Wildlife Task Force meeting was if the Committee recommended culling on private property, would this mean all properties within the City or certain properties within the City based upon specific criteria. There was discussion about large lots vs. small lots and also other criteria such as neighbors' approval on all three sides of any private property. Additionally, there was conversation about minimum lot size, which the Task Force was not in favor of. At the end of the meeting, the recommendation was to move forward with the protocols with culling on private property. He added that there was some confusion, as Chief DeMuth and Jim Mariano intended to start the culling on larger lots first. This was inconsistent with the tone and the topics discussed at the Wildlife Task Force meeting. Consequently, it was decided to bring both committees back today to talk to the above issues and try to reach a consensus on protocols for the project and private culling. He added, as Nancy mentioned, we are not here to discuss the contract, it is more of an issue with regard to the private culling. Mayor Weiss indicated that sixty-five percent (65%) of survey respondents are in favor of culling on private property.

Chair Moore thanked Mayor Weiss and indicated that there are a lot of separate little issues. She added that she thought we could begin by asking Council Member Williams who chairs the Wildlife Task Force to express what the recommendations were of the Wildlife Task Force.

Council Member Williams explained that as the Mayor indicated, there was a robust discussion with regard to the protocols for private property culling. There was strong support from the Task Force for private culling and unanimous support to move forward on

it. There was specific discussion whether or not to limit small lot culling and have lot restrictions. It was discussed and decided, based on what was understood regarding safety concerns, that there were no safety concerns with doing it on small lots. Therefore, there was support for not having any lot size restrictions. The results of the Task Force was to endorse culling on private land and to continue culling on public property recommending the \$58,000 contract which would include private property. Council Member Williams asked Council Member Rob Zimmerman, who is also on the Wildlife Task Force, if he would like to add anything.

Council Member Zimmerman stated that he would like to add a statement to this discussion. He explained that what he is about to say he states as a member of City Council. He added that he thought everyone did a good job of summarizing what brought the Committee and the Wildlife Task Force here today. However, he explained that he has been on Council for 14 years and in his experience has never seen what has happened and has brought the topic again to the Safety and Public Works Committee today. He stated that the Committee is here for a “do over” and there has not been a “do over” in 14 years. Council Member Zimmerman that his statement is directed to the Administration. Members of Council depend on full, complete and accurate information from the Administration. It is necessary for Council Members as they do not work at City Hall. Therefore, accurate communication is depended on and knowing what a Committee thinks and why they think a certain way is imperative to the process. Council can then debate it and ultimately make an educated decision on the topic. Without going into great detail, there was a memorandum prepared that laid out procedural information of the Wildlife Task Force and the Safety and Public Works Committee, which was handed over to the Finance Committee and it was inaccurate. Consequently, it had to be pulled from the agenda. Council Member Zimmerman stated that he never saw this before and he does not ever want to see this again. Culling is a sensitive issue and personal to many people and there are very good arguments on both sides as to whether or not culling should be completed. However, we made a commitment and are prepared to fulfill this commitment. Per our expert, there was a feeling that we needed to expand the culling to not only public, but public and private properties and we took that action. He added that we have a good thing going on here in Shaker Heights and what ties it all together is fundamental transparency and the ability to rely on what we hear from the Administration and take it to the bank without worrying that anything is held back or inaccurate. Council Member Zimmerman stressed that he is not accusing anyone of doing anything intentionally wrong, but everything needs to be shared both in writing and at the meetings.

Chair Moore thanked Council Member Zimmerman and stated that she would now like to add Chief DeMuth and Jim Mariano into this discussion. She asked that they speak to the concerns here such as safety concerns with regard to the culling on private lands. The jeopardy that the Committee and the City is looking at now is that we want the program to continue to be successful and need to know that the best circumstances are maintained for the ongoing success of the program.

Chief DeMuth thanked Nancy Moore. Chief DeMuth stated that he wants to reiterate what has been said thus far today at the Safety and Public Works meeting. He added that he takes full responsibility with regard to Council Member Zimmerman’s comments. Chief

DeMuth explained that the responsibility lays on his shoulders with regard to the inaccuracy, as the referred to memo is his memo and he forwarded it on to the necessary parties. He added that the intentions in his mind going forward were not expressed. When talking with Jim Mariano from Precision Wildlife, we were not sure if there would be approval for culling on private property. The topic was discussed ad nauseam with regard to moving forward with this program, as private property culling is critical to its future success. As Jim has mentioned many times while attending the Task Force meetings and personally to me, deer are smart animals and they know where they are getting killed. We still have the deer problem; however, the deer will now bed down in back yards and not come onto public lands as they know their fellow deer are getting killed on public lands. To explain, the intention was if private culling was approved, that we would start on large private tracts of land; however, this was not clearly conveyed. If you listen to the recordings of the Wildlife Task Force and this Committee on September 6, private property culling was discussed on small parcels of land and how we could successfully cull on small parcels of land. The ability to cull on small parcels of land doesn't mean it has been successful as there are other factors involved. In the memo submitted a second time to this Committee, the inclusion of conversations with Jim Mariano were highlighted and considerations are also included for private property culling. Once again, one of the considerations, the first year of private property culling needs to be successful in order to complete the program year after year. We knew when we discussed private property culling that it is not unanimously accepted by residents. Again, it is important for the overall and ongoing success. We knew that the best opportunity to achieve private property culling would be on large tracts of land. It is easier to bait, safer and more efficient. Importantly, it removes the "culling" signature, i.e., easier not to be seen on a larger tract of land. To summarize, larger tracts of land is the best opportunity for success and we knew it was a controversial issue. In thinking about this, but not conveyed, if we were not successful on large tracts of land, there would be no purpose in moving forward to small tracts of land where it may be more difficult to cull. It was felt that during the first year, if approved, culling would take place on larger pieces of private property. Chief DeMuth added that it is his fault for not conveying these thoughts. It was not done on purpose, but in his mind if private property culling was approved, Precision Wildlife would start on larger private properties. This should have been conveyed to everyone—if private property culling is approved we would start on larger properties.

Chair Moore stated that she would like to qualify what the Committee is asked to do. We have already approved the contract. When it goes to Council, Precision Wildlife's contract will read that it will be a contract from \$58,000 to \$68,000. There is a range there that will permit the actual culling to begin on public land and include private land. We don't know how successful the culling will be on private lands, we want to have the ability to extend the culling season and have the options extended and have the option of the higher allocation of dollars.

Chief DeMuth asked if he could interject that he believed Chair Moore put it very well. This Committee and the Wildlife Task Force could very well say that they appreciate what your recommendations are, but we want the entire City considered for private culling. He added that through conversations with the resident expert (James Mariano), the recommendations is to start on larger tracts of land, if the private culling is approved.

Chair Moore asked if the Committee found that to be clear enough. Smaller lots are not being ruled out, but it is necessary to know what the Committee thinks given the concerns. Directing her attention to Citizen Member McGuan, she asked his concerns.

Citizen Member McGuan asked if the Committee will take a vote on anything.

Chair Moore stated that she asked Chief Administrative Officer Chaikin if there should be a vote earlier today. The vote would be whether or not the City would recommend the Safety and Public Works Committee and the Wildlife Task Force support for the first year pilot program of private property culling on large tracts of land. The motion can be that we support culling on private land of any size lot, etc.

Citizen Member McGuan asked if this was a qualification of a recommendation that already went to Council.

Council Member Zimmerman stated that it has not gone to Council. What will come before Council is a contract. This is where we had to pull it from the Finance Committee because the Finance Committee deliberates on the spending of City dollars. What is important here is what that money will be truly spent on. Council Member Zimmerman stated that the Committee should not get hung up on the \$68,000 vs. the \$58,000. What Council needs to understand is when they vote on the contract this is what the money will be spent on, that there is a continuation of culling on public property and will add culling on private property. What defines that is this discussion and what it actually looks like to Council (what will the culling look like on private property). We already know what culling on public property looks like as it has occurred the past couple of years. This is a change; it is private property. In terms of authority for culling on private property, Council will want to know what the sense of the Committee was with regard to private property culling.

Chair Moore asked if Council Member Zimmerman needed for Council a motion for approval or a sense of the committee on this issue.

Mayor Weiss interjected that he agreed with everything Council Member Zimmerman just stated. He added that he believes that the discussion gets a little muddy if the contract is not definitive and states what will be done. In this case, we do not know where the deer are and we will not know until Jim gets out there. The reality is we do not know how many deer will be culled on public property. We do not know how many deer will be culled on private property. A fair question from Council is that this is a change in the contract and needs the Committee's philosophy of expanding the culling of deer to both public and private. This is the fundamental issue that Council should be aware of because it is a change in the contract. If they agree with the change, then we can move forward on that basis. If they do not agree with it, we will go in a different direction. Mayor Weiss interjected that if we assume for a minute that Council will allow culling on private property, the question then is: How does that get implemented when we do not know where the deer are actually located and where we are going to have the most success? Mayor Weiss added that it would be wise to advise Council that there was a discussion regarding large lots vs. small lots and the recommendation of the Committee was to not put any

limitations on the size of small lots. Assuming this is the sense of the joint Committee and Task Force that is what would be forwarded to Council.

Chair Moore stated that the only caveat she would add to what the Mayor stated is that is the recommendation. However, that was the recommendation before we had all of the information from Chief DeMuth and Jim Mariano and their discussions in that they intended to mean that they would first start culling on large private lots. That is where the confusion comes in. Therefore, she added she is not certain what the recommendation is from the Wildlife Task Force as the description has changed.

Mayor Weiss added that the next step in the analysis is to now assume that we all agree that the recommendation is to cull on both public and private. The question then is how that will be implemented. He added that his take away from the Committee was that there would be no prohibition in doing it if culling occurred on a smaller property. Mayor Weiss stated that he believed the gap was from Chief DeMuth—we have authority to cull on both public and private, understanding that it makes sense to start on large lots. He stated that he believes that is the intent of the meeting today.

Council Member Zimmerman stated that he is the only member of Council present today not on the Safety and Public Works Committee. He added that based on other Task Force Members' thoughts, we should not draw distinction on lot sizes as that draws a line based on economics and locations. That would be like saying that this service is available to those that own large houses and large yards, but not so much for those that do not. This causes certain residents to be upset. That was the discussion--avoid line drawing. The topic to address in this discussion is the concept of safety. Council Member Zimmerman explained that he came out of that discussion thoroughly convinced by both Chief DeMuth and Jim Mariano that there was no difference in the safety no matter what lot size. However, then it is noted in the revised protocols that safety is an issue. He stated that this led him to believe that it will be safer to cull are larger tracts of land as opposed to a small lot, which was not heard during the Wildlife Task Force meeting. This is what needs to be discussed. Council Member Zimmerman stated that he wants the Committee to understand the full flavor of the previous discussions.

Chair Moore stated that Citizen Member McGuan brought up the issue during the Safety and Public Works last meeting that whether larger institutions have been approached for culling on their lands. This would be under "private institutions," but it could be public as well in the case of the Shaker Family Connections Building. The answer was that only the Shaker Heights Country Club had been approached and they did not want culling on their property. Is there a consensus that you want to allow culling on both public and private lands and then we can get to the issue of safety and larger versus smaller lots? She asked if the Committee can separate the two issues.

Citizen Member Johnathan Hren stated that he was fine with both public and private culling.

Citizen Member Austin McGuan stated that he supports the deer culling program, but was not ready for it to occur on private property without more safeguard definitions.

Citizen Member James Brady stated that he supports both private and public culling.

Council Member Anne Williams stated she supports both private and public culling

Council Member Julianna Senturia stated she supports both private and public culling and her opinion has not changed from the last meeting.

James Mariano from Precision Wildlife explained that the overall program is set up to manage the deer in Shaker Heights and we want to do that first and foremost as safely as possible. The risk associated with this type of program needs to be managed. In order to do that, we want to put ourselves where deer roam. We need to be as efficient as possible and humane as possible. If you view the map of the aerial survey that was completed, the majority of the deer are located above South Woodland. It is not that deer do not roam in other areas of Shaker Heights. The lots in the southern portion of the city are close to one another. The residents that want the deer culling on their property do not necessarily want to see how it is done. Therefore, when on larger parcels of land, there is a lesser chance of being seen coming in and coming out, harvesting the deer, or transporting the deer. The question is, can we safely cull deer throughout the City. The answer is, yes, but it depends on where in the City. For example of someone has a lot that is next to houses and it is the houses are empty and the landscaping is overgrown, that may be an option. There are places in the City where he can make the shot, but he indicated that is not how he operates. Mr. Mariano stated that he always errors on the side of caution. He added that people go to Heinen's and everything is already packed and ready to consume, they do not want to see how it got there. If culling takes place in the southern portion of the City where there are very small lots, you have to be very careful as someone can enter a lot, there are fences on the properties, and different topography. Mr. Mariano stated that he would go anywhere in the City to assess a property for potential culling. However, he stated that we need to be concerned about, in the interest of transparency, what will it look like and are we drawing unnecessary attention to this issue. He added deer management in Shaker Heights is broken down into zones. We want to impact as many zones as possible, but we need to figure out the best way to go about it and safety is the most important thing.

Council Member Zimmerman stated he would like to summarize as what he heard Jim Mariano say is that no matter where he is, whether it be the biggest lot in Shaker Heights or the smallest lot, he is making a determination as to whether or not he can cull safely. If it is feasible, he will cull. If it cannot be done safely, he would decline. Safety is not really what is driving "this" as safety will be implemented no matter where the culling takes place. He added that he agrees with what Jim Mariano said; however, for himself, the sensitivity issue is more of a Council issue.

Nany Moore asked to hear the Committee's reaction.

Anne Williams asked if the residents who have stated that they would like culling on their properties are located on larger lots.

Mr. Mariano stated that via the questionnaire there were residents who want deer culling and they have also indicated that their neighbors may also like to have culling on their property. There are residents on South Park and North Park who have larger tracts of land that would like culling on their property. He added that he could go onto the larger tract, bait, have cameras up, harvest and move out quickly without being seen. The area near Canterbury last year would have been one of those areas and a perfect situation. As the program morphs, we learn lessons as to what has been successful and what has not been successful as far as harvesting the deer. Once there is a successful program on private property, more residents may accept that. Once again, he added that he can go anywhere to make an assessment and there are places both north and east where there are mitigating factors and he cannot safely cull. Currently, there is a list of 10 or 15 residents that want culling on their land.

Council Member Williams asked if some of those properties were on smaller properties.

Mr. Mariano stated that there were some smaller properties. He added that there is a lot on South Woodland that is approximately one-half acre, but the configuration of where they are located is not safe to cull deer.

Council Member Williams stated that what she is trying to get at is have there been any requests from South Shaker Heights.

Mr. Mariano stated he has requests going east, but not going south. There is a lot of deer activity, but it is too close to a school. It makes sense that no one in the south area has asked yet. The majority of the deer are north of South Woodland.

Council Member Williams stated that looking at the maps on the survey there is more activity in the south part of Shaker as compared to a few years ago.

Chief DeMuth stated that he would like to add to the conversation: He stated that it is his job as the program moves forward to make sure that everyone in Shaker Heights is not offended by the deer culling. As Jim Mariano stated, we learned a valuable lesson last year with Canterbury and that, along with other issues, pushed the program towards private property culling. He added that the thought was getting permission and starting on larger tracts of land, as we know how sensitive an issue the culling program is and what happens when people obtain a minimal amount of information and not all the information. It creates an uproar and creates more work for everyone who is in the room. Chief DeMuth stated that it is his fault for not communicating how the program would be started, but it was with all good intentions so that it would be the least offensive for everyone in the Community. The intention was to gain some initial success prior to moving forward to smaller properties. Private culling is critical to the success of the deer culling program to continue to thin the herd and get the numbers we plan on obtaining.

Citizen Member McGuan stated that he acknowledged the professionalism and knows that Jim Mariano will not do anything to place residents in harm's way. However, it did state in the memo that it is safer to cull on larger tracts of land. Is that correct?

James Mariano indicated that statement is correct.

Citizen Member McGuan stated that he does have concerns about expanding the program onto private property. He believes a good start into furthering the program is to limit it to private, non-residential property, establishing a minimum size of the property. He added that he understands Council Member Zimmerman's concerns about only people whom can afford a large lot of property can obtain the private property culling. One way to eliminate that potential concern is to remove residential property from the program if it goes forward in that direction. Therefore, he stated that he stays firm with his previous position, unless there is more limitation on the expansion of culling on private property.

Council Member Senturia stated that she is still not clear on the answer to the question: "Is it safer to cull on larger tracts of land?" She explained that she keeps on hearing different versions of it. A cleaner version would be that safety is contextual. If there was a safety issue on a piece of property, it would not be culled on and may or may not be dictated by the size of the land. Therefore, she asked if we could all agree on that. We keep stating something different and it is important to get it straight.

Chief DeMuth added perhaps this may be a bad analogy or maybe not: If you drive on Shaker Boulevard and there are no cars on the road, is it safer to drive on Shaker Boulevard than on Lee Road during rush hour. Is it safe to drive on Lee Road during rush hour? He explained that more detail should have been added to the explanation, but that is his point. We can do it safely, but it is safer to cull on larger properties.

Council Member Zimmerman stated that he did not believe it was necessary to make a "safety" distinction. Jim Mariano will not cull on property unless he feels it is safe.

Mr. Mariano stated that from a risk management perspective, when he says "safe," you have to realize how he was trained by a sharp shooter. Every single shot is documented along with weather conditions. Having said that, the shot can be made; however, when dealing with smaller parcels of land there are a host of mitigating factors, notwithstanding the people who actually view the shoot. People can walk from one spot to the next without being seen. Therefore, a particular spot needs to be chosen so that it is not near a backdoor of the resident's home, eliminating the risk of the resident walking from their back door to the backyard. The reality of it is, deer do not like to jump fences. There are many fences in postage stamp-like tracts of land and these types of properties have the potential for ricochet. There is more slant in small areas and that is another concern. Mr. Mariano stated he could make it work with the right configuration, but asks that the Committee rely on his expertise and critical decision making. At the end of the day, he would go anywhere in the City to look at any property and make an assessment. However, it is better accepted to start on larger tracts of land.

Citizen Member Brady stated to Council Member Zimmerman's point, Jim is not willing to take a shot in an area that has a higher risk element. You are more likely to go to a larger lot as there are less mitigating factors. It is not necessarily safer or unsafe per se because Mr. Mariano knows what he is doing. The other piece of it is, just from the optics, the way the memo was originally written, is if we are going to allow culling on private properties (both large and small), is it necessary to say "starting with larger properties." Should it not

just say we will allow culling on private properties as then you take away the perception of people with bigger lots have culling. It is turned into a socioeconomic issue, but in reality that is not the case.

Chief DeMuth stated that he agreed with Citizen Member Brady one-hundred percent. He added that is why we are here; this was his thought process, but further conversation was needed.

Citizen member Brady added either way, Mr. Mariano will take a shot based on his determination of safety.

Chair Moore turned her attention to Citizen Member Jonathan Hren and stated that he has been the only Committee member who has not weighed in on the discussion.

Citizen Member Hren's perception was indiscernible.

Mr. Mariano stated that he believes that if deer are culled on public property only, that he would not be able to cull 40 deer. There are many deer in the City in an area where they cannot be harvested. Once private property culling is accepted, then we may be able to expand on smaller empty lots in the south portion of the City. There are places in the City--north, south, east or west, where deer cannot be harvested. He added that he would pick his locations based on the deer count. Mr. Mariano stated that the ODNR seems to be willing to work with him. If he obtains 40 deer quickly, we could ask for additional permits. Mr. Mariano explained that if the surrounding cities would help a little bit, we would see great results. It is very difficult to do what we are doing by ourselves wherein the surrounding cities have no deer culling program.

Council Member Anne Williams stated that in the past the culling ceased on South Park and residents were upset that it was shut down.

Mr. Mariano explained that it was not on South Park, but the Canterbury area on public land and deer were seen there on a regular basis. There is approximately 10 acres of land that is close to this area (private property) that would be great to cull on. There are very few places where we can cull deer on public land that are free of people. He added that he was surprised to see the amount of pedestrian traffic in the evening and/or very early in the morning hours.

Chief DeMuth stated that if it is a mild winter, there will be more people out and it will be more difficult to cull deer on public property as the deer flee to private property.

Council Member Senturia stated that this is a great conversation, but feels that the conversation is going into the weeds as far as details are concerned. She added that the Committee is sensitive to the political implications more than anything and less so to the safety and the ability of the contractor, etc. She is glad to see the protocols in writing. She would like to suggest on No. 2, second line, that "Only large tracts of land," be removed and add something like Precision Wildlife Management LTD will assess the context of the property. The City needs to have trust in the judgement of Mr. Mariano.

The City is paying for that trust and it is necessary in order to determine an appropriate place to cull deer. Member Senturia added that she did not believe the Committee should dictate that level of detail.

Chair Moore stated that she would like to summarize based on what the Committee has stated today: The majority of this Committee was supportive of culling on public and private land and in response to the issue of whether culling can be completed safely, it expressed the consensus that safety is entirely contextual. Therefore, there could be a safe situation to cull on a smaller lot. Conversely, you could have a situation where culling is not safe on a larger lot. The Committee relies on the expertise of the contractor, Precision Wildlife Management LTD, to make that determination. This Committee prefers not to make a specific statement on recommendations according to lot size not for only the reason that safety is contextual, but for the sensitivity to perception and fairness of the culling program and exclusivity if lot size is specified.

Chair Moore asked if there is another way in which the Committee's views can be summarized.

Citizen Member McGuan stated that he would like it to be clear that there is a majority.

Chair Moore stated that we did not take a vote, but there was an exception to the majority on the consensus statement as it relates to culling on private property.

Chief DeMuth clarified, with that being said, if approved, the intent is to start on large tracts of private land.

Chair Moore stated that is correct, but we are not telling you to only cull on large lots when culling on private land.

Chief DeMuth stated when he writes the memo to Council, for full transparency, he will disclose that private land culling will initially start on large tracts of land.

Chair Moore specified that this would be an administrative decision. The Committee is not saying that deer culling will exclusively occur on large tracts of land when culling on private property.

Citizen Member McGuan stated that that is very different then the conversation we had wherein culling will start on large properties, establish success on large properties, and then move to small private properties. It sounds like the Committee is eliminating that process.

Council Member Williams stated that she thinks it is the same process. What has changed is our language.

Citizen Member McGuan stated that it does not sound like an accurate representation. It is fine if that is the course that the Committee wants to take, but accuracy is needed in the way it is described.

Mr. Mariano stated that he does not know how to describe what he is about to say eloquently, but going back to the overall objective of this program--we want to cull deer where the majority of the deer are located, as efficiently as possible to reduce the deer population in the City. In his opinion, where he sees the majority of deer where he can potentially cull them safely, efficiently, humanely, and without undue trauma to residents, in areas of larger tracts of land. He added that he does not know why any of this needs mentioning other than we have a deer culling program in Shaker Heights. We will not cull on private property for residents who have asked for culling and whose neighbors have not approved the culling. Additionally, we continue on our mission of reducing the deer population, which is the goal of the program. The program in 2019-2020 will look a lot like the last three year--the deer will be culled and most residents will not view what is occurring while culling. Consequently, the mission will be accomplished and accepted and we are doing the right thing for the citizens.

Chair Moore stated that what Council will want to know from this Committee is what the sense of this Committee was about culling on private lands and the issue of safety. She added that we can summarize that without including huge discrepancies in the conversation by saying the following: We believe that safety is of paramount concern. We believe this year the culling on private property can be accomplished and we rely expressly on the discretion of the contractor to do so because safety is contextual. We do not want to say to anyone that requests culling on their property north of Shaker that it will automatically be approved.

Council Member Zimmerman stated that he agrees with that summary. He explained that what he is hearing is that there is a general consensus to strike the large tracts in the protocol, etc. (summary is indiscernible).

Chair Moore stated then the summary should be: It is recommended by the Safety and Public Works Committee and the Wildlife Task Force to proceed with a pilot program of private property culling and strike the word "Only large tracts of land" in the "Private Property Deer Culling Protocols," No. 2, second sentence.

Chair Moore stated that she will be very careful to say that there is an exception and we will continue the discussion and see what Council determines. She then thanked the Committee for being patient and for staying a little longer.

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There being no further business, the meeting was adjourned at 9:20 A.M. The next meeting will be December 6, 2019.

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Debra R. Messing, Sr. Administrative Assistant  
Safety & Public Works Committee



# SHAKER HEIGHTS

## Memorandum

To: Members of the Safety and Public Works Committee

From: William M. Ondrey Gruber, Director of Law

cc: David E. Weiss, Mayor  
Jeri E. Chaikin, Chief Administrative Officer

Date: March 2, 2020

Re: **Legislation to Amend the City's Ordinances - Food, Games and Ice Cream Trucks Regulations**

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We are proposing amendments to the City's Traffic Code and Business Regulation Code in order to:

- clarify contradictions,
- better reflect the manner in which the current regulations are actually implemented,
- make changes and add language to improve regulation of the City's right-of-way and door to door solicitation, and
- add specific regulations of food trucks, game trucks and ice cream trucks.

For the past year or so, the Administration has been reviewing the City's regulation of vehicles that sell items in the right-of-way (i.e. food trucks) and the popularity of game trucks for private parties when parked in the street, and more recently we were asked by some citizens to consider why ice cream trucks have not been coming into most parts of the City in recent years.

In order to enact ordinances dealing with these issues, it was also necessary to review and ultimately recommend changes to update the City's Traffic Code provision on sales from vehicles (Section 1111.05), and the City's Business Regulation Code section dealing with sales of goods and services in the right of way and going door to door (Chapter 545).

### Section 1111.05 of the City's Traffic Code

Currently, Section 1111.05 of the City's Traffic Code regulates sales made from vehicles in the right-of-way of the City. The ordinance was adopted in 1959, with some amendments being made in 1971. So this ordinance has not been reviewed or updated in many years..

Unfortunately, the language of Section 1111.05 is confusing and even has contradictory provisions; for example, in one place it prohibits any sales from a vehicle on the City's streets, but then in other sub-sections it provides detailed regulation of vehicles making sales while on the City's streets.

Section 1111.05 applies to any sales from a vehicle in the right-of-way (i.e. streets, sidewalks, driveway aprons, and tree lawns). It does NOT apply to sales from trucks on private property.

Currently, it prohibits shouting, blowing a horn, ringing bell, or making other sounds (e.g. music) while a vehicle is driving in the streets or in public places trying to attract attention for sales, allowing only a soft

bell or chime to be used while a vehicle is parked. This provision seems to be a barrier for ice cream trucks coming into the City, based on our research with ice cream truck companies.

Also, Section 1111.05 prohibits selling from vehicles:

- within 1000 feet of a school or park/recreation facility;
- within 250 feet of any intersection;
- on a through street (e.g. Shaker Blvd., Van Aken Blvd., South Woodland Rd., Fairmount Blvd.);
- from the left side of vehicle;
- before 11:00 a.m. or after 5:00 p.m.;
- on Sundays or holidays;
- while stopped for more than 5 minutes; or
- on any street more than once each day.

The Section also prohibits driving at a slow rate of speed while trying to make sales if it obstructs or impedes traffic or is done in a congested area. The Section requires use of emergency flashing lights on the front and rear while stopped and limits sales on a street to once per day.

As you can tell, many of these provisions appear to be geared toward ice cream trucks. According to the companies that operate such trucks, some of these regulations make it virtually impossible for ice cream trucks to operate in the City.

We are proposing to retain some of Section 1111.05, make some changes, and make it much simpler and clear. Most of the substantive regulations of food trucks and ice cream trucks are proposed to be moved to existing Chapter 545 in the Business Regulation Code, and the newly proposed Chapter 546 in the same Code.

The reason to keep the Section at all is to allow the Police Department to issue traffic tickets to enforce the basic provisions that will be retained in the Traffic Code, which will make enforcement simpler and more efficient.

The revised Section 1111.05 will provide for the following:

- Require a License or Permit issued pursuant to Chapter 545 or 546 of the Business Regulation Code in order to sell goods or services in the right-of-way from a vehicle or cart.
- Prohibit the following, unless a street is closed curb to curb to traffic under a Special Event Permit or License (such as for a block party or Van Aken street fair):
  - No sales on street with speed limit greater than 25 MPH (this replaces the prohibition of sales on “through streets”);
  - No sales from left side of vehicle;
  - No sales on street in one place for more than 15 minutes (increased from 5 minutes);
  - No stopping in a congested area, or to obstruct or impede traffic or cause inconvenience.
- Require use of emergency flashing lights on front and rear of vehicle.
- Prohibit sales before 11:00 a.m., or after either 9:00 p.m. or sunset, whichever is earlier (replaces limit of sales after 5 p.m.).
- Prohibit sales of goods or services on any street more than twice each day (instead of only once).
- Prohibit operating vehicle or cart at such a slow rate of speed as to obstruct or impede the normal flow of traffic.
- Prohibit shouting or blowing a horn to attract attention.
- Allow ice cream trucks only to operate a bell, chime or music while moving on a street, but not when stopped, as long as the volume is set so no sound may be heard more than 500 feet from the vehicle at any time.

- Require disposal receptacles of sufficient capacity to handle the amount of litter or waste emanating from the vehicle.
- Require the vendor to clean the area where sales have been made of all litter emanating from the vehicle or customers before moving to another location.

## **Chapter 545 - Solicitors and Peddlers**

The City has had an ordinance regulating sales and solicitation of donations both in the right-of-way and for people going door to door on private property since the enactment of Chapter 545 in 1978. The Chapter was amended in 1992 and 2005.

### **License Requirement**

Chapter 545 has a licensing requirement that requires any for profit business to obtain a license before making sales or soliciting business or donations of money in the right-of-way or by going door to door on private property.

The annual license is issued by Police Dept. (with a background check at the Police Department's discretion). The Police can deny a license or revoke it if a vendor misrepresents their identity or intentions, violates Chapter 545, has been convicted of any felony, or is convicted of a misdemeanor involving force, violence, moral turpitude, or in any way connected with the act of peddling or soliciting other than a traffic offense. The fee for the license is \$40.00 per year.

### **Registration Requirement**

There are exceptions to the licensing requirement that apply to persons providing goods that they made themselves or who provide services personally, and that apply to non-profit organizations that sell items or solicit donations by going door to door. These persons are not required to get a license, but they are required to register with the Police Department, at no charge, to alert the Police to their presence in the City.

### **No License or Registration Required**

There is no requirement to get a license or to register for persons handing out fliers or advertising circulars (including for-profit or non-profit entities, or for political or religious purposes. There is also no requirement for a license or registration for persons going door to door to talk to people about anything (e.g. canvassing for political candidates or issues, or to talk to residents about a particular religion). This exemption is based on First Amendment Constitutional interpretations.

### **Regulations**

There are time limits for going door to door to sell goods or services and for soliciting donations:

- For License holders: soliciting is prohibited before 9:00 a.m. or after 1/2 hour after sunset; and
- For Registrants: soliciting is prohibited before 9:00 a.m. or after 9:00 p.m.
- There is no time limit for persons passing out fliers or knocking on doors to talk to residents.

This discrepancy is the result of an amendment approved by Council in 2005 in response to threats of litigation by non-profit organizations that said that our previous time limit for them of 1/2 hour after sunset severely limited their ability to raise funds in the winter during evening hours when residents would most

likely be at home. There are court decisions that back up their position, so Council extended the time limits, but only for non-profits.

Note that under the existing ordinance, residents can post “no soliciting” sign preventing solicitors regulated by Chapter 545. However, these signs do not prevent persons exempt from the Chapter for handing out fliers and talking to people door to door.

The Police Department enforces the licensing and registration requirements of Chapter 545, but to their knowledge it has only been applied to the licensing of door to door sales people. The Department can recall no other entity that we have approved or that has requested to make sales in the right-of-way.

### **Proposed Amendments to Chapter 545**

The proposed amendments to Chapter 545 leave in place all of the provisions described above. The title of the Chapter is changed to: “Solicitation of Sales of Goods and Services” in order to modernize the language of the title.

1. Lemonade Stand Exemption:

The first major addition to the Chapter is to provide an explicit exemption for sales by minors in the right-of-way, such as lemonade stands. These types of sales have required registration under the current ordinance, but the law has not been enforced against such sales.

The exemption from licensing and registration would apply to persons under the age of 18 who sell goods during daylight hours on the sidewalk or tree lawn for charitable or non-commercial (personal) purposes, as long as such sales do not block the sidewalk or impede pedestrians, or create any nuisance.

2. Persons Completely Exempt from Chapter 545:

The second major amendment is to add an explicit description of what kind of activities are exempt entirely from the licensing and registration requirements. The amendment states that Chapter 545 does not apply to:

- Mobile Food or Game Vehicles subject to Chapter 546;
- Delivery services or the actual providers of goods or services who have been hired by a resident;
- Persons handing out fliers door to door; and
- Persons going door to door seeking to speak to occupants about any religious, political, or other matter that does not involve the solicitation of sales or donations.

3. Explicit Prohibition of Sales on Sidewalks, Aprons and Tree Lawns Using Stands, Carts, etc.:

The third major amendment to Chapter 545 adds an explicit prohibition that has previously been enforced through the City’s general right to regulate the right-of-way. This provision prohibits erecting a stand, cart, table, box, bin or other structure for the display or sale of goods or the provision of services or for the pursuit of any occupation whatsoever, unless a permit to do so has been issued by the City for a special event.

Naturally, this does not apply to a person under the age of 18 who sells goods during daylight hours on the sidewalk or tree lawn for charitable or non-commercial (personal) purposes, such as a lemonade stand.

4. Regulation of Unsolicited Material:

In explicitly allowing the dissemination of printed material door to door (see # 2 above), which has up until now been allowed implicitly pursuant to free speech requirements, we believe it is important to limit where printed material may be left at a home. There are certain materials that from time to time have been left at homes unsolicited in various places, including being thrown at the end of a driveway from a passing vehicle. The City has received a number of complaints about such deliveries of materials.

Thus, the fourth major proposed amendment would regulate where unsolicited materials may be left in the right-of-way and on private property, as follows:

a. Right-of-way:

The amendment would state that no person shall throw or place in the right-of-way any newspaper, handbill, advertising circular, or other printed material, except that a person may do the following:

- place material in news box, book drop box, public trash or recycling bin;
- hand material to a person who freely accepts it;
- stack material neatly for distribution for up to 12 hours (e.g. newspaper dropping off newspapers for later delivery);
- temporarily place material if it is expressly authorized by the City.

b. Private Property:

The amendment would state that no person shall throw or place on private property if the property is apparently vacant, and may not place material on private property except as follows:

- Hand material to a person who freely accepts it;
- Place material solicited by the owner or occupant;
- Leave dense material that will not blow away in a box or bag outside if left within 5 feet of a door;
- Leave material outside in a weather-proof box or container; or
- Leave material attached securely to a door, or inside a door.

### **Proposed New Chapter 546**

We are proposing to add a new Chapter 546 to the Business Regulation Code entitled “Mobile Food and Game Vehicles.”

1. Food Trucks:

With the increase in the number and uses of food trucks generally in the country and in our region, and in response to inquiries we receive about food trucks, we are proposing to clarify our current law, to explicitly state that food trucks are not allowed to operate in the right-of-way of the City unless they are specifically authorized through a Special Event Permit or a license issued by the City. This is not a change in the law, but only an explicit clarification.

Food trucks are allowed on private property for private uses, subject to the Zoning Code. They are also allowed pursuant to a special event permit, such as for a block party or similar event around a school. Likewise, at Van Aken food trucks are allowed in the right-of-way or on RMS property through a license agreement the City has with RMS for the Van Aken Center. Under that agreement, RMS has control over when food trucks would be allowed, or not allowed.

Food trucks are regulated to some extent by the limited provisions of the new Section 1111.05 of the Traffic Code, as explained above. The new Chapter 546 would provide the following additional regulations:

- All food trucks are subject to inspection by the Fire Dept. while operating in the City. (That does not mean the Fire Dept. is required to inspect every food truck, rather it allows spot checks by Fire and responses to complaints.)
- There is a restriction on food trucks operating within 500 feet of a Special Event, unless approved as part of said Special Event, or within 500 feet of any brick and mortar restaurant. This is to prevent them from operating on private property in competition with a City-sanctioned special event.
- A waste container for public use is required that the operator shall empty at the operator's expense and not into any City-owned waste container.
- Signage is restricted.

## 2. Game Trucks:

Large Game Trucks or trailers have become a popular rental for private events. We define "Mobile game vehicle" as a vehicle used to provide games, including video games, for persons entering the vehicle, including trucks, passenger vehicles, vans, and trailers, whether the vehicle is self-propelling or must be pulled by another vehicle. The inclusion of game trucks in the new Chapter 546 is solely for the purpose of ensuring that they do not create a hazard or inconvenience for residents and traffic. No licensing or registration is required in the proposed ordinance.

A mobile game vehicle would be allowed to operate in the right-of-way without being part of a Special Event or having a Special Event Permit or special License, but only for or as part of a private event, while such event is taking place, and only while parked on the street frontage immediately adjacent to the property where the private event is being held.

A mobile game vehicle may not be open to the public while parked on a public street, or otherwise in the public right-of-way, unless as part of a Special Event. A mobile game vehicle may only operate while parked on a public street if it is parked in full compliance with all parking laws of the City. No mobile game vehicle may operate on City-owned property unless authorized by a Special Event Permit or special License issued by the City.

## 3. Ice Cream Trucks:

Ice cream trucks are, obviously, a subset of food truck. Due to popular demand, we are proposing to reduce the number and severity of regulations that currently limit the ability of ice cream trucks to operate in the City, and to explicitly allow them to operate as an exception to the food truck restriction described above.

We have reached out to several ice cream vendors and companies that operate a number of the trucks. They have told us that they avoid communities where the restrictions are too onerous, the fees are too high, the use of music or jingles while driving is prohibited, and/or where it takes too long to get a permit or license. We believe the propose regulations are protective of the City and its citizens while not being too onerous for operators to be interested in coming into the City.

Some changes affecting ice cream trucks are set forth in the Traffic Code at Section 1111.05, as explained above.

In new Chapter 546, the following additional regulations would apply to ice cream trucks:

- Ice cream trucks would have to obtain an annual license issued by the Police Department.

- The Police Dept. can deny (or revoke) a license if the operator has willfully misrepresented their identity or intention, has violated any provision of the Chapter or of Section 1111.05 of the Traffic Code, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated.
- The operator of a Mobile Ice Cream Truck must maintain a valid Mobile Food License issued by the Cuyahoga County Board of Health or another authorized Health Department and display it.
- The operator must have insurance.
- The operator must display their City Mobile Ice Cream Vendor License.
- They must have certain equipment:
  - A sign saying “Slow” or similar as approved by the Police Department that is attached to the left side of the truck and can be extended out from the side of the truck while it is parked for sales.
  - A convex mirror mounted on the front so that driver in the driver's normal seating position can see the area in front of the truck obscured by the hood; and
  - A device capable of emitting a sound audible under normal conditions from a distance of not less than 200 feet when the vehicle is backing up.

Pursuant to Section 1111.05 of the Traffic Code (below), ice cream trucks would be allowed to operate a bell, chime or music while moving on a street, except that the volume must be set so that no such sound may be heard more than 500 feet from the vehicle at any time.

### **Recommendation**

It is requested that the Safety and Public Works Committee recommend to Council to adopt the proposed changes to the City’s Traffic and Business Regulation Code as described in this memorandum.

councilmemos/2020/0228FoodTrucks

**PART FIVE - BUSINESS REGULATION CODE**  
**CHAPTER 545**  
**Solicitation of Sales of Goods and Services**

**545.01 LICENSE REQUIRED.**

No person shall sell or offer for sale, barter, gift, or exchange any goods or other articles of value or money or offering any services for hire or commission ("goods or services") in the right-of way of the City, including sidewalks, driveway aprons, tree lawns and roadways, in any public places, or going from door to door on public or private property, unless such person is the holder of a license issued by the City which is in full force and effect and issued pursuant to the provisions of this Chapter or Chapter 546, as applicable. Such person shall have such license with them at all times while exercising such calling and shall, upon demand, exhibit the license to any police officer or official of this City or occupant of any residence or business establishment within the City being contacted or solicited.

(Ord. 78-19. Enacted 2-27-78.)

**545.02 LICENSE APPLICATION, ISSUANCE AND FEE.**

(a) Any person desiring to sell or offer for sale, barter, gift, or exchange any goods or services in the right-of way, in any public places, or going from door to door on public or private property shall make application to the Police Department. Such person shall furnish the following evidence of their identity and character:

- (1) Name, present residence address, permanent or business address, and telephone number;
- (2) A brief description of the nature of the business and the kinds of goods or services to be peddled or solicited;
- (3) The name, address and telephone number of the applicant's employer and credentials showing authorization by or representation of such employer; if the applicant is self-employed, the applicant shall so state;
- (4) Two (2) photographs of the applicant of appropriate size (approximately two inches by two inches (2" x 2")), one (1) of which shall be attached at all times to the license, and the other for the records of the Police Department;
- (5) Submission to fingerprinting, if requested, by the Police Department for local police files and for the purpose of determining the criminal record, if any, of the applicant.

(b) A license shall be issued unless it is determined by the Police Department that the applicant has willfully misrepresented their identity or intention, or has violated any provision of this Chapter, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, or in any way connected with the act of peddling or soliciting other than a traffic offense. The fee for the license shall be forty dollars (\$40.00) per year. (Ord. 92-120. Enacted 7-27-92.)

**545.03 LICENSE EXPIRATION AND REVOCATION.**

Any license issued pursuant to the provisions of this Chapter shall expire at the end of one (1) year following the date of issuance, and may be revoked or suspended at any time by the Chief of Police, or the Chief's authorized representative, should the person to whom it is issued be found to have willfully misrepresented their identity or intention, or has been convicted of any felony or misdemeanor involving force, violence, moral turpitude, or in any way connected with the act of peddling or soliciting other than a traffic offense, or has violated any section of this Chapter.

(Ord. 78-19. Enacted 2-27-78.)

**545.04 EXEMPTION FROM LICENSE AND FEE; REGISTRATION.**

(a) The following persons shall not be required to obtain a license or pay a license fee as provided in this Chapter, but shall register with the Police Department as provided in Section 545.05.

- (1) Any person soliciting or peddling newspapers or anything which such person has personally manufactured, raised or produced.
- (2) Any person soliciting the rendering of personal services to be performed by the person so soliciting.
- (3) Any person soliciting contributions for, or offering for sale, any goods or publications for any religious, charitable, civic, educational or political organization.

(b) Persons under the age of 18 who sell goods during daylight hours on the sidewalk or tree lawn for charitable or non-commercial (personal) purposes (such as a lemonade stand) shall not be required to obtain a license or register with the Police Department. No such sales shall block the sidewalk or impede pedestrians, or create any nuisance.

(c) The requirements to obtain a license or to register under this Chapter do not apply to a Mobile Food or Game Vehicle subject to Chapter 546, the delivery or provision of goods or services, a person handing out fliers door to door, or any person going door to door seeking to speak to occupants about any religious, political, or other matter that does not involve the solicitation of sales or donations.  
(Ord. 78-19. Enacted 2-27-78.)

#### **545.05 REGISTRATION; NOTICE OF SALES OF GOODS OR SERVICES.**

(a) Every person subject to the requirement to register pursuant to Section 545.04 (a), prior to selling or offering for sale, barter, gift, or exchange, any goods or services, shall register with the Police Department for identification purposes their name, address and telephone number. However, if the solicitation is on behalf of an organization only, the responsible officer thereof shall be required to register the name, address and telephone number of the organization.

(b) Such person or the responsible officer on behalf of an organization shall notify the Police Department personally, of the time period and the specific areas within the City in which soliciting or sales will be conducted. No person or organization shall solicit or sell at any time without having given such specific prior notice, and no person shall peddle or solicit in an area or at a time not previously listed with the Police Department.  
(Ord. 78-19. Enacted 2-27-78.)

#### **545.06 HOURS.**

No person subject to the license requirements of this Chapter shall sell or solicit before the hour of 9:00 a.m. or after one-half (1/2) hour after sunset of any day. No person who is subject to the provisions of this Chapter, but who is exempt from the license requirements as set forth in Section 545.04 (a), shall sell or solicit from door to door within the City before the hour of 9:00 a.m. or after 9:00 p.m. of any day. (Ord. 05-130. Enacted 12-19-05.)

#### **545.07 MISREPRESENTATION.**

No seller or solicitor shall register a false or fictitious name or address, or represent by words or action that they are the employee, agent, partner or representative of any person or organization when in fact they are not the employee, agent, partner or representative of such person or organization.  
(Ord. 78-19. Enacted 2-27-78.)

#### **545.08 NOTICE PROHIBITING ENTRY.**

No person, while engaged in selling or soliciting regulated by this Chapter, shall knock at the door or ring the doorbell of any home,

apartment or other dwelling unit in the City upon which is clearly displayed at the entrance a notice which reads "No Solicitors" or a similar notice which otherwise clearly purports to prohibit sellers or solicitors on the premises, unless such person is or has been invited upon the premises by the occupant.

(Ord. 78-19. Enacted 2-27-78.)

**545.09 STREET AND SIDEWALK BUSINESS STANDS.**

No person shall sell or solicit the sale of goods or services, and/or erect, place or maintain in, upon or over any public street, alley, driveway apron, sidewalk, tree lawn, or other public property any stand, cart, table, box, bin or any other arrangement or structure for the display or sale of goods or the provision of services at that location, or for the pursuit of any occupation whatsoever, unless a license or permit to do so has been issued by the City for a special event. This section shall not apply to a person under the age of 18 who sells goods during daylight hours on the sidewalk or tree lawn for charitable or non-commercial (personal) purposes, such as a lemonade stand.

**545.10 UNSOLICITED PRINTED MATERIAL RESTRICTIONS.**

(a) No person shall throw or place partially or wholly in the public right-of-way any newspaper, handbill, advertising circular, or other printed material, except as permitted in part (b) of this Section. The public right-of-way includes, among other places, roadways, driveway aprons, tree lawns, and public sidewalks.

(b) The following actions are exempt from the prohibition of part (a) of this Section:

- (1) placing printed material in an enclosed news box, approved book drop box, public trash or recycling bin, or similar permanent container;
- (2) handing printed material to a person who freely accepts it;
- (3) keeping printed material in an orderly, safe, and non-obstructive condition, in the immediate vicinity, and under the close and continuous control, of its lawful possessor, provided that the printed material is kept in the public right of way for no more than twelve (12) hours; and
- (4) temporary placement expressly authorized by the City.

(c) No person shall throw or place on private property any newspaper, handbill, advertising circular, or other printed material, except as permitted in part (d) of this Section. No person shall deliver any newspaper, handbill, advertising circular, or other printed material, in any manner, to property that the deliverer has reason to believe is vacant.

(d) The following actions are exempt from the prohibition of (c) of this Section:

- (1) Handing printed material to a person who freely accepts it.
- (2) Placing printed material pursuant to, and in a manner contemplated by, the solicitation by or permission from an occupant or owner of the property for placement of that particular material.
- (3) Leaving printed material too dense to be moved or blown about by the wind or other weather that is enclosed in a

container, such as a box or bag, outside of a home or building, if left within five (5) feet of an exterior door, not including a garage door.

- (4) Leaving printed material outside a home or building but inside a weather-proof box or container that the person placing the material reasonably believes to have been provided by the property for the purpose of accepting deliveries of newspapers and other printed material. This provision does not authorize the use of official United States Post Office containers for placing material other than by a Postal Service worker.
- (5) Leaving printed material attached securely to a home or building's exterior door, or immediately inside an exterior door.
- (6) Delivery by the United States Postal Service.

## **CHAPTER 546**

### **Mobile Food and Game Vehicles**

#### **546.01 DEFINITIONS**

As used in this Chapter:

(a) "Mobile food vehicle" shall mean a food establishment that is located upon or within a vehicle, including but not limited to trucks, passenger vehicles, motorcycles and bicycles, or a cart or other equipment which is pulled by a vehicle, where food or beverage is cooked, prepared, or served for individual portion service. This definition includes but is not limited to: mobile food kitchens, pushcart vendors, bicycle cart vendors, mobile food trucks, canteen trucks, ice cream trucks and coffee trucks. This definition does not apply to "meals on wheels" program vehicles or food delivery services.

(b) "Mobile game vehicle" shall mean a vehicle used to provide games, including video games, for persons entering the vehicle, including trucks, passenger vehicles, vans, and trailers, whether the vehicle is self-propelling or must be pulled by another vehicle.

(c) "Mobile ice cream vendor" or "ice cream truck" means any motorized or non-motorized vehicle in which ice cream, popsicles, ice sherbets or frozen desserts of any kind are carried for purposes of retail sale on the streets of the City. A mobile ice cream vendor is a type of mobile food vehicle under this Chapter.

(d) "Special event" for the purpose of this Section shall mean an activity, other than a Parade under Section 1111.05 of the Traffic Code, taking place in the dedicated public right-of-way or on any public property, including, but not limited to, parks and other City-owned facilities, or a public event on private property when City-services are required, for which a Special Event Permit or a special License has been issued by the City. Special events include, but are not limited to, an organized running race or walk, block party, festival, market, street fair, art exhibit or concert or other performance, or a private party.

#### **546.02 RESTRICTIONS ON OPERATIONS.**

(a) No mobile food vehicle shall sell or provide food or beverages on City-owned property or within the public right-of-way unless authorized as part of a Special Event Permit or a special License issued by the City, except that ice cream trucks may operate within the public right-of-way

without being part of a Special Event or having a Special Event Permit or special License from the City. An ice cream sales vehicle must obtain a license pursuant to this Chapter, and must follow the requirements of this Chapter and Section 1111.05 of the Traffic Code.

(b) A mobile game vehicle may operate within the public right-of-way without being part of a Special Event or having a Special Event Permit or special License from the City, but only for or as part of a private event, while such event is taking place, and only while parked on the street frontage immediately adjacent to the property where the private event is being held. A mobile game vehicle may not be open to the public while parked on a public street, or otherwise in the public right-of-way, unless as part of a Special Event. A mobile game vehicle may only operate while parked on a public street if it is parked in full compliance with all parking laws of the City. No mobile game vehicle may operate on City-owned property unless authorized by a Special Event Permit or special License issued by the City.

**546.03 REGULATION OF MOBILE FOOD VEHICLES.**

(a) A mobile food vehicle may be inspected by the City's Fire Department at any time during its operation in the City in order to determine whether the vehicle is being operated in compliance with the ordinances of the City.

(b) No mobile food vehicle shall operate on public or private property within 500 feet of a Special Event, unless approved as part of that Special Event, or within 500 feet of any fixed, permanent restaurant location.

(c) All mobile food vehicles shall offer a waste container for public use that the operator shall empty at the operator's expense and not into any City-owned waste container.

(d) No mobile food vehicle shall make or cause to be made any excessive noise, lighting, or other method of attracting the attention of the public, except for ice cream trucks that are in compliance with the requirements of this Chapter, Section 1111.05 of the Traffic Code, and the City's noise regulations.

(e) Mobile food vehicles shall not be permitted free-standing temporary signage except one menu board, with a maximum size of six square feet, placed adjacent to the mobile food vehicle.

(f) The City reserves the right to relocate a mobile food vehicle to an alternate location as determined by the City if the approved location needs to be used for emergency purposes or other public benefit.

(g) The operation of mobile food vehicles shall at all times be in compliance with all applicable governmental rules and regulations, including but not limited to those of the County Public Health Department and the State.

**546.04 REGULATION OF MOBILE ICE CREAM VENDORS.**

(a) Any person desiring to operate a mobile ice cream truck shall make application to the Police Department for and obtain an annual Mobile Ice Cream Vendor License prior to operating in the City. Such person shall submit a completed application on the form provided by the Police Department, which shall include all of the following:

- (1) Name, present residence address, permanent or business address, and telephone number of the operator of the ice cream truck;

- (2) The name, address and telephone number of the business entity that owns or furnishes the ice cream truck or franchise to operate such truck under the business's name; if the applicant is self-employed, the applicant shall so state;
- (3) The make, model, year and current registration number of the vehicle(s) used by the operator;
- (4) A copy of the operator's driver's license;
- (5) Two (2) photographs of the applicant operator of appropriate size (approximately two inches by two inches (2" x 2")), one (1) of which shall be attached at all times to the license, and the other for the records of the Police Department;
- (6) A copy of the operator's Mobile Food License issued by the Cuyahoga County Board of Health or another authorized Health Department;
- (7) Proof of insurance as required in this Section;
- (8) Submission to fingerprinting, if requested, by the Police Department for local police files and for the purpose of determining the criminal record, if any, of the applicant, or other background check acceptable to the Police Department.
- (9) Such other information as may be reasonably required by the Police Department.

(b) The applicant shall submit a fee for the License of forty dollars (\$40.00) per year.

(c) A License shall be promptly issued after submission of a complete application, the fee, and the required background check, unless it is determined by the Police Department that the applicant has willfully misrepresented their identity or intention, or has violated any provision of this Chapter or of Section 1111.05 of the Traffic Code, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated.

(d) The Mobile Ice Cream Vendor License shall be valid for the calendar year in which it was issued. The License may be revoked or suspended at any time by the Chief of Police, or the Chief's authorized representative, should the person to whom it is issued be found to have willfully misrepresented their identity or intention, or has been convicted of any felony or misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated, or has violated any section of this Chapter.

(e) The operator of a Mobile Ice Cream Truck shall maintain a valid Mobile Food License issued by the Cuyahoga County Board of Health or another authorized Health Department while operating within the City. The license shall at all times be clearly displayed on the vehicle during times of operation.

(f) The operator of a Mobile Ice Cream Truck shall maintain general liability insurance and automobile insurance covering the vehicle, business operation and any property or bodily injury that may result from their operation within the City in amount as may reasonably be required by the Director of Law. The operator shall provide a certificate of insurance at the time of application for a License. Licensed operators shall maintain and carry proof of insurance at all times while operating within the City. Failure to carry or maintain the required level insurance shall result in a denial of the application for or a revocation of the License.

(g) The operator shall clearly display their City Mobile Ice Cream Vendor License on the exterior of the vehicle or through their vending

window so as to be conspicuously visible to all customers. Vendors shall also carry all personal credentials on their person at all times, including a valid Ohio driver's license and proof of insurance, when operating within the City.

(h) A Mobile Ice Cream Truck operating in the City shall maintain the following equipment in good working order:

- (1) A convex mirror mounted on the front so that driver in the driver's normal seating position can see the area in front of the truck obscured by the hood.
- (2) A device capable of emitting a sound audible under normal conditions from a distance of not less than 200 feet when the vehicle is backing up.

(i) A Mobile Ice Cream Vendor License may be denied, suspended or revoked if it is found that the operator has willfully misrepresented their identity or intention, or has violated any provision of this Chapter or of Section 1111.05 of the Traffic Code, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated.

- (1) Licensee shall be notified promptly, in writing of any decision to deny, revoke or suspend their License and of the licensee's right to appeal the decision.
- (2) Licensee may appeal a denial, revocation or suspension of

a

License by submitting a request to appeal, in writing, to the Chief of Police within thirty (30) days of the date of the notice of revocation or suspension. The Chief of Police

the

shall hold a hearing within thirty (30) days of the date

have

City received the licensee's appeal. The licensee shall

the right to appear at such hearing, to be represented by counsel, and have the right to examine and cross examine witnesses. In the event of a decision and ruling adverse to the licensee, the licensee shall have the right to appeal such decision and ruling to the City's Board of Appeals by sending a written appeal to the Director of Law.

- (3) Whenever, for any cause, a license is denied or revoked, the

operator shall not be eligible for a license for a period of twelve months from the date of denial or revocation of the License.

(j) Persons operating a mobile ice cream truck without a valid license may be served with a cease and desist order by the Police Department or may be prosecuted as set forth in Chapter 599.

**PART ELEVEN - TRAFFIC CODE**

**TITLE THREE - Streets and Traffic Control Devices**

**Chap. 1111. Street Obstructions and Special Uses.**

**1111.05 SALES OF GOODS OR SERVICES FROM VEHICLES AND CARTS.**

(a) No person shall sell goods or services on a public street or roadway, sidewalk, driveway apron, or tree lawn from a vehicle or cart

without having obtained a license issued under Chapter 545 or 546 of the Business Regulation Code, or pursuant to a Special Event Permit or License Agreement with the City. The sale of goods includes, without limitation, the sale of food, ice cream and beverages.

(b) No person shall sell goods or services on a public street or roadway, sidewalk, driveway apron, or tree lawn from a vehicle or cart unless such person is in compliance with the following regulations, except to the extent any regulation is modified by a Special Event Permit or License Agreement with the City:

- (1) Unless a street is closed from curb to curb to traffic pursuant to a Special Event Permit or License, no sales of goods or services may be made:
  - A. on any street with a speed limit of greater than 25 miles per hour (MPH)
  - B. from the left side of a vehicle parked, stopped or standing on a public street or roadway;
  - C. while standing, stopping or parking such vehicle or cart in any one place for more than fifteen (15) minutes;
  - D. in a congested area, or in such manner as to obstruct or impede the normal flow of traffic or inconvenience to the public; or
  - E. without the vehicle using its emergency flashing lights on both the front and rear of such.
- (2) No sales of goods or services may be made on or before the hour of 11:00 a.m., or after either 9:00 p.m. or sunset, whichever is earlier.;
- (3) No person shall operate such vehicle or cart at such a slow rate of speed as to obstruct or impede the normal flow of traffic;
- (4) No person shall shout or blow a horn while operating or
- (5) An ice cream truck may operate a bell, chime or music
- (6) No sales of goods or services may be made on any street more than twice on any day.

using

a vehicle for the purposes of selling goods or services for the purpose of attracting attention to such goods or services.

while

moving on a street, except that the volume shall be set so that no such sound may be heard more than 500 feet from the vehicle at any time.

(Ord. 59-122. Enacted 6-22-59.)

(c) Every vehicle used for the purpose of soliciting or selling goods, wares, or merchandise from which wrappings or waste material of any type may litter the public streets, shall be equipped with one or more disposal receptacles of sufficient capacity to handle the amount of litter or waste emanating from such vehicle. Every vendor or operator of such vehicle shall clean each area where sales have been made of all litter emanating from the vehicle or customers before moving to another location.

(Ord. 71-115. Enacted 10-25-71.)

Section 2. This ordinance is not intended to be, nor does it, constitute the regulation of the occupancy or use of the public way as defined in Ohio Revised Code Section 4939.

Section 3. This ordinance shall take effect from and after the earliest time allowed by law.

**PART FIVE - BUSINESS REGULATION CODE**  
**CHAPTER 545**  
**Solicitation of Sales of Goods and Services**

**545.01 LICENSE REQUIRED.**

No person shall sell or offer for sale, barter, gift, or exchange any goods or other articles of value or money or offering any services for hire or commission ("goods or services") in the right-of way of the City, including sidewalks, driveway aprons, tree lawns and roadways, in any public places, or going from door to door on public or private property, unless such person is the holder of a license issued by the City which is in full force and effect and issued pursuant to the provisions of this Chapter or Chapter 546, as applicable. Such person shall have such license with them at all times while exercising such calling and shall, upon demand, exhibit the license to any police officer or official of this City or occupant of any residence or business establishment within the City being contacted or solicited.

(Ord. 78-19. Enacted 2-27-78.)

**545.02 LICENSE APPLICATION, ISSUANCE AND FEE.**

(a) Any person desiring to sell or offer for sale, barter, gift, or exchange any goods or services in the right-of way, in any public places, or going from door to door on public or private property shall make application to the Police Department. Such person shall furnish the following evidence of their identity and character:

- (1) Name, present residence address, permanent or business address, and telephone number;
- (2) A brief description of the nature of the business and the kinds of goods or services to be peddled or solicited;
- (3) The name, address and telephone number of the applicant's employer and credentials showing authorization by or representation of such employer; if the applicant is self-employed, the applicant shall so state;
- (4) Two (2) photographs of the applicant of appropriate size (approximately two inches by two inches (2" x 2")), one (1) of which shall be attached at all times to the license, and the other for the records of the Police Department;
- (5) Submission to fingerprinting, if requested, by the Police Department for local police files and for the purpose of determining the criminal record, if any, of the applicant.

(b) A license shall be issued unless it is determined by the Police Department that the applicant has willfully misrepresented their identity or intention, or has violated any provision of this Chapter, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, or in any way connected with the act of peddling or soliciting other than a traffic offense. The fee for the license shall be forty dollars (\$40.00) per year. (Ord. 92-120. Enacted 7-27-92.)

**545.03 LICENSE EXPIRATION AND REVOCATION.**

Any license issued pursuant to the provisions of this Chapter shall expire at the end of one (1) year following the date of issuance, and may be revoked or suspended at any time by the Chief of Police, or the Chief's authorized representative, should the person to whom it is issued be found to have willfully misrepresented their identity or intention, or has been convicted of any felony or misdemeanor involving force, violence, moral turpitude, or in any way connected with the act of peddling or soliciting other than a traffic offense, or has violated any section of this Chapter. (Ord. 78-19. Enacted 2-27-78.)

**545.04 EXEMPTION FROM LICENSE AND FEE; REGISTRATION.**

(a) The following persons shall not be required to obtain a license

or pay a license fee as provided in this Chapter, but shall register with the Police Department as provided in Section 545.05.

- (1) Any person soliciting or peddling newspapers or anything which such person has personally manufactured, raised or produced.
- (2) Any person soliciting the rendering of personal services to be performed by the person so soliciting.
- (3) Any person soliciting contributions for, or offering for sale, any goods or publications for any religious, charitable, civic, educational or political organization.

(b) Persons under the age of 18 who sell goods during daylight hours on the sidewalk or tree lawn for charitable or non-commercial (personal) purposes (such as a lemonade stand) shall not be required to obtain a license or register with the Police Department. No such sales shall block the sidewalk or impede pedestrians, or create any nuisance.

(c) The requirements to obtain a license or to register under this Chapter do not apply to a Mobile Food or Game Vehicle subject to Chapter 546, the delivery or provision of goods or services, a person handing out fliers door to door, or any person going door to door seeking to speak to occupants about any religious, political, or other matter that does not involve the solicitation of sales or donations.  
(Ord. 78-19. Enacted 2-27-78.)

#### **545.05 REGISTRATION; NOTICE OF SALES OF GOODS OR SERVICES.**

(a) Every person subject to the requirement to register pursuant to Section 545.04 (a), prior to selling or offering for sale, barter, gift, or exchange, any goods or services, shall register with the Police Department for identification purposes their name, address and telephone number. However, if the solicitation is on behalf of an organization only, the responsible officer thereof shall be required to register the name, address and telephone number of the organization.

(b) Such person or the responsible officer on behalf of an organization shall notify the Police Department personally, of the time period and the specific areas within the City in which soliciting or sales will be conducted. No person or organization shall solicit or sell at any time without having given such specific prior notice, and no person shall peddle or solicit in an area or at a time not previously listed with the Police Department.  
(Ord. 78-19. Enacted 2-27-78.)

#### **545.06 HOURS.**

(Ord. 05-130. Enacted 12-19-05.)

#### **545.07 MISREPRESENTATION.**

No seller or solicitor shall register a false or fictitious name or address, or represent by words or action that they are the employee, agent, partner or representative of any person or organization when in fact they are not the employee, agent, partner or representative of such person or organization.  
(Ord. 78-19. Enacted 2-27-78.)

#### **545.08 NOTICE PROHIBITING ENTRY.**

No person, while engaged in selling or soliciting regulated by this Chapter, shall knock at the door or ring the doorbell of any home, apartment or other dwelling unit in the City upon which is clearly displayed at the entrance a notice which reads "No Solicitors" or a similar notice which otherwise clearly purports to prohibit sellers or solicitors on the premises, unless such person is or has been invited upon the premises by the occupant.  
(Ord. 78-19. Enacted 2-27-78.)

**545.09 STREET AND SIDEWALK BUSINESS STANDS.**

No person shall sell or solicit the sale of goods or services, and/or erect, place or maintain in, upon or over any public street, alley, driveway apron, sidewalk, tree lawn, or other public property any stand, cart, table, box, bin or any other arrangement or structure for the display or sale of goods or the provision of services at that location, or for the pursuit of any occupation whatsoever, unless a license or permit to do so has been issued by the City for a special event. This section shall not apply to a person under the age of 18 who sells goods during daylight hours on the sidewalk or tree lawn for charitable or non-commercial (personal) purposes, such as a lemonade stand.

**545.10 UNSOLICITED PRINTED MATERIAL RESTRICTIONS.**

(a) No person shall throw or place partially or wholly in the public right-of-way any newspaper, handbill, advertising circular, or other printed material, except as permitted in part (b) of this Section. The public right-of-way includes, among other places, roadways, driveway aprons, tree lawns, and public sidewalks.

(b) The following actions are exempt from the prohibition of part (a) of this Section:

- (1) placing printed material in an enclosed news box, approved book drop box, public trash or recycling bin, or similar permanent container;
- (2) handing printed material to a person who freely accepts it;
- (3) keeping printed material in an orderly, safe, and non-obstructive condition, in the immediate vicinity, and under the close and continuous control, of its lawful possessor, provided that the printed material is kept in the public right of way for no more than twelve (12) hours; and
- (4) temporary placement expressly authorized by the City.

(c) No person shall throw or place on private property any newspaper, handbill, advertising circular, or other printed material, except as permitted in part (d) of this Section. No person shall deliver any newspaper, handbill, advertising circular, or other printed material, in any manner, to property that the deliverer has reason to believe is vacant.

(d) The following actions are exempt from the prohibition of (c) of this Section:

- (1) Handing printed material to a person who freely accepts it.
- (2) Placing printed material pursuant to, and in a manner contemplated by, the solicitation by or permission from an occupant or owner of the property for placement of that particular material.
- (3) Leaving printed material too dense to be moved or blown about by the wind or other weather that is enclosed in a container, such as a box or bag, outside of a home or building, if left within five (5) feet of an exterior door, not including a garage door.
- (4) Leaving printed material outside a home or building but inside a weather-proof box or container that the person placing the material reasonably believes to have been

provided by the property for the purpose of accepting deliveries of newspapers and other printed material. This provision does not authorize the use of official United States Post Office containers for pacing material other than by a Postal Service worker.

- (5) Leaving printed material attached securely to a home or building's exterior door, or immediately inside an exterior door.
- (6) Delivery by the United States Postal Service.

## **CHAPTER 546**

### **Mobile Food and Game Vehicles**

#### **546.01 DEFINITIONS**

As used in this Chapter:

(a) "Mobile food vehicle" shall mean a food establishment that is located upon or within a vehicle, including but not limited to trucks, passenger vehicles, motorcycles and bicycles, or a cart or other equipment which is pulled by a vehicle, where food or beverage is cooked, prepared, or served for individual portion service. This definition includes but is not limited to: mobile food kitchens, pushcart vendors, bicycle cart vendors, mobile food trucks, canteen trucks, ice cream trucks and coffee trucks. This definition does not apply to "meals on wheels" program vehicles or food delivery services.

(b) "Mobile game vehicle" shall mean a vehicle used to provide games, including video games, for persons entering the vehicle, including trucks, passenger vehicles, vans, and trailers, whether the vehicle is self-propelling or must be pulled by another vehicle.

(c) "Mobile ice cream vendor" or "ice cream truck" means any motorized or non-motorized vehicle in which ice cream, popsicles, ice sherbets or frozen desserts of any kind are carried for purposes of retail sale on the streets of the City. A mobile ice cream vendor is a type of mobile food vehicle under this Chapter.

(d) "Special event" for the purpose of this Section shall mean an activity, other than a Parade under Section 1111.05 of the Traffic Code, taking place in the dedicated public right-of-way or on any public property, including, but not limited to, parks and other City-owned facilities, or a public event on private property when City-services are required, for which a Special Event Permit or a special License has been issued by the City. Special events include, but are not limited to, an organized running race or walk, block party, festival, market, street fair, art exhibit or concert or other performance, or a private party.

#### **546.02 RESTRICTIONS ON OPERATIONS.**

(a) No mobile food vehicle shall sell or provide food or beverages on City-owned property or within the public right-of-way unless authorized as part of a Special Event Permit or a special License issued by the City, except that ice cream trucks may operate within the public right-of-way without being part of a Special Event or having a Special Event Permit or special License from the City. An ice cream sales vehicle must obtain a license pursuant to this Chapter, and must follow the requirements of this Chapter and Section 1111.05 of the Traffic Code.

(b) A mobile game vehicle may operate within the public right-of-way without being part of a Special Event or having a Special Event Permit or special License from the City, but only for or as part of a private event, while such event is taking place, and only while parked on the street frontage immediately adjacent to the property where the private event is being held. A mobile game vehicle may not be open to the public while parked on a public street, or otherwise in the public right-of-way, unless as part of a Special Event. A mobile game vehicle may only operate while parked on a public street if it is parked in full compliance with all parking laws of the City. No mobile game vehicle may operate on City-owned property unless authorized by a Special Event Permit or special License issued by the City.

**546.03 REGULATION OF MOBILE FOOD VEHICLES.**

(a) A mobile food vehicle may be inspected by the City's Fire Department at any time during its operation in the City in order to determine whether the vehicle is being operated in compliance with the ordinances of the City.

(b) No mobile food vehicle shall operate on public or private property within 500 feet of a Special Event, unless approved as part of that Special Event, or within 500 feet of any fixed, permanent restaurant location.

(c) All mobile food vehicles shall offer a waste container for public use that the operator shall empty at the operator's expense and not into any City-owned waste container.

(d) No mobile food vehicle shall make or cause to be made any excessive noise, lighting, or other method of attracting the attention of the public, except for ice cream trucks that are in compliance with the requirements of this Chapter, Section 1111.05 of the Traffic Code, and the City's noise regulations.

(e) Mobile food vehicles shall not be permitted free-standing temporary signage except one menu board, with a maximum size of six square feet, placed adjacent to the mobile food vehicle.

(f) The City reserves the right to relocate a mobile food vehicle to an alternate location as determined by the City if the approved location needs to be used for emergency purposes or other public benefit.

(g) The operation of mobile food vehicles shall at all times be in compliance with all applicable governmental rules and regulations, including but not limited to those of the County Public Health Department and the State.

**546.04 REGULATION OF MOBILE ICE CREAM VENDORS.**

(a) Any person desiring to operate a mobile ice cream truck shall make application to the Police Department for and obtain an annual Mobile Ice Cream Vendor License prior to operating in the City. Such person shall submit a completed application on the form provided by the Police Department, which shall include all of the following:

- (1) Name, present residence address, permanent or business address, and telephone number of the operator of the ice cream truck;
- (2) The name, address and telephone number of the business entity that owns or furnishes the ice cream truck or franchise to operate such truck under the business's name; if the applicant is self-employed, the applicant shall so state;

- (3) The make, model, year and current registration number of the vehicle(s) used by the operator;
- (4) A copy of the operator's driver's license;
- (5) Two (2) photographs of the applicant operator of appropriate size (approximately two inches by two inches (2" x 2")), one (1) of which shall be attached at all times to the license, and the other for the records of the Police Department;
- (6) A copy of the operator's Mobile Food License issued by the Cuyahoga County Board of Health or another authorized Health Department;
- (7) Proof of insurance as required in this Section;
- (8) Submission to fingerprinting, if requested, by the Police Department for local police files and for the purpose of determining the criminal record, if any, of the applicant, or other background check acceptable to the Police Department.
- (9) Such other information as may be reasonably required by the Police Department.

(b) The applicant shall submit a fee for the License of forty dollars (\$40.00) per year.

(c) A License shall be promptly issued after submission of a complete application, the fee, and the required background check, unless it is determined by the Police Department that the applicant has willfully misrepresented their identity or intention, or has violated any provision of this Chapter or of Section 1111.05 of the Traffic Code, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated.

(d) The Mobile Ice Cream Vendor License shall be valid for the calendar year in which it was issued. The License may be revoked or suspended at any time by the Chief of Police, or the Chief's authorized representative, should the person to whom it is issued be found to have willfully misrepresented their identity or intention, or has been convicted of any felony or misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated, or has violated any section of this Chapter.

(e) The operator of a Mobile Ice Cream Truck shall maintain a valid Mobile Food License issued by the Cuyahoga County Board of Health or another authorized Health Department while operating within the City. The license shall at all times be clearly displayed on the vehicle during times of operation.

(f) The operator of a Mobile Ice Cream Truck shall maintain general liability insurance and automobile insurance covering the vehicle, business operation and any property or bodily injury that may result from their operation within the City n amount as may reasonably be required by the Director of Law. The operator shall provide a certificate of insurance at the time of application for a License. Licensed operators shall maintain and carry proof of insurance at all times while operating within the City. Failure to carry or maintain the required level insurance shall result in a denial of the application for or a revocation of the License.

(g) The operator shall clearly display their City Mobile Ice Cream Vendor License on the exterior of the vehicle or through their vending window so as to be conspicuously visible to all customers. Vendors shall also carry all personal credentials on their person at all times, including a valid Ohio driver's license and proof of insurance, when operating within the City.

(h) A Mobile Ice Cream Truck operating in the City shall maintain the following equipment in good working order:

- (1) A convex mirror mounted on the front so that driver in the driver's normal seating position can see the area in front of the truck obscured by the hood.
- (2) A device capable of emitting a sound audible under normal conditions from a distance of not less than 200 feet when the vehicle is backing up.

(i) A Mobile Ice Cream Vendor License may be denied, suspended or revoked if it is found that the operator has willfully misrepresented their identity or intention, or has violated any provision of this Chapter or of Section 1111.05 of the Traffic Code, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated.

- (1) Licensee shall be notified promptly, in writing of any decision to deny, revoke or suspend their License and of the licensee's right to appeal the decision.
- (2) Licensee may appeal a denial, revocation or suspension of

a

License by submitting a request to appeal, in writing, to the Chief of Police within thirty (30) days of the date of the notice of revocation or suspension. The Chief of Police

the

shall hold a hearing within thirty (30) days of the date

have

City received the licensee's appeal. The licensee shall

the right to appear at such hearing, to be represented by counsel, and have the right to examine and cross examine witnesses. In the event of a decision and ruling adverse to the licensee, the licensee shall have the right to appeal such decision and ruling to the City's Board of Appeals by sending a written appeal to the Director of Law.

- (3) Whenever, for any cause, a license is denied or revoked, the

operator shall not be eligible for a license for a period of twelve months from the date of denial or revocation of the License.

(j) Persons operating a mobile ice cream truck without a valid license may be served with a cease and desist order by the Police Department or may be prosecuted as set forth in Chapter 599.

**PART ELEVEN - TRAFFIC CODE**

**TITLE THREE - Streets and Traffic Control Devices  
Chap. 1111. Street Obstructions and Special Uses.**

**1111.05 SALES OF GOODS OR SERVICES FROM VEHICLES AND CARTS.**

(a) No person shall sell goods or services on a public street or roadway, sidewalk, driveway apron, or tree lawn from a vehicle or cart without having obtained a license issued under Chapter 545 or 546 of the Business Regulation Code, or pursuant to a Special Event Permit or License Agreement with the City. The sale of goods includes, without limitation, the sale of food, ice cream and beverages.

No person shall sell goods or services on a public street or roadway, sidewalk, driveway apron, or tree lawn from a vehicle or cart unless such person is in compliance with the following regulations, except to the extent any regulation is modified by a Special Event Permit or License Agreement with the City:

- (1) Unless a street is closed from curb to curb to traffic pursuant to a Special Event Permit or License, no sales of goods or services may be made:
  - A. on any street with a speed limit of greater than 25 miles per hour (MPH)
  - B. from the left side of a vehicle parked, stopped or standing on a public street or roadway;
  - C. while standing, stopping or parking such vehicle or cart in any one place for more than fifteen (15) minutes;
  - D. in a congested area, or in such manner as to obstruct or impede the normal flow of traffic or inconvenience to the public; or
  - E. without the vehicle using its emergency flashing lights on both the front and rear of such.
- (2) No sales of goods or services may be made on or before the hour of 11:00 a.m., or after either 9:00 p.m. or sunset, whichever is earlier.;
- (3) No person shall operate such vehicle or cart at such a slow rate of speed as to obstruct or impede the normal flow of traffic;
- (4) No person shall shout or blow a horn while operating or
- (5) An ice cream truck may operate a bell, chime or music
- (6) No sales of goods or services may be made on any street more than twice on any day.

using

a vehicle for the purposes of selling goods or services for the purpose of attracting attention to such goods or services.

while

moving on a street, except that the volume shall be set so that no such sound may be heard more than 500 feet from the vehicle at any time.

(Ord. 59-122. Enacted 6-22-59.)

(c) Every vehicle used for the purpose of soliciting or selling goods, wares, or merchandise from which wrappings or waste material of any type may litter the public streets, shall be equipped with one or more disposal receptacles of sufficient capacity to handle the amount of litter or waste emanating from such vehicle. Every vendor or operator of such vehicle shall clean each area where sales have been made of all litter emanating from the vehicle or customers before moving to another location.

(Ord. 71-115. Enacted 10-25-71.)

Section 2. This ordinance is not intended to be, nor does it, constitute the regulation of the occupancy or use of the public way as defined in Ohio Revised Code Section 4939.

Section 3. This ordinance shall take effect from and after the earliest time allowed by law.



## Memorandum

To: Members of Safety & Public Works Committee

From: Patricia Speese, Director, Public Works

cc: David E. Weiss, Mayor  
Jeri E. Chaikin, CAO

Date: February 28, 2020

Re: City Hall Fire Alarm Replacement – additional funding

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Shaker Heights City Hall was built in 1930. The original Fire Station #1 was part of the City Hall building. That area of City Hall was expanded in the early 1970s. That expansion was the last time that the fire alarm system at City Hall has had a major update. The current fire alarm system at City Hall is outdated and needs to be replaced.

The life safety codes have been improved over the past 45 years. The current NFPA (National Fire Prevention Association) code requires ADA accessible pull stations and extensive smoke and fire detectors. It requires additional horns so that all occupants are notified when the system alarms. It further requires all alarm strobes to be synced so as to prevent causing health hazards when functioning. If the alarm strobes are not in sync, people with certain medical conditions can become extremely ill.

The fire alarm system is not up to date when considering the current usage and layout of City Hall. The last time that the fire alarm system was updated smoking was allowed within City Hall so many heat detectors were installed in areas that would typically have smoke detectors. Many rooms that did not require fire prevention devices (i.e. smoke detectors) at the time are now required by code to have smoke detectors. The limited area fire sprinkler system in the basement boiler room is not monitored by the fire alarm system. The sprinkler system could trip and flood the basement boiler room without the Fire Department or Public Works being notified.

Initially the Engineer's estimate for replacement of the City Hall fire alarm system was \$35,000. Original funding of \$35,000 was appropriated in the 2016 capital budget; the design and public bidding took place in 2018. The received bids were \$69,000 - \$72,000. This was double the Engineer's estimate. Additional funding of \$49,000 was appropriated in the 2020 Capital budget through ordinance 19-122. This funding would provide for the project's engineering fees of \$8,300 and the expected construction costs of approximately \$70,000.

The project was publicly rebid in January 2020. The lowest bid was \$92,015. The lowest bid exceeded the State of Ohio's threshold of \$75,000 for Prevailing Wage public projects so the project had to be rebid as a Prevailing Wage job. The latest public bidding received two bids. The lowest public bid was \$115,000. The highest bid was \$136,324. The prevailing portion of the bid is partially responsible for the significant increase along with the fact that historical buildings are difficult to work in; the contractors in the Cleveland area are very busy, and City Hall must remain open and occupied during construction which increases the required cleanups and after-hours premium rate work. Funds for this request are available in unallocated capital funds.

We are requesting to amend ordinance #19-122 with an appropriation increase of \$39,260 for a total of \$123,260 available for this project. These funds will provide for the engineering costs of \$8,260 and the construction bid of \$115,000. This project will be completed this year.



**Memorandum**

To: Members of Safety & Public Works Committee  
From: Patricia Speese, Director of Public Works  
cc: Mayor David E. Weiss  
Chief Administrative Officer Jeri E. Chaikin  
Date: March 6, 2020  
Re: 2020 Street Resurfacing

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On February 14, 2020 the City of Shaker Heights received five (5) bids for the 2020 Street Resurfacing project. The Contractors and their submitted bids are as follows:

Contractor	Total
Chagrin Valley Paving	\$1,674,352.00
Ronyak Paving, Inc	\$1,688,000.00
Karvo Companies, Inc.	\$1,707,565.70
Barbicas Construction	\$1,734,123.40
The Shelly Company	\$1,888,279.90

The Shaker Heights Public Works construction cost estimate was \$1,710,000.00.

The apparent low bidder is Chagrin Valley Paving with a bid total of \$1,674,352.00.

Chagrin Valley Paving was awarded the 2015 Street Resurfacing project. In review of that project, Public Works issued a Default of Contract letter because the contractor had been unresponsive. Some of the issues that we encountered involved not following our clear direction when resurfacing around Laurel School, causing chaos and mass confusion, overloaded trucks, speeding (48 mph in a 35 mph zone) employees being rude to residents and failure to follow our contract which resulted in the Default of Contract letter. After increasing our quantities in early August per the contract, the contractor was non responsive and it was not until Public Works contacted the Bonding Company and issued the Default of Contract letter that Chagrin Valley Paving responded and did the work in late September. In general, the quality of work performed under that contract was fair. This is consistent with other municipalities we have spoken to.

The second lowest bidder was Ronyak Paving. This contractor has worked on multiple projects for the City (Shaker Blvd. Resurfacing, 2016 & 2017 Street Resurfacing projects). Additionally, they have performed resurfacing work within the City as a sub-contractor for other utility work.

Their quality of work exceeds industry standards, the project managers are responsive and professional. The difference between the lowest and second lowest bidders was \$13,648.00. Ronyak Paving submitted the lowest, best bid which represents less than a one-percent increase from Chagrin Valley Paving's bid.

Per the City Charter, the Mayor can award contracts to the "Lowest" bid, however it has been our tradition to take requests for the "Lowest and BEST" bid to Council for their approval.

Based on their bid and previous experience with the City, it is recommended that Ronyak Paving is awarded the 2020 Street resurfacing project at a cost of \$1,688,000.00. As such, we are seeking support from the Safety & Public Works Committee for this request.



## Memorandum

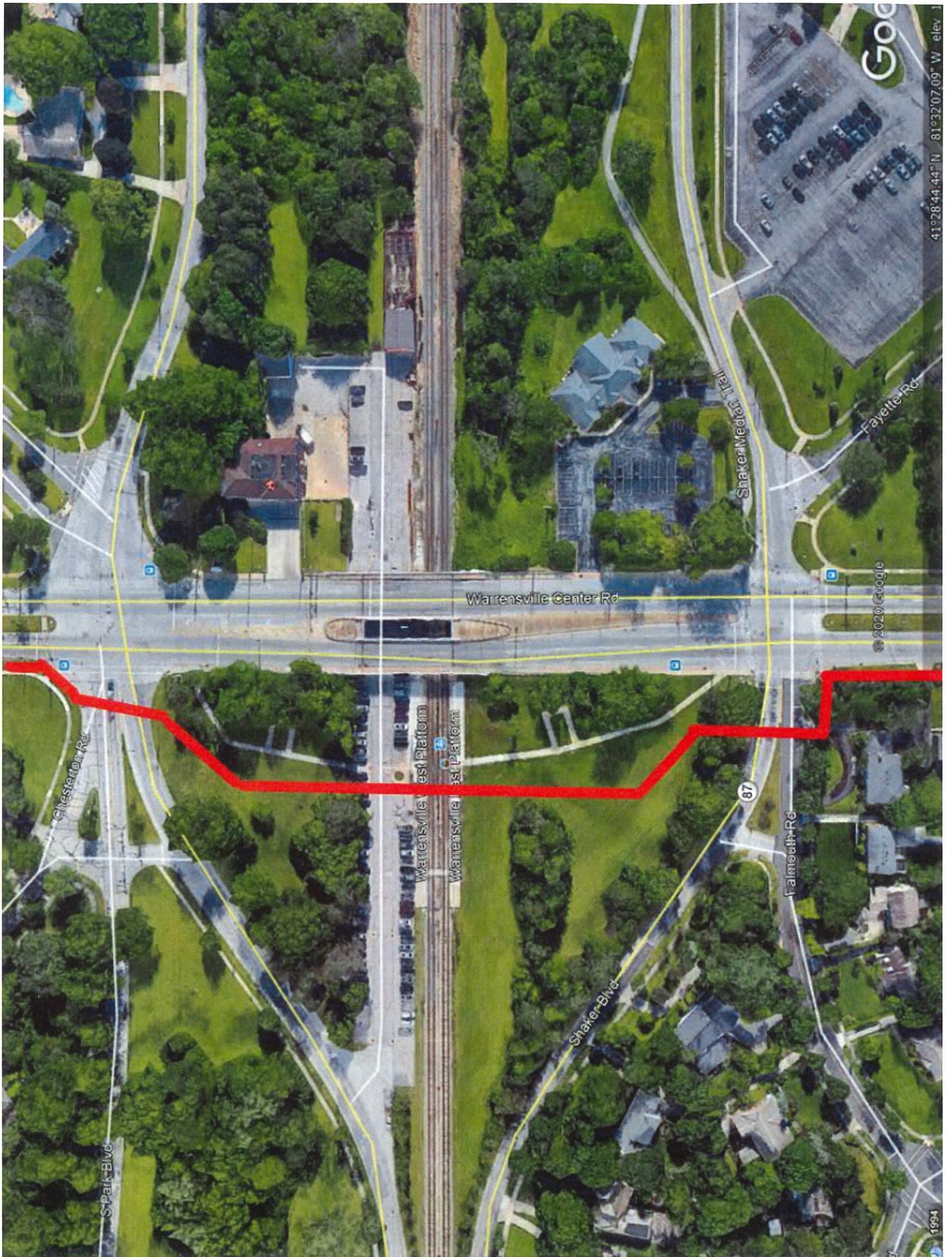
To: Members of Safety & Public Works Committee  
From: Patricia Speese, Director of Public Works  
cc: Mayor David E. Weiss  
Chief Administrative Officer Jeri E. Chaikin  
Date: February 28, 2020  
Re: Dominion Energy Ohio Easement

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Dominion Energy Ohio (DEO) currently has an existing gas main that runs parallel to the bridge on Warrensville Center Road between east and west bound Shaker Blvd. In preparation of Cuyahoga County Department of Public Works replacement of this bridge, DEO needs to relocate the existing gas main. The proposed alignment for the new gas main is approximately 120-feet west of the western edge of the existing bridge on parcel numbers 733-12-016 and 733-23-020. These parcels are owned by the City of Shaker Heights. In order to install and maintain the new gas main, DEO is requesting a permanent gas pipeline easement.

DEO submitted plans to the City of Shaker Heights for our review in late 2019. Based on our understanding, the new gas main will be installed underground with minimal impact to city property. It does not appear any trees will be removed as a result of this project. This work in the general vicinity of Warrensville Center Road and Shaker Blvd. is part of a larger gas pipe main replacement project. DEO is anticipating starting the project in the spring of 2020. The gas main replacement project will be completed prior to the Warrensville Center Road / Shaker Blvd. intersection reconfiguration project starts in the fall of 2020.

Public Works recommends granting a permanent gas pipeline easement for PPN 733-12-016 and 733-23-020 to Dominion Energy Ohio. As such, we are seeking support from the Safety and Public Works Committee for DEO's request.



41°28'44.44" N 81°32'07.09" W elev 1

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