



## COUNCIL UPDATE

October 25, 2019

### MEETINGS & REMINDERS

Sunday, October 27	-	11:00 a.m.	-	Howl-O-Ween Bark in Cain Park (flier attached)
Tuesday, October 29	-	7:30 p.m.	-	Citizens Advisory Committee
Wednesday, October 30	-	7:00 p.m.	-	Board of Zoning Appeals
	-	7:00 p.m.	-	Transportation Advisory Committee
Thursday, October 31	-	6:00 p.m.	-	Meet Your Police
	-	6:00 – 8:00 p.m.	-	Trick or Treat
Sunday, November 3	-	Remember to set your clocks back one hour		

### UPCOMING EVENTS

Wednesday, November 6	-	10 a.m. – Noon	-	Cupcakes with Cops (flyer attached)
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### LEGISLATION

- **Severance Town Center, Second Reading.** A Resolution authorizing the City Manager to enter into an agreement with AE7 Pittsburgh, LLC, concerning the Severance Town Center Redevelopment Plan project
- **Chapter 505, Second Reading.** An Ordinance repealing Part Five, *General Offenses Code*, of the Codified Ordinances of Cleveland Heights, Chapter 505, *Animals and Fowl*, of the Codified Ordinances, and adopting a replacement Chapter 505, *Animals and Fowl*
- **Small Business Saturday.** A Resolution declaring November 30, 2019, “Small Business Saturday”

- **Sanitary and Storm Sewer Maintenance.** A Resolution authorizing the City Manager to enter into an agreement with the County of Cuyahoga to perform certain services to help maintain the City's sanitary and storm sewers
- **NEORS.** A Resolution authorizing the City Manager to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the 2020 Member Community Infrastructure Grant Program for the Delamere Drive Basement Flooding Relief Project

Proposed: 10/21/2019

RESOLUTION NO. 93-2019 (PD), *Second Reading*

By Council Member Ungar

A Resolution authorizing the City Manager to enter into an agreement with AE7 Pittsburgh, LLC, concerning the Severance Town Center Redevelopment Plan project.

WHEREAS, consistent with the City's Master Plan, the City has identified the need to redevelop Severance Town Center; and

WHEREAS, on June 21, 2019, the City issued a Request for Proposals ("RFP") for the Severance Town Center Redevelopment Plan project, with responses to be provided by July 31, 2019; and

WHEREAS, the City received several proposals in response to said RFP; and

WHEREAS, the proposals were based on the following criteria: recent history of similar successful, high-impact urban planning projects; strength of experience of the proposed planning consultant team assigned to the project; proposed project cost; adequacy of financial resources; and community engagement approach; and

WHEREAS, the Director of Economic Development and other City staff have identified the proposal submitted by AE7 Pittsburgh, LLC as the best and most responsive proposal under said criteria.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council hereby authorizes the City Manager to enter into an agreement with AE7 Pittsburgh, LLC, concerning the Severance Town Center Redevelopment Plan project. The agreement shall be in substantial accordance with the terms and conditions set forth in AE7 Pittsburgh, LLC's proposal for the Severance Town Center Redevelopment Plan project, a copy of which is on file with the Clerk of Council. The agreement and any related documents shall be approved as to form by and subject to the final approval of the Director of Law.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Ordinance shall take effect and be in force at the earliest time permitted by law.

RESOLUTION NO. 93-2019 (PD)

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CAROL ANN ROE, Mayor  
President of Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED:



PROPOSAL FOR:

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# Severance Town Center Redevelopment Plan

REVISION 01  
OCTOBER 9, 2019





City of Cleveland Heights  
Attn: Mr. Timothy M. Boland , Director of Economic Development  
40 Severance Circle  
Cleveland Heights, OH 44118  
stcredevelopmentplan@clvhts.com

RE: Redevelopment Plan for Severance Town Center

Dear Mr. Boland:

Thank you for the opportunity to submit our qualifications for the Severance Town Center redevelopment of Cleveland Heights. AE7 firmly believes that finding solutions that deliver a client's vision is the true measure of success. Together with our consultants we have contributed significantly to shaping successful mixed-use developments and now seek to apply our experience and knowledge to provide Cleveland Heights with the building blocks for an emerging model of redevelopment - driven by the mutually beneficial principles of Public Private Partnerships - P3.

Having lived and worked in the Mid-west, I have witnessed first-hand the remaking of both Cleveland and Pittsburgh - two cities with similar pasts and very bright futures. I am proud to have played a role in shaping pieces of both places and helping transform their Rust-belt identities into the centers of innovation and prosperity they are known for today. It would be an honor for the AE7 team to lead this effort on behalf of the City of Cleveland Heights. Our team understands the methodologies for **transforming a distressed and under performing asset** into the very heart and soul of the community ...and does so with an eye towards bettering the resident, worker and visitor experience of each and every neighborhood. Our strategies for reviving the area are simple yet inclusive: **Program, Place, and People**. They are discussed and further illustrated in our proposal. We hope to start the discussion for how we can exceed the City's aspirations in creating a Vision for the Redevelopment of the Severance Town Center.

We believe you'll recognize that AE7 is best placed to deliver for Cleveland Heights. We understand what makes a **successful redevelopment strategy an intriguing investment opportunity**. By building financial performance into the process, we systematically provide attractive solutions that the Commercial Real Estate community will enthusiastically embrace.

We thank you for the opportunity to present our qualifications. We would be thrilled to continue the conversation about this project to better understand how we could collaborate with you for this exceptional opportunity.

Should you have any questions about our proposal or qualifications, please contact me via phone at 412.932.2044 or via email at philip.wilkinson@ae7.com.

Sincerely,

A handwritten signature in black ink that reads "Philip Wilkinson".

Philip Wilkinson, AIA, LEED AP, NCARB



# CONSULTANT TEAM INFORMATION

## OVERVIEW & EXPERIENCE

### ABOUT AE7

AE7 is an international planning and design firm that believes in a holistic approach to design and the transformational power of an integrated practice in providing thoughtful and meaningful solutions for the built environment. Our team thrives at a wide range of scale and scope. From developing authentic gathering places in a local neighborhood to creating innovative visions for communities that become destinations themselves.

Founded in 2009, AE7's leadership has worked together for more than 20 years. The Pittsburgh office was established in 2014 with two employees and has grown to a staff of over 40, which includes land planners and landscape designers, architects, interior designers, and visualizers. Overall the firm has grown to more than 600 employees in seven offices worldwide and established an internationally respected position as experts in mixed-use planning and urban design. Our Cleveland office opened in 2019 and will be supported from by our Pittsburgh staff.

The Pittsburgh team, which will be the office responsible for this project, is heavily involved in the company's design of mixed-use developments worldwide. Our culture emphasizes responsiveness, innovative solutions and collaboration. AE7 service offerings range from the inception and planning stages of the project through construction completion. We help clients bring the entire project vision to life, as well as, achieve individual milestones crucial to the success of their project.

Our Cleveland office is located at 2750 Endicott Rd, Shaker Heights, OH 44120

### EXPERIENCE WITH URBAN PLANNING PROJECTS

At AE7, we create master plans and urban plans for a variety of sites domestically and internationally. In our experience,

the majority of the planning projects in the US consist of redevelopment of existing sites, often brownfields or otherwise distressed sites, or properties that outlived their useful life-cycle and are no longer attractive to the consumers. Each of these projects comes with its unique set of challenges that we are accustomed to tackling in a creative and efficient manner.

In Montgomery, AL, we have delivered a Visioning Study and Plan for the mostly-vacant shopping mall. Our plan balances a variety of programs and uses to attract visitors and keep them coming back. The plan is currently being used to successfully attract new investors to the site.

Wilkinsburg, PA is located in the back yard of our Pittsburgh office and it's an area that has been in decline for many years. The town is situated between downtown Pittsburgh and the suburban neighborhoods just East of Pittsburgh and has an enormous development potential. The local CDC is actively looking to revive the area and attract new investment. Starting with the 700 block of Penn Avenue, the main street of Wilkinsburg, AE7 has developed a plan and cost-effective strategies to make Penn Avenue more appealing to the potential investors and residents. Visualization renderings have been created to demonstrate the potential for the area.

The Esplanade mixed-use development, to be located in Pittsburgh's North Side, will transform both current and former industrial sites within a 15 acre plot. In our master plan, we give close consideration to reconnecting the site to adjacent neighborhoods and the larger city beyond through vehicular, bicycle, pedestrian and public transport links and extensions. Programmatic uses of the site are based upon market studies and the proforma to determine the appropriate and viable mix of uses from both an urban and financial standpoint.

These projects are discussed in greater detail in the "Relevant Planning Experience" section of our proposal.



AE7 PITTSBURGH OFFICE STAFF



ESPLANADE

## AE7 URBAN PLANNING EXPERIENCE

As today's real estate market is confronted with unparalleled change, planning and design has taken on the critical role of synthesizing a project's diverse spatial, fiscal, and physical development needs in order to coalesce these into unified comprehensive solutions.

AE7 is an architectural design firm that focuses on the **Built Environment**. That means our plans are realistic and grounded in viable / implementable solutions.

Perhaps the most distinctive element of our planning process is that **we think like a developer**. AE7 in-house staff includes Market Economists that are strategically integrated within our Planning Team. Much more than a consultant, they are deeply involved within the decision making process in a Development Advisor capacity.

AE7 remains committed to the aspirations of Smart Growth America ([www.smartgrowthamerica.org/our-vision/](http://www.smartgrowthamerica.org/our-vision/)) in the delivery of healthy, prosperous and resilient communities in every stage of the planning process.

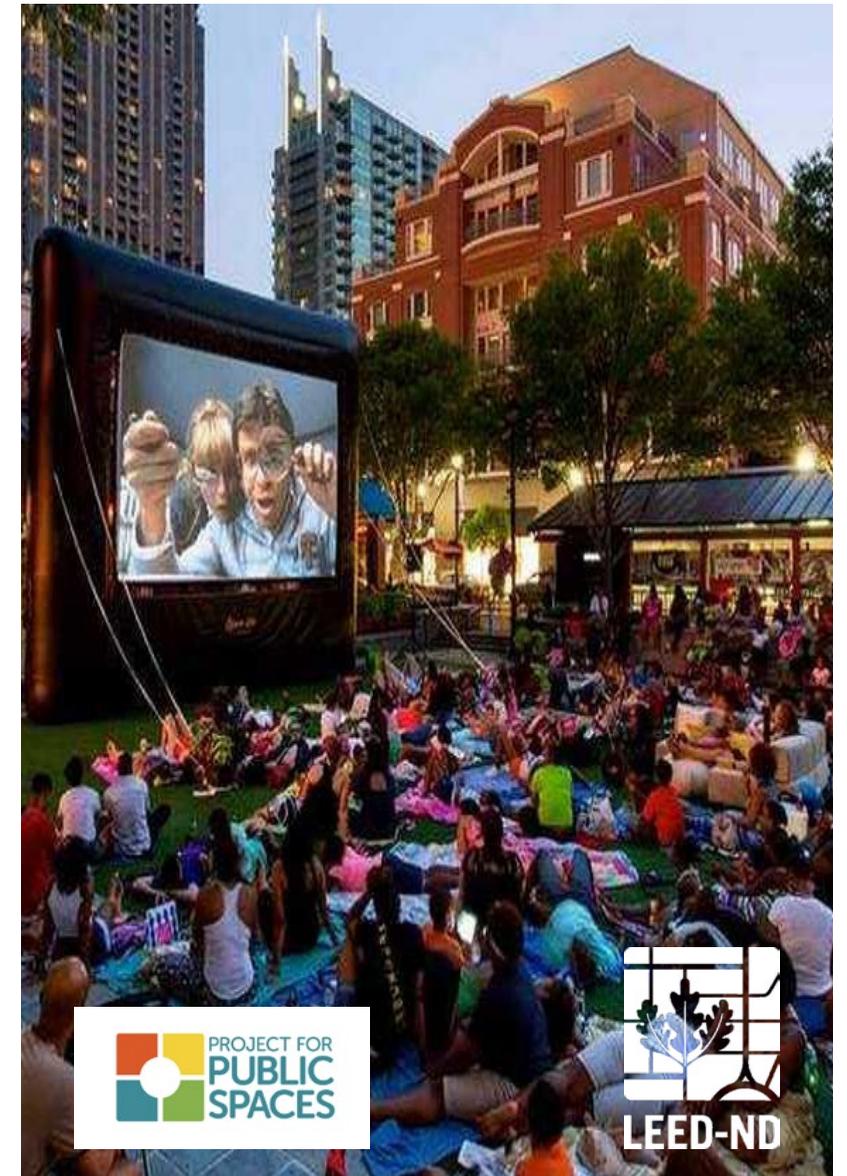
*What differentiates us from our competitors is that we view those same aspirations through a lens of assessing the fiscal implications of each.*

We believe in the principles of Urbanism which prioritizes: density, walkability, and reuse. Integrating best practice solutions in mobility to ensure communities are well connected. AE7 is aligned with the 4 Qualities of Placemaking as articulated by Project for Public Spaces ([www.pps.org](http://www.pps.org)) which provides us with the basic tools for evaluating each facet of the planning process and keep us focused towards the user experience.

*How are we different? We assimilate these vital components in to the overall master plan while pursuing financially viable ways to translate each into the built environment.*

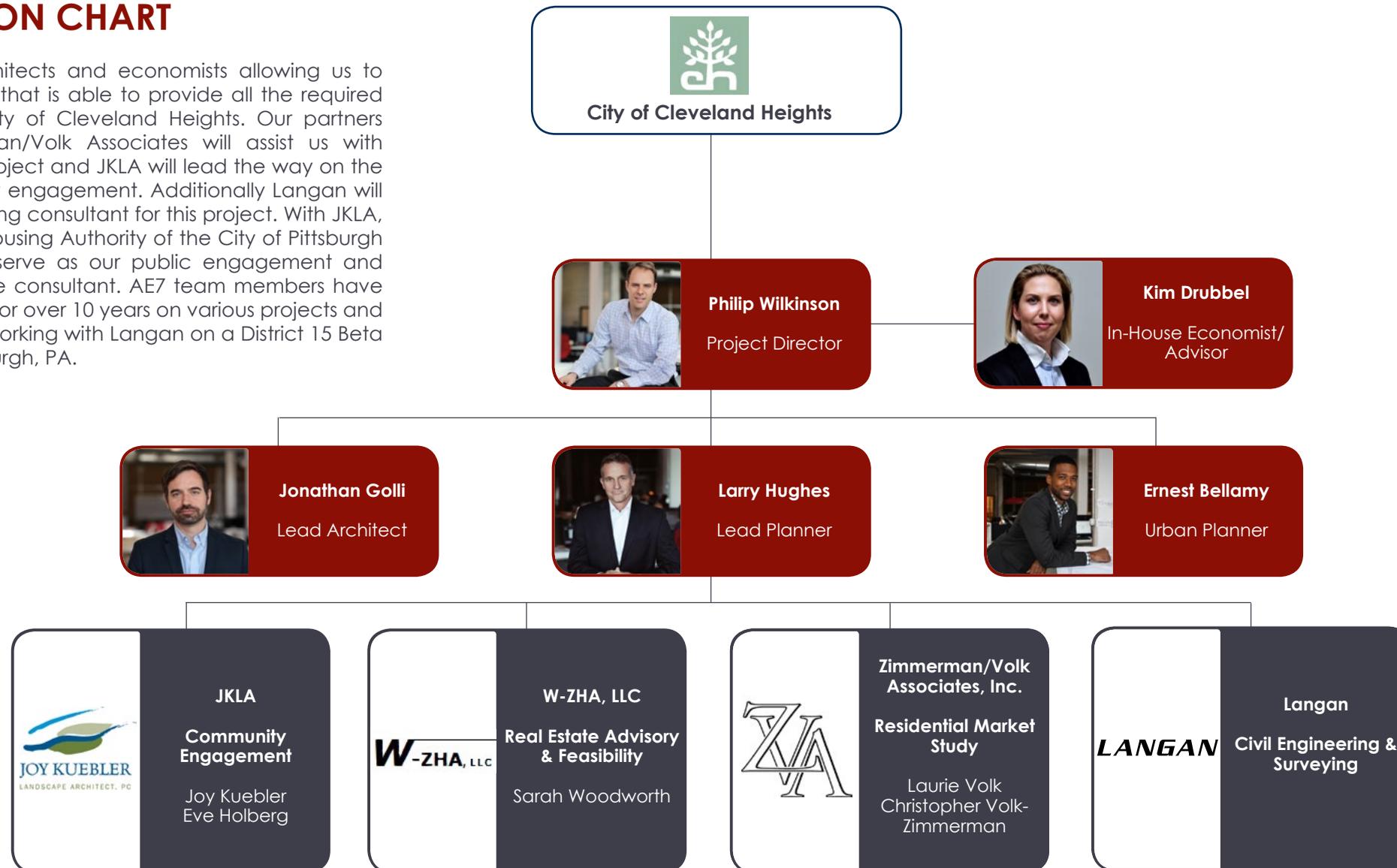
Our methodology facilitates broad-based set of sustainable standards such as LEED - ND (<https://new.usgbc.org/leed/rating-systems/neighborhood-development>) as priorities defined by the USGBC.

*Why AE7? - We relentlessly adhere to the often overlooked economic basics of commercial real estate development, which makes implementation attainable in an ever-evolving market place.*

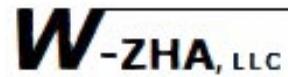


## ORGANIZATION CHART

AE7 has in-house architects and economists allowing us to create a “lean team” that is able to provide all the required deliverables to the City of Cleveland Heights. Our partners W-ZHA and Zimmerman/Volk Associates will assist us with market study for this project and JKLA will lead the way on the meaningful community engagement. Additionally Langan will be our civil and surveying consultant for this project. With JKLA, we currently have a Housing Authority of the City of Pittsburgh contract where they serve as our public engagement and landscape architecture consultant. AE7 team members have also worked with JKLA for over 10 years on various projects and engagements. AE7 is working with Langan on a District 15 Beta office building in Pittsburgh, PA.



**W-ZHA, LLC (WBE) | REAL ESTATE ADVISORY & FEASIBILITY**



Established in 2007, W-ZHA, LLC is the successor organization of ZHA, Inc., a firm established in 1975. W-ZHA provides real estate advisory services to private, public and non-profit clients. W-ZHA's staff has conducted development-related assignments in over 30 states for hundreds of public and private clients. W-ZHA is a woman-owned business located in Annapolis, MD.

W-ZHA's approach begins with identifying viable development opportunities and analyzing these opportunities much as an investor or developer would. W-ZHA applies market analysis conclusions to craft optimum development programs and often tests private development feasibility. Financing gaps are identified and innovative financing techniques are identified and tested. Ultimately, W-ZHA crafts implementation programs and structures equitable joint development arrangements between the public and private sectors.

W-ZHA staff perform development-related services for a variety of public and private clients, including units of local government, private foundations, private individuals, nonprofit development corporations, private developers, property owners, downtown development associations and corporations, lending institutions, civic organizations, community and quasi-public corporations and others involved in the development process.

**ZIMMERMAN/VOLK ASSOCIATES, IN. (WBE) | RESIDENTIAL MARKET STUDY**



Zimmerman/Volk Associates, Inc. is a state-certified WBE (Women's Business Enterprise) and a C-Corporation incorporated in the State of New Jersey with offices located in Clinton, New Jersey and San Diego, California (Federal I.D. 22-3028941). The company has been operating continuously since 1988 and there are currently four professional personnel.

The company has a national reputation for innovative market analysis based on its proprietary target market methodology and specializes in the analysis of downtown redevelopment; compact and sustainable development; mixed-income, mixed-tenure redevelopment; mixed-use urban revitalization; and traditional neighborhood developments. Zimmerman/Volk Associates is recognized by the leading practitioners of the New Urbanism as the national expert on the residential market feasibility of New Urbanist communities and urban redevelopment.

The company's clients range from small builders and developers to the subsidiaries of Fortune 100 firms, as well as city, regional and state government agencies.

ZVA is currently working with the City of Cleveland Heights and has a strong understanding of the City's unique residential market.



### JKLA (WBE) | COMMUNITY ENGAGEMENT

Joy Kuebler Landscape Architect (JKLA) has focused its work on the human experience by working to improve the quality of life for people through the power of the environment surrounding them. JKLA's PLAYCE approach to public engagement invites stakeholders to be collaborative problem solvers from the onset of the process by becoming active participants in site analysis. Stakeholders become project champions; ideas move to consensus sooner and concepts are tried on early, ensuring greater future success.

JKLA has a track record with important and catalytic projects that have returned human scale and walkability to the public realm.

- **In the Village of Williamsville, NY**, JKLA developed innovative engagement activities to gather public input and generate excitement about revitalizing downtown. JKLA worked to return pedestrian scale, multi-modal access and renewed economic opportunity to the village through enhanced pedestrian crossing of busy Main Street, development of a town square experience to help spark revitalization of historic commercial property, installation of pocket parks, installation of green infrastructure, and installation of street furniture and lighting.
- **In North Tonawanda, NY**, JKLA is leading a team that is reconnecting the downtown with the waterfront, and improving pedestrian safety and circulation through traffic calming, streetscapes, multi modal access and traffic calming. Public engagement included a tactical intervention to better direct traffic through a troublesome intersection that was so well received that the City has temporarily installed it as the new pattern pending final construction in Spring 2020.

### LANGAN | CIVIL ENGINEERING

Langan provides an integrated mix of engineering and environmental consulting services in support of land development projects, corporate real estate portfolios, and the energy industry. Their clients include developers, property owners, public agencies, corporations, institutions, and energy companies around the world.



Many of Langan projects are public-facing development. As a result, every day they work side-by-side with federal, state and local agencies either directly as a client or as a project team member. They draw not only on their past projects that are relevant to the project at hand, but also look to the existing relationships they have formed over the years with various regulatory agencies for input. These working relationships are a testament to their proven capacity for effective teamwork, facilitating access and successful regulatory negotiations.

Public agencies seek out Langan to provide engineering services for all project phases, from initial design through construction. They work closely with other consultants and agency staff to streamline the development process and communicate with local communities and other interested stakeholders. To this end, Langan prepares a detailed agency scope and approval matrices, leads technical workshops, and coordinates the timing of all stakeholders towards project completion.

## MARKET STUDY | W-ZHA & ZVA

The HR&A Market Analysis provides valuable baseline data on the Cleveland Heights retail and office market. The next step is to identify a realistic and implementable Severance Town Center Plan. Importantly, our market study task includes attention to development feasibility as well as to market potential, since market potential alone does not guarantee that a private real estate investor can realize an attractive return on investment and will move forward with redevelopment.

Our market analysis will reveal the best competitive positioning for the Redevelopment Plan and the logical types of residential, retail, office and hotel product to support this position. We will build upon the HR&A study by devoting most effort toward developing a more nuanced understanding of the residential market potential indicated in the study, while devoting a lighter level of effort to verifying the range of retail, office, and hotel market possibilities. Our emphasis on understanding residential market potential in detail will provide developers valuable insights into the site's most important near-term real estate opportunities.

Residential market. Zimmerman/Volk Associates (ZVA) has an outstanding track record identifying emerging housing market opportunity in new and existing walkable, mixed-use districts across the United States. ZVA's demographic-driven market analysis methodology provides very specific recommendations on the optimal mix, quantity, and development pace of housing types responding to a variety of household demand profiles. Conclusions typically cover a five- to seven-year period. This yields insights into market potential not available through traditional comp-based market analysis, highlighting new opportunities as growing numbers of households rediscover the appeal of living in mixed-use environments. Time and again, developers have utilized ZVA's research to plan and execute successful projects. ZVA's role on our team will leverage the

long and close working relationship developed among Goody Clancy, ZVA, and W-ZHA through a variety of community planning efforts. ZVA happens to be conducting market analysis for another client in the Cleveland Heights area at this time, enabling them to provide market analysis for Severance Town Center site at \$10,000 below their usual cost.

- Commercial market. W-ZHA's commercial market analysis will start with the baseline commercial assessment, then test the tenant mix products for market feasibility in Cleveland Heights. Based on this, W-ZHA will recommend commercial program and land use positioning for different Town Center scenarios. All of this analysis will feed directly into financial analysis and development planning.

- Financial feasibility. It is important to note that market analysis identifies land use potential and does not address the question of investment potential. To attract a private developer there must be an attractive investment opportunity. W-ZHA will test the feasibility of different Town Center scenarios from an investor's perspective. One investor is the Mall owner—is the redevelopment strategy implementable given supportable rents and existing lease constraints? There is also the prospective developer. The prospective developer needs to know that the Town Center redevelopment concept generates a sufficient return to warrant investment. Ten-year proformas will be run to test for private investment feasibility through an iterative process that incorporates sample building and parking typologies and input from engineering team members on infrastructure costs. Development costs will be vetted with local developers and operating assumptions will be informed by the market analysis, industry standards, and property manager interviews. This analysis will determine the financial feasibility of redevelopment scenarios, including any public incentives or other support that may be justified.

Public/private partnership strategy. We will develop a strategic approach to soliciting and working with developer partners. To the extent that a mixed-use redevelopment scenario is not financially feasible for the private sector alone, W-ZHA will quantify the gap funding necessary to attract private investment. W-ZHA will work with the City and rely on national experience to identify viable sources of public financing. Our experience suggests that it is imperative that the planning process result in a clear understanding of private sector and public sector roles and the tools the public sector expects to deploy to support redevelopment. Through the planning process the community can be educated on why public/private cooperation is necessary, and gain confidence in the tools the City intends to deploy to make meaningful investment happen. Community consensus and buy-in on these business matters at the onset greatly reduces developer risk and, as such, enhances the investment opportunity. The general structure of a public/private development agreement should be a product of this planning endeavor

## MARKET AND ECONOMIC SCOPE OF SERVICES

### PHASE I: PROJECT KICK-OFF

#### *Task 1: Kick-Off Meeting*

W-ZHA and Zimmerman/Volk Associates will attend a Kick-Off Meeting with AE7 and the Client in Cleveland Heights.

#### *Task 2: Study Tour and Interviews*

W-ZHA and Zimmerman/Volk Associates (ZVA) will participate in a tour by the Client highlighting key neighborhood, land use and transportation opportunities and constraints. This tour will take place on the same trip as the Kick-Off Meeting.

W-ZHA and ZVA will also participate in interviews with land owners, brokers, public officials and other stakeholders to gain a better understanding of development opportunities and constraints.

### PHASE II: MARKET ANALYSIS

#### *Task 3: Supply-Side Data: The Current Context*

Both W-ZHA and ZVA will perform this task, albeit separately. For the residential market analysis, ZVA will collect information on relevant newly-constructed for-sale projects, relevant existing rental projects, and relevant planned developments.

Zimmerman/Volk Associates will evaluate the residential context in relation to mixed-use development on the site, based on supply-side data and field investigation by Zimmerman/Volk Associates' personnel.

Information will be provided as follows:

- Summary of relevant market-rate rental multi-family properties in the market area: building type, unit sizes and bedroom count, rents, amenities and occupancy rates, as available.
- Summary of relevant new market-rate for-sale multi-family properties in the market area: building type, unit sizes and bedroom count, prices, amenities and sales, as available.

W-ZHA will identify competitive commercial districts and shopping centers. The character of the competitive supply will be documented in terms of location, size, tenant mix, and market positioning (neighborhood, community/power, regional, specialty, outlet, etc.). Interviews with managers and brokers will inform conclusions about trade areas for each competitive location.

#### *Task 4: Determination of Market Potential and Optimum Market Position*

It is at this stage that ZVA will move forward with Market Potential and W-ZHA will pause. W-ZHA will be testing the market for the retail/entertainment concepts generated in the Scenarios. The Scenarios will be developed later in the process. ZHA's tasks are as follows:

## MARKET AND ECONOMIC SCOPE OF SERVICES

### *Task 4.1: Draw Area Delineation*

Zimmerman/Volk Associates will identify the appropriate draw areas for housing within the City of Cleveland Heights and the Severance Town center property based on historical settlement patterns, migration and mobility trends, and other market dynamics. The data will cover the most recent five-year period for which the Internal Revenue Service has released data.

### *Task 4.2: Determination of Market Potential*

Zimmerman/Volk Associates will determine the depth and breadth of the potential market for new and existing housing units within the City of Cleveland Heights and the Severance Town Center site through target market analysis of households in the draw areas, as follows:

- Current household classification by market group within the draw areas.
- Qualification and filtering of the draw area households by relevant criteria including, among others, mobility and migration factors, income levels (financial capabilities), and housing propensities.
- Identification of the draw area households with the potential to move within or to the City of Cleveland Heights and to the Severance Town Center site over the next five years.

The potential market will be correlated by household group (empty-nesters/retirees, traditional and non-traditional families, younger singles/couples); by tenure (rental and ownership); and by housing type (e.g.—multi-family for-rent and for-sale {lofts/apartments}, single-family attached {rowhouses/townhouses/live-work}; single-family detached).

### *Task 4.3: Determination of Optimum Market Position*

Based on the findings of the target market analysis, the supply-side data, and redevelopment of the Severance Town Center site with a mix of uses, Zimmerman/Volk Associates will determine the optimum market position for the redevelopment and will cover the following:

- Mix of tenure, housing, and unit that match market propensities;
- Unit sizes and configurations, based on target market preferences;
- Market-entry market-rate base rents and prices from the consumer perspective, derived from target market financial capabilities; and
- Annual market capture by value (price and rent) range, over five years (absorption forecasts).

In addition, the study will also provide:

- Descriptions of target market buyers and renters.

### *Task 4.4: Draft Study*

The draft report, including text and appendices, will be provided in print-compatible Adobe Portable Document File (.pdf) format.

W-ZHA will “test” the market for different retail and eat/drink scenarios. The objective is to target the analysis and the work effort in order to maximize budget efficiency. Given the competitive

## MARKET AND ECONOMIC SCOPE OF SERVICES

supply evaluation from Task 4, W-ZHA will determine the Trade Area for the mix contemplated and analyze whether there is sufficient market to support the concept envisioned. W-ZHA will conclude with supportable square feet by land use and lease rates. W-ZHA will issue a report summarizing the market analysis and the conclusions.

### *Task 5: Team Meeting*

W-ZHA and ZVA will participate in a 2nd Meeting to discuss the findings of the market analysis and its implications on Severance Mall redevelopment.

### *Task 6: Final Market Analysis Products*

ZVA will finalize the residential market analysis. W-ZHA will finalize the commercial market due diligence work. These analyses will be separate documents.

## PHASE III: SCENARIOS

### *Task 7: Scenario Development*

W-ZHA and ZVA will support AE7 in the development of redevelopment scenarios.

### *Task 8: Scenario Investment and Financial Implications*

On a preliminary basis, W-ZHA will analyze different scenarios from an investor's perspective. W-ZHA will conduct yield analysis (projected net operating income over development cost) on each scenario to determine whether the scenario makes investment sense. Infrastructure development costs will be provided by AE7. W-ZHA will use professional experience and third party cost databases to estimate, on an order-of-magnitude basis, building development cost. Scenarios will be compared for the level of subsidy required.

### *Task 9: Scenario Meeting*

W-ZHA will attend a meeting with the Client (and others, as appropriate) to discuss the scenarios and their implications. The goal of the meeting is to identify a preferred scenario.

## PHASE IV: FINAL PLAN AND STRATEGY

### *Task 10: Proforma and Public/Private Deal Structure*

W-ZHA will develop a proforma for the development program contemplated. The proforma will take into consideration the phasing plan developed by AE7. The proforma will determine the level of subsidy (or not) necessary to attract an investor. W-ZHA will work with City representatives to identify public funding tools. W-ZHA will demonstrate how project economics improvement with these tools deployed. W-ZHA will not guarantee that there will be sufficient funds to make a project an attractive investment prospect.

## **MARKET AND ECONOMIC SCOPE OF SERVICES**

*Task 11: Technical Memorandum – Financing Strategy the Role of the Public and Private Sector*

W-ZHA will summarize project economics and the finance strategy in a Technical Memorandum.

*Task 12: Meeting*

W-ZHA will attend a meeting with AE7 to present the final plan and strategy.

## **SCHEDULE**

The residential market analysis report will be submitted 3 months after the kick-off meeting. W-ZHA's market assessment will be submitted by the 3rd month after the kick-off meeting assuming W-ZHA has six to eight weeks to complete upon receiving the retail program.



**PHILIP WILKINSON, AIA, LEED AP, NCARB**

Principal/Project Director

Philip is a Principal focused on mixed-use and retail destinations domestically and around the world. His experience features complex master plans and large-scale retail centered developments. He thrives at leading multi-discipline teams across various offices while consistently delivering designs that address client's vision and goals.

Philip has a strong understanding of consumer psychology and market trends. As the retail/F&B industry evolves and can no longer function as a standalone domain, Philip crafts solutions that are different and engaging – attracting shoppers to the development and enticing them to stay.

**Selected Project Experience:**

**Northfield Stapleton Town Center, Forest City, Denver, CO.** Lead designer for 120,000 SF retail and office within a 1.2 mil SF town center / retail destination. The open-air town center is built over the original Denver International Airport runways, turning the brownfield site into a 1.2 million square foot retail destination. Major entertainment and department store anchors, restaurants, shops and offices are organized along a pedestrian oriented main street, creating an urban tapestry of architectural expressions.

**Heartland Town Center, Islip, NY.** Project Architect. The master plan arranged the civic retail core around an existing water tower. The overall development program includes 600,000 SF of retail, restaurants and entertainment uses, 3,685 residential units, 500,000 SF of office space and 50,000 SF of civic amenities.

**Ninth & Penn Mixed-Use Development, Pittsburgh, PA.** Project Manager. Multi-phase mixed-use project is a redevelopment of an existing parking structure (to be demolished) and multiple other properties on the 8th block of the Penn Avenue. The new destination development balances experience-based design, sustainable development, and client's programming requirements and features residential units, restaurants, cafes, retail stores, boutique market, a 935 space parking garage, and potential culture venues.

**Hudson Yard, Related, New York, NY.** Project Manager. The Shops at Hudson Yards is part of the largest development in Manhattan, bringing together 12 million SF of residential, commercial and office space over the west rail yards.

**Miami World Center, The Forbes Company, Miami, FL.** Project Architect and Designer. Led design for 1 million square feet of retail, restaurant and entertainment venues, residential, luxury and wellness facilities.





**LARRY HUGHES, LEED ND**

Lead Planner

Larry employs his unique background in landscape architecture, engineering and project management to create programmatic solutions for complex land-use assignments. Drawing on nearly 20 years in the planning profession, he brings best practice experience to help shape contextually based, environmentally sensitive, culturally engaged and financially sound outcomes. He is a LEED ND certified professional adept at integrating the principles of smart growth, urbanism and green building into master planning and community design.

**Selected Project Experience:**

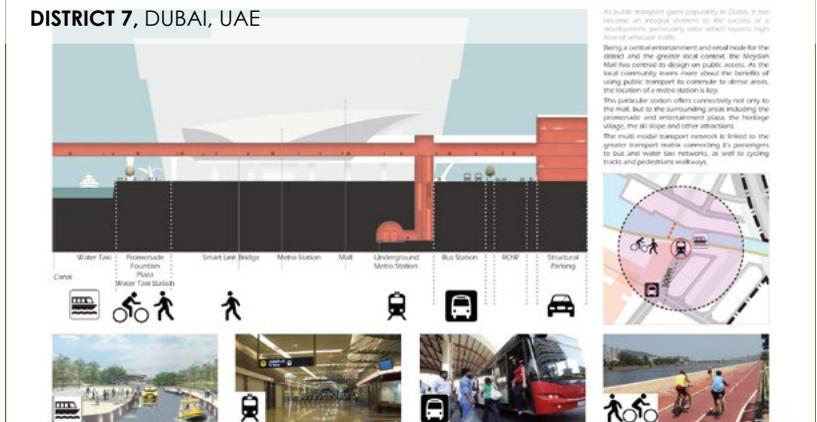
**TownCenter at Al Riyadh District, Abu Dhabi, UAE.** Lead Planner and Team Facilitator. Providing concept urban design and development feasibility for the ‘Downtown’ of Riyadh South. Creating the core area as a mixed-use development surrounding a multi-modal transit hub, plans delivered the vision for a collection of sustainable urban neighborhoods supported by engaging public spaces.

**Oasis Development, Montgomery, AL.** Lead Planner and Project Manager. Envisioned as a new town in the southern tradition. Detailed design efforts established the Village Square at Oasis as the soul of a small scaled community that blends the principles of urbanism in a rural setting.

**Bloom Cultural District, Abu Dhabi, UAE.** Lead Planner and Project Manager. Implementing the 2030 Vision for Abu Dhabi Planning Council. The City Centre at Bloom District is the signature piece of placemaking in the Capital City. Careful crafting of land use and public realm, the development was the result of an extensive urban design effort and a market driven approach which brought work, live and play to the cultural heart of the Emirates.

**District 7, Dubai, UAE.** Lead Planner and Team Facilitator. The Central District of Victoria was envisioned as a sustainable-minded transit oriented development. The detailed studies located a multi-modal transit hub along with a district wide bike facility in the center of the mixed-use (office/retail) core. All of which serves as a vibrant anchor for the community and makes the City completely accessible.

**Somerset West Mixed-Use Development, Troy, MI.** The Boardwalk at Somerset is a destination development that fully encompasses the live-work-play ethos and aspires to set a new standard for urban living in Troy.





**ERNEST BELLAMY**

Urban Planner

Ernest is an urban planner and architectural designer with national experience in urban design as well as commercial and retail projects. He is passionate about creating efficient master plans and successful mixed-use and Transit Oriented Developments (TODs). Throughout his career Ernest was involved in various aspects of community engagement. He is proficient in BIM and Adobe Design Suite, making him an asset for any design team.

**Selected Project Experience:**

**IN•District Historic Neighborhood, Chicago, IL.** Urban Planner. The IN•District is a strategy that preserves and celebrates the historic context of the Chicago North Branch area through revitalization into a new center for culture, innovation, and industry.

**Wilksburg Urban Design Strategies, Wilksburg, PA.** Planner. The study addressed visioning for a Main Street Corridor to rethink its potential as a catalyst for neighborhood regeneration. The Studio set out to develop a proposal that goes beyond the Main Street/CBD neighborhood and think how strategic interventions could help spur an overall borough reinvestment and redevelopment.

**Oasis Development, Montgomery, AL.** Planner. Master planning and financial feasibility studies for 3 sites to become a mixed-used development, urban agricultural and market development, and entertainment development.

**Solid Waste Management Northeast Transfer Station, Miami, FL. Architectural Designer.** Concept Design through Construction Documents for The first LEED Silver rated building for Miami-Dade County’s Solid Waste Department. The building boast solar panels, rain-water harvesting, and a hyper-insulated building envelope, among many other sustainable design measures.

**El Tucan Cabaret and Marion Restaurant, Miami, FL. Technical Designer.** Client & Consultant Coordination and Construction Administration for the 21,000 SF commercial restaurant, bar and performance space venue renovation in Downtown Miami.





**JONATHAN GOLLI, AIA, NCARB**  
Lead Architect & Cleveland Office Manager

Jonathan is our Cleveland Office Manager and Senior Architect. Jonathan is actively involved in a variety of mixed-use project as a Project Manager and Lead Architect. Throughout his career, he has led design and planning efforts for numerous mixed-use, corporate/office, higher education, and residential projects. His experience as a designer and team lead provides for greater understanding of project stakeholders and allows him to flawlessly coordinate multiple aspects of the project.

**Selected Project Experience:**

**Bloom Riverfront Towers, Rochester, MN.** *Project Manager and Lead Designer.* Mixed-use master plan development in downtown Rochester that extends over 2 acres and includes condos and senior living, 5-Star Hotel, retail, F&B, public parks, and structured parking. The development will house an integrated parking podium topped by two high-rise towers. The podium provides a total capacity of 750 spaces.

**Ninth & Penn Mixed-Use Development, Pittsburgh, PA.** *Assistant Project Manager.* Concept design for a 800,000 SF multi-phase mixed-use destination development to include, residential units, restaurants, cafes, retail stores, boutique market, a 935 space parking garage, and potential culture venues.

**Deira Waterfront Master Plan, Dubai, UAE.** *Senior Designer.* Four interconnected districts along the Dubai Creek historic corridor. Site area covering approximately 15 acres. The development includes 4-star hotel and yacht club, retail, 5-star hotel, anchor retail venues, a boardwalk, residential towers, food and beverage outlets, and a cultural center.

**Esplanade Mixed-Use Development, Pittsburgh, PA.** *Senior Architect.* Feasibility study and master plan for a 15 acre riverfront mixed-use development. The development will include a hotel, condos, apartments, retail and restaurants, office tower, and aquarium, making it a truly one of a kind waterfront development.

**Tepper School of Business West Addition: Carnegie Mellon University, Pittsburgh, PA.** *Project Manager.* As a Project Manager, Jonathan oversaw the entire team responsible for design of the 8,000-SF addition, coordination of all disciplines and consultants, as well as construction documentation.





**KIM DRUBBEL**

In-house Economist / Advisor

Kim is an accomplished leader and a trusted advisor to many leading developers and investors, assisting them to assure the commercial and investment competitiveness of their projects. Kim has over 15 years of experience in the mixed-use real estate and hospitality management and development sectors. She brings professional experience in all aspects of both business and real estate life-cycles with a diverse and comprehensive knowledge of commercial, retail, residential, hospitality, industrial as well as non-core asset classes.

**Selected Project Experience:**

**Esplanade Mixed-Use Development, Pittsburgh, PA.** *Feasibility Advisor.* Performed masterplanning and financial modeling support for a 15 acre riverfront mixed-use development master plan. The development will include a hotel, condos, apartments, retail and restaurants, office tower, and aquarium, making it a truly one of a kind waterfront development.

**Dubai Creek Rejuvenation, Dubai, UAE.** *Economic Advisor/Development Strategist.* Performed detailed market research (hospitality, residential, office and retail asset classes); land use plan definition and development recommendations; financial and investment analysis; and development strategy and phasing for rejuvenation of the Dubai Creek. The project developed a series of integrated historical residential, commercial, and recreational precincts. The site area stretches 40 acres along the northern and southern banks of the creek.

**Civic Arena Redevelopment Study, Pittsburgh, PA.** *Feasibility Advisor.* Provided feasibility and development recommendations, scenario analysis and investment memorandum for a development of an 8-acre master plan on a 26-acre iconic site. The master plan called for 7 buildings that include hotels, branded and luxury residential units, residential units, and a high rise office building.

**InterContinental and Al Bustan Hotel Sites, Muscat, Oman.** *Economic Advisor/Development Strategist.* Conducted a Highest and Best Use study of the InterContinental and Al Bustan Hotel sites to generate highest value of the land. Prepared development recommendations, project phasing and investment analysis.

**Casablanca-Anfa Airport Regeneration, Morocco.** *Economic Advisor/Development Strategist.* Conducted a detailed market study for all asset classes (re-)development recommendations for existing components on-site. Performed financial analysis and development partner selection criteria for the 900 acre mixed-use development on the site of the old Casa-Anfa airport. The project features residential, retail, office, hospitality, public amenities and leisure components.





**JOY KUEBLER, RLA, ASLA**  
Community Engagement Lead

Joy has more than 20 years of Landscape Architecture experience. Throughout her career, Joy has brought diverse and meaningful projects to life from half-acre community-built parks, learning gardens at our public schools, and large university campus redevelopment, to streetscapes and green infrastructure projects. Joy focuses on the human experience in the landscape, integrating architecture and the outdoors to create unique, inspiring environments.

She launched her firm in 2003 to have a positive impact on the public's quality of life through sensitive and responsible design for outdoor spaces.

**Selected Project Experience:**

**City of North Tonawanda, NY.** Downtown Placemaking Project.

**City of Lackawanna, NY.** Lackawanna Brownfield Opportunity Area – Step 3 Implementation Plan.

**City of Jamestown, NY.** Chadakoin River West Brownfield Opportunity Area – Step 2 Nomination Study.

**Village of Gowanda, NY.** Gowanda Brownfield Opportunity Area – Step 1 Pre-Nomination Study.

**City of Tonawanda, NY.** Local Waterfront Revitalization Program & Comprehensive Plan.

**Town of Tonawanda, NY.** Tonawanda Brownfield Opportunity Area – Step 2 Nomination Study.

**Worldwide Park(ING) Day-City of Buffalo, NY.** Pop-up Parklette Tactical Urbanism.

**CNU 22-Buffalo, NY.** “Park-in” at the Hotel at the Lafayette Tactical Urbanism.

**Village of Williamsville, NY.** “Picture Main Street Live” Tactical Urbanism & Public Engagement.

**Village of Springville, NY.** Community Visioning & Streetscape Improvements Plan.

**Town of Tonawanda, NY.** Waterfront Corridor Landscape Feasibility Study & Preliminary Design.





**EVE HOLBERG, AICP**  
Community Engagement

Eve Holberg is an urban planner with more than 25 years of experience. Since completing her graduate degree in planning, she has worked in the public, private and non-profit sectors. Eve acts in the capacity of project manager for a variety of projects including economic development strategies, feasibility studies, corridor management, community revitalization and downtown redevelopment strategies as well as comprehensive plans for communities of all sizes. Eve is a former downtown manager and has developed a special expertise in heritage, recreation and scenic byway planning, and tourism development strategies.

**Selected Project Experience:**

**Village of Hamburg, NY.** Underutilized Sites Strategy.

**Village of Hamburg, NY.** Shared Maintenance Facility Feasibility Study.

**City of Ogdensburg, NY.** Fort de la Présentation Visitors Interpretive Feasibility Study.

**Village of Lakewood, NY.** Comprehensive Plan.

**City of Hornell, NY.** Housing Market Study.

**Village of Fredonia, NY.** New York Main Street Technical Assistance Grant; New York Main Street Anchor Grant Administration.

**Village of Lakewood, NY.** New York Main Street Technical Assistance Grant and Study.

**Buffalo Main Streets Initiative.** Infill Development Grant and Administration.

**Buffalo Main Streets Initiative.** Target Area Building Renovation Program Administration.

**Grant writing.** New York Main Street programs, Buffalo Main Streets Initiative programs, ESDC Economic Development Feasibility Study, DOS Local Government Efficiency Study, DOT Transportation Alternatives Program.





**SARAH WOODWORTH**

Real Estate Advisory & Feasibility

As Managing Member of W-ZHA, LLC, Sarah concentrates primarily on redevelopment strategies, feasibility analyses for various land uses, and structuring equitable financial structures on public/private development projects. Sarah was the Senior Vice President of ZHA, Inc. and W-ZHA, LLC is the successor organization of ZHA, Inc. W-ZHA, LLC is a Maryland-certified woman-owned business.

In understanding urban redevelopment, Sarah is mostly interested in identifying those competitive aspects of a place which successfully attract people and investment. Sarah has worked on a number of projects which required a full understanding of the market and place characteristics in order to consciously cultivate opportunities for mixed-use development and sustainability. In performing redevelopment analyses, Sarah has conducted market analysis, financial feasibility analysis, gap financing identification, transit-oriented development analysis, developer solicitation packaging and evaluation. In addition, Sarah is fully aware of alternative regulatory strategies to enhance development potential and land use profitability.

In her 25 years of experience, Sarah has helped to craft redevelopment strategies for downtowns and target sites in numerous towns and cities such as: Rockville, MD; Washington, DC; Wichita, KS; Providence, RI; Albany, NY; Norfolk, VA; Chattanooga, TN; Charleston, SC; Cincinnati, OH; Lexington, KY; Pittsburgh, PA; and Corpus Christi, TX. In each case, whether a big city or a small town, commercial and residential market dynamics form the foundation of the revitalization strategy.



**LAURIE VOLK**

Residential Market Study Lead

Laurie Volk is principal in charge of Zimmerman/Volk Associates' market studies and is the firm's primary analyst of demographic, market, and lifestyle trends. Volk has been directly involved with every market study completed by Zimmerman/Volk Associates since the company's founding in 1988. Volk's development of the target market methodology—analytical tools to determine the market potential for downtown housing; for mixed-income, mixed-tenure repopulation and stabilization of fragile inner-city neighborhoods, and for new mixed-use, pedestrian-oriented traditional neighborhoods—has been instrumental in bringing Zimmerman/Volk Associates into national prominence.

Volk has conducted more than 905 downtown studies across the country, in cities ranging in size from Petersburg, Virginia (population 32,400) to Detroit, Michigan (population 713,000).

Volk currently serves as Chair of the Board of Directors of the Congress of the New Urbanism. She was a founding board member, now emeritus, of the National Charrette Institute, and served on the Board of Governors of the Seaside Institute and the Advisory Board of the Remaking Cities Institute. She was also a member of the Technical Advisory Group for Location and Planning of the U.S. Green Building Council. Volk was recipient of a 2002 Knight Fellowship in Community Building, and has been an instructor on market analysis



**RELEVANT PLANNING EXPERIENCE**

## ESPLANADE MIXED-USE DEVELOPMENT, Pittsburgh, PA

**Project Type:** Concept Master Plan  
**Project Size:** 15 Acres  
**Construction Cost:** Est. \$150 million  
**Status:** Master Planning & Concept  
**Contact:** Chad Wheatley  
 Millcraft Investments  
 Senior Vice President of Development and Construction  
 724.229.8800  
 cwheatley@millcraftinv.com

**AE7 Team Members:** Philip Wilkinson (Principal-in-Charge), Jonathan Golli (Project Manager), Kim Drubbel (Economist)

### Development Summary:

Land Area	12,406,623 SF
GFA	1,527,370 SF
Residential	7,254,552 SF
Entertainment	177,080 SF
Office	319,810 SF
Retail	52,640 SF
Hospitality	257,220 SF
Parking (structured)	1,585 Spaces

### Relevance to the Cleveland Heights Project:

- Site historical context
- Amenity driven development
- Mixed-use program
- Phased development
- Connectivity to surround street grid
- Community park
- Redevelopment of an abandoned commercial site



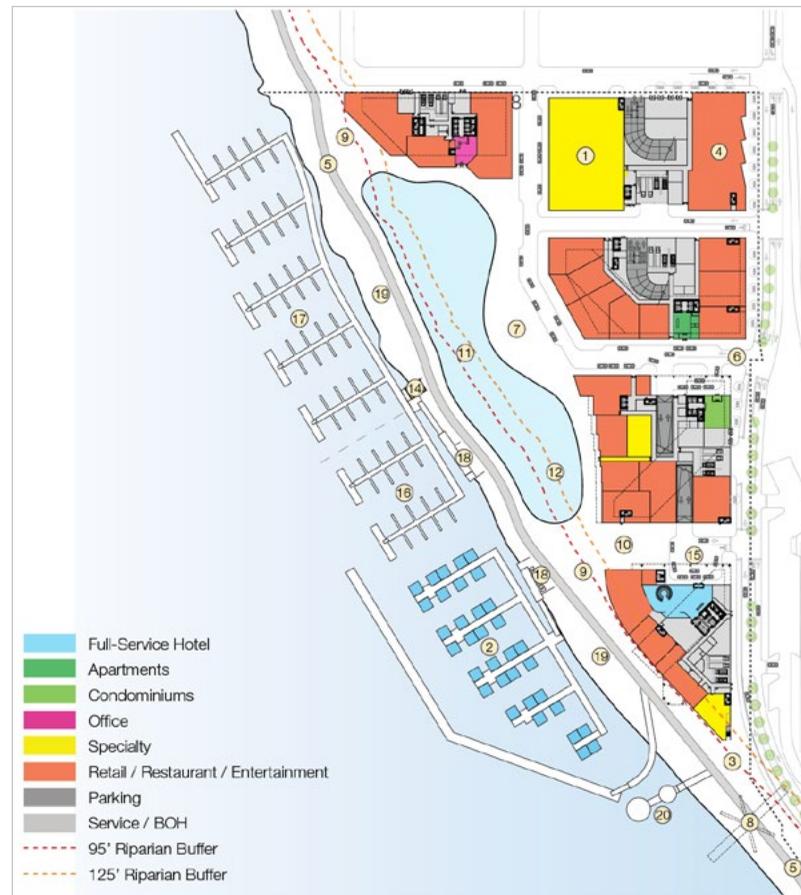
## ESPLANADE MIXED-USE DEVELOPMENT (Continued)

Esplanade is a mixed-use development to be situated on the Ohio riverfront of Pittsburgh's North Side. The development will be a destination for visitors and locals alike to enjoy lifestyle and amenities representative of a world-class locale.

The design transforms several underutilized industrial sites and brownfields into a sustainable district and a transit-oriented development with a focus on connections to the river for residents and the public. Offering year-round amenities that energize the site 24 hours a day, view corridors and welcoming buildings will draw people through the development and down to an activated riverfront. Along the river, they will enjoy several water-oriented amenities such as a Crystal Lagoon with an urban beach, a full marina, a revamped section of the Three Rivers Heritage Trail and a climate-controlled Ferris wheel perched over the river with dramatic views to one of Pittsburgh's prominent features, the fountain at the Point. The Ferris wheel is not only an add-on amenity, but a tribute to its inventor, George Washington Gale Ferris, Jr., who was born and lived in this Pittsburgh neighborhood.

Esplanade will feature the world's first all-season Crystal Lagoon that seamlessly converts from a beach retreat in the summer into a winter destination with thermal baths complementing an on-site spa and an adjoining ice skating rink.

The development includes a 300-key full-service hotel, 200 residential condominiums, and 330 apartments, boutique retail and restaurants, community-oriented stores, an aquarium, three parking structures and a 300,000 SF office tower oriented around the Crystal Lagoon, making it a landmark waterfront development for the Pittsburgh area and region.



## NORTHFIELD STAPLETON

Denver, CO

Project Type: Mixed-Use Development Master Plan  
 Project Size: 160,000 SF  
 Status: Preliminary Master Plan  
 Client: Forest City Commercial Group

AE7 Team Members: Philip Wilkinson (Principal-in-Charge)  
 Architect of Record: Elkus Manfredi Architects  
 Awards: LEED CS Silver

### Development Summary:

Land Area	1,200,000 SF
Retail & Office	160,000 GFA
Retail	30 stores
F&B	25 cafes/restaurants
Entertainment	18 screen cinema

### Relevance to the Cleveland Heights Project:

- Mixed-use program
- Connectivity to surround street grid
- Phased development
- Redevelopment of a distressed site



## NORTHFIELD STAPLETON (Continued)

The open-air town center is built over the original Denver International Airport runways, turning the brownfield site into a 1.2 million square foot retail destination. Major entertainment and department store anchors, restaurants, shops and offices are organized along a pedestrian oriented main street, creating an urban tapestry of architectural expressions. The primary design responsibilities included 160,000 square feet of retail and office space.

Northfield is the first LEED CS Silver certified main street town center in the country. Key sustainable elements include the first brownfield redevelopment over a metropolitan airport, 7,000 kwh solar array, 30% reduction in potable water, and 50% reduction in landscape irrigation, local material sourcing and educational kiosks.

Architect of Record: Elkus Manfredi Architects  
 AE7 Staff and Role: Philip Wilkinson, Project Designer



## SOMERSET WEST MIXED-USE DEVELOPMENT, Troy, MI

**Project Type:** Master Plan Vision Study  
**Project Size:** 61 Acres  
**Construction Cost:** TBD  
**Status:** Study Completed  
**Contact:** Rob Peters  
 The Forbes Company  
 248.827.4600  
 rpeters@theforbescompany.com

**AE7 Team Members:** Philip Wilkinson (Principal-in-Charge)  
 Jonathan Golli (Project Manager)  
 Larry Hughes (Planning)  
 Kim Drubbel (Economist)

### Development Summary:

Land Area	1,067,280 GFA
Total GFA	2,663,340 GFA
Entertainment/Retail	591,750 SF
Residential	543,100 SF
Hospitality	200,600 SF
Office	58,200 SF
Parking (structured)	4,463 Spaces

### Relevance to the Cleveland Heights Project:

- Amenity driven development
- Mixed-Use Program
- Phased Development
- Connectivity to surround street grid
- Community Park
- Redevelopment of an abandoned corporate-commercial headquarters site



## SOMERSET WEST MIXED-USE DEVELOPMENT (Continued)

The Somerset Master plan is a concept study of three master plan options to determine site opportunities, development framework strategies, open space networks, and experience

The Boardwalk at Somerset Collection is a destination development that fully encompasses the live-work-play ethos and aspires to set a new standard for the region. The modern aesthetic implemented – clean, simple lines - is derived from the strong local history of mid-century architecture, while a pair of subtly abstracted forms pronounce the strong central features around which experiential activities will occur.

A strong, organic movement juxtaposed to the sharp building forms creates the primary connection to Somerset North, pulling visitors and residents to and through the development. Integration of current site features to create a sensitive, sustainable development Place-making through centralization of the high profile hotel complex and key public spaces.



PUBLIC OPEN SPACE



DISTRICTS ZONES

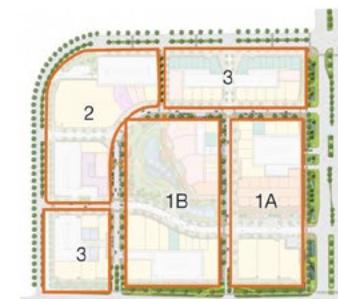


PROGRAMMATIC MASSING MODEL



STREETS & PEDESTRIAN NETWORK

Vehicle  
Pedestrian



POTENTIAL PHASING



PROGRAMMATIC MASSING MODEL



## NORMANDALE TOWN CENTER

Montgomery, AL

Project Type: Master Plan Vision Study  
 Project Size: 39 Acres  
 Construction Cost: TBD  
 Status: Preliminary Master Plan  
 Contact: William Green  
 City of Montgomery Councilor District 5  
 334.625.4636  
 wgreen@montgomeryal.gov

AE7 Team Members: Philip Wilkinson (Principal-in-Charge),  
 Larry Hughes (Project Manager & Lead Planner)  
 Ernest Bellamy (Urban Design)  
 Kim Drubbel (Economist)

### Development Summary:

Land Area	1,698,840 SF
Total GFA	418,605 GFA
Retail	94,750 GFA
Residential	102,335 GFA
Hospitality	98,320 GFA
Office	123,200 GFA

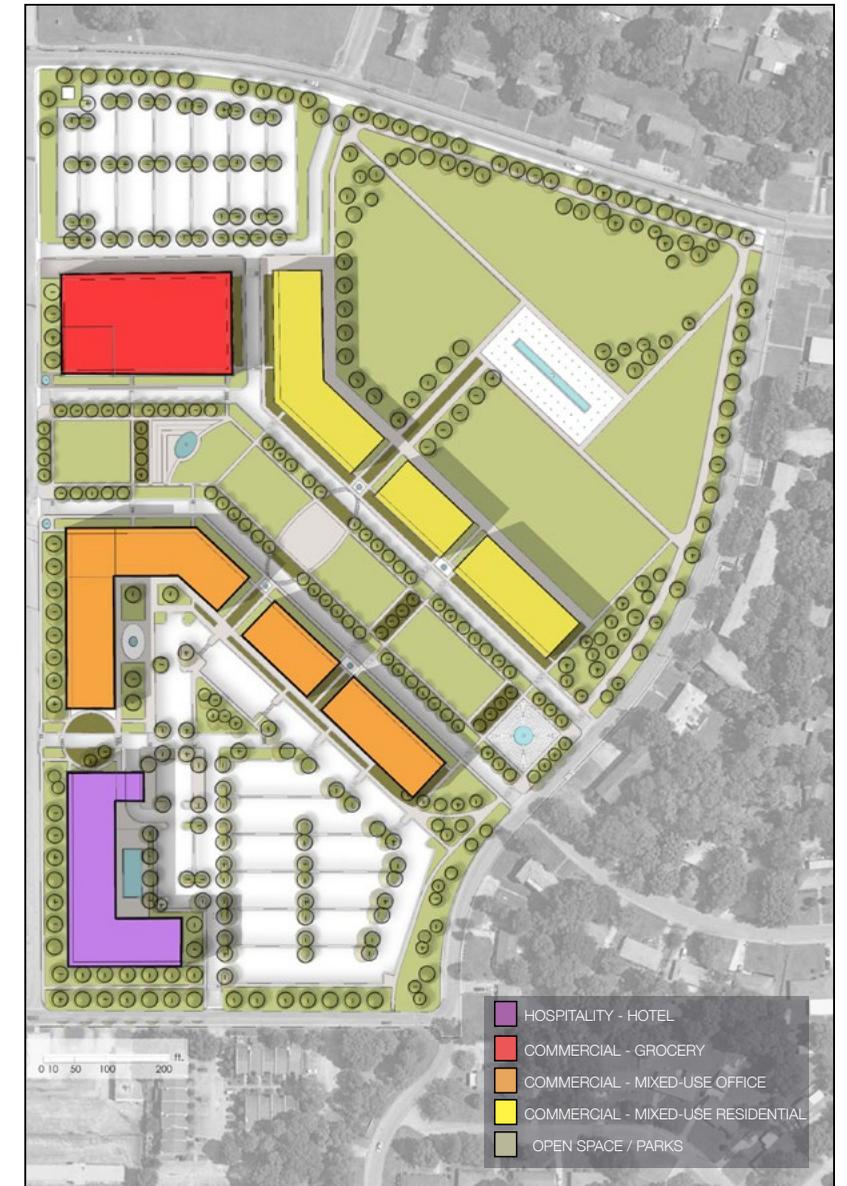
### Relevance to the Cleveland Heights Project:

- Municipal client
- Mixed-use program
- Connectivity to surround street grid
- Community park
- Redevelopment of an abandoned mall site

AE7 was engaged to provide a vision study for the redevelopment of the partially vacated Normandale Shopping Mall, a site located roughly 2 miles east of downtown Montgomery. After nearly 2 decades of neglect, the mall property was rendered unsustainable by the early 2000s.

The primary challenge was finding the right blend / mix of commercial and residential of the 450k SF of gross floor area to reanimate the public spaces while maintaining a thriving neighborhood that fit contextually with surrounding community. As the study effort had been completed just prior to HUD's announcement of Opportunity Zone program, the development has gained much attention from investors.

The deliverables for this project were a Vision Master Plan Study supported by a desktop market analysis which yielded a preliminary report from which to seek investor interest.



## WILKINSBURG MASTER PLAN

Wilkesburg, PA

Project Type: Master Plan  
 Project Size: 2 City Block Area  
 Construction Cost: TBD  
 Status: Concept Design Complete  
 Contact: Tracey Evans  
 Wilkesburg Community Development Corp

412-727-7855

Tracey@wilkesburghcdc.org

AE7 Team Members: Philip Wilkinson (Principal-in-Charge)  
 Jonathan Golli (Project Manager)

### Development Summary:

Penn Avenue Redevelopment Plan is a conceptual study and strategy for the Penn Avenue Main Street CBD of Wilkesburg. The plan focused on lighting, landscape, and street design elements which could be implemented to promote the economic incentive for private development to invest into the retail and commercial space available.

### Relevance to the Cleveland Heights Project:

- Municipal client
- Distressed main street site
- Mixed-use context
- Landscape architecture/urban design strategy



## WILKINSBURG MASTER PLAN (Continued)

Contracted by the Wilkinsburg Community Development Corporation (WCDC), AE7 was tasked with providing conceptual design services for a façade and streetscape visioning study for the 700 block of Penn Avenue in Wilkinsburg, PA. The ultimate goal of this project was to develop two levels of improvements on the case study facades. Moderate improvements (at minimal cost) which include the cleaning, painting, screening of vacant facades, streetscape furniture, plantings, branding, and ultimate improvements (long-term redevelopment) which include in-fill buildings, significant façade renovations, and additions.

In order to facilitate these studies, AE7 documented the context in an existing conditions survey complete with historical research along Penn Avenue, photographic documentation of the existing facades, existing conditions 3D model of the context, and a two phased approach for the beautification of Penn Avenue.

The deliverables for this project were before and after elevations along Penn Avenue, renderings of the moderate improvements along the streetscape, and renderings of the ultimate improvements along the streetscape. With the information and design provided by AE7, the WCDC has begun fundraising efforts that will facilitate the ultimate vision along Penn Avenue.



## DESIGN STANDARDS

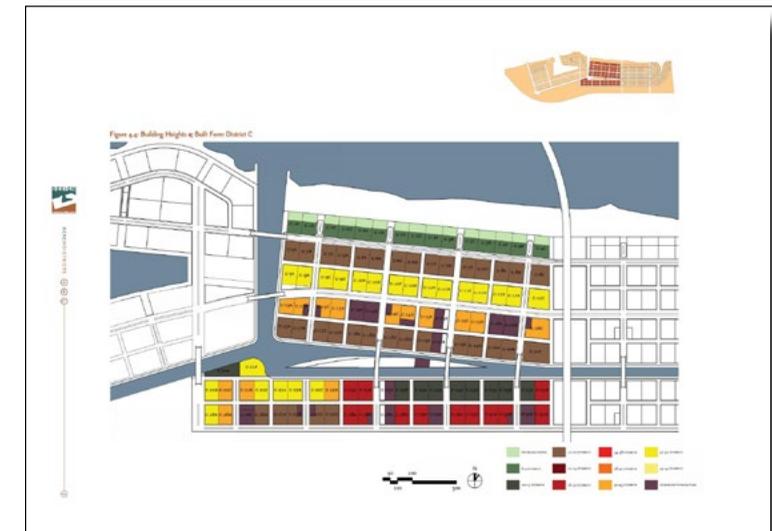
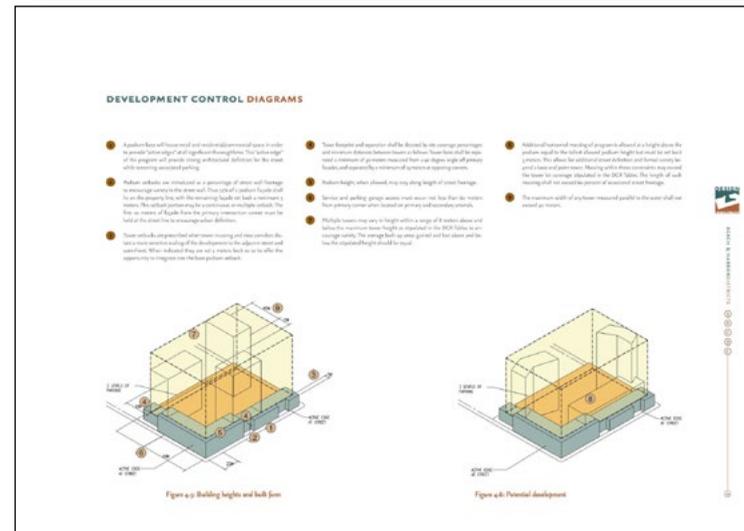
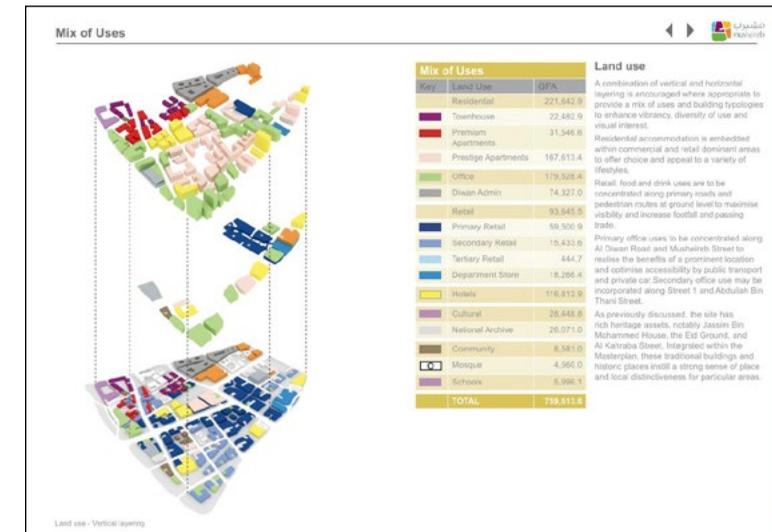
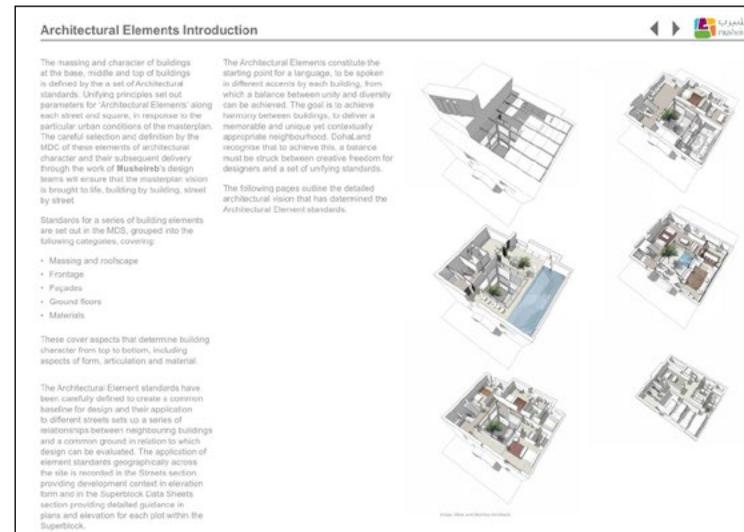
Why our **Development Regulations** are more than just design standards.

These sets of documents are a comprehensive collection of tools that control every facet of the development process. All of which are based in the **Built-Form** rather than the typical land use to ensure that urban environment prioritizes the principles of **Placemaking** over arbitrary occupancy rules.

Any proposal for use and development of land or water body within the development must abide to the requirements specified. Additionally the regulations form part of the legally binding set of documents and provide for the framework of agreements between the Owner/Master Developer and Sub Developers or third party entities for lease and purchase of property within the limits of development. Our **Development Regulations** consist of two parts:

**Part A – Design Guidelines: provides for sustainable outcomes** Together with precedents and built applications, the guides seek to ensure quality aesthetic of the built-environment. Urban Form, Architecture and Site Design are all delineated for each sub-parcel. The guides also provide pathways for achieving sustainable objectives (such as LEED or WELL standards) as may be required by the development as whole.

**Part B - Development Control: provides for effective implementation.** By thoroughly describing the application process, these give clear guidance for the use of the Regulations: the development approval and building permit process; zoning districts and allowable uses; and general development requirements.





**FINANCIAL CAPACITY**

## FINANCIAL CAPACITY

AE7 has been in existence since 2009. Our company has progressively grown over the past 9 years from 7 original partners to over 600 full-time employees. The Pittsburgh office opened in 2014 and has seen a growth from 2 employees to over 40 employees. The fees for the Pittsburgh office have grown nearly 67% since 2014. Our Pittsburgh office fees for 2017 totaled nearly \$5,500,000. We project that our fees will total nearly \$6,800,000 for 2018. For 2019, we project our fees to be around \$7 million.

AE7 has staff and resources to deliver the services that are being requested.





## COMMUNITY ENGAGEMENT

## ENGAGING YOUR COMMUNITY THROUGH PLAYCE

Our partner JKLA will lead the community engagement process for this project. JKLA's engagement techniques are unique and effective, delivering place making through play.

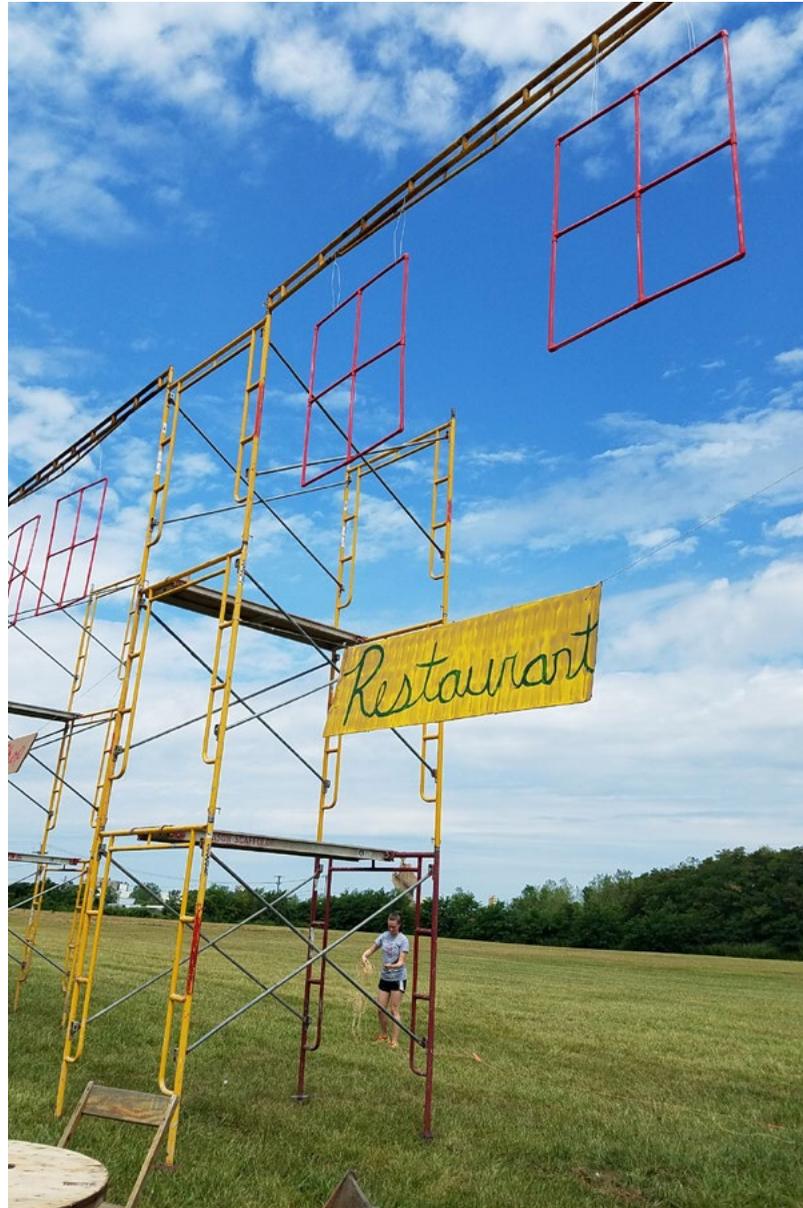


### WHAT IS PLAYCE?

PLAYCE is our placemaking methodology that integrates traditional public engagement techniques with team building and organizational development principles utilizing the power of play to build trust within a group, create consensus around an idea, and develop a strategy to move that idea forward. JKLA's PLAYCE approach to public engagement invites stakeholders to be collaborative problem solvers from the onset of the process by becoming active participants in site analysis. Stakeholders become project champions; ideas move to consensus sooner and concepts are tried on for size early, ensuring greater future success.

JKLA created the PLAYCE approach to public engagement as a fun and interactive process that helps to form the basis of a design vision that is deeply rooted in community support. After decades of relying on traditional planning models, users and stakeholders have become ambivalent with the process and are often less likely to enthusiastically participate.

The PLAYCE approach is easily integrated into traditional public engagement models and provides forms of engagement that foster efficient, productive and quality public participation. PLAYCE techniques cultivate a spirit of cooperation and creative problem solving among participants that when combined with a transparent process, builds trust from the onset of a project.

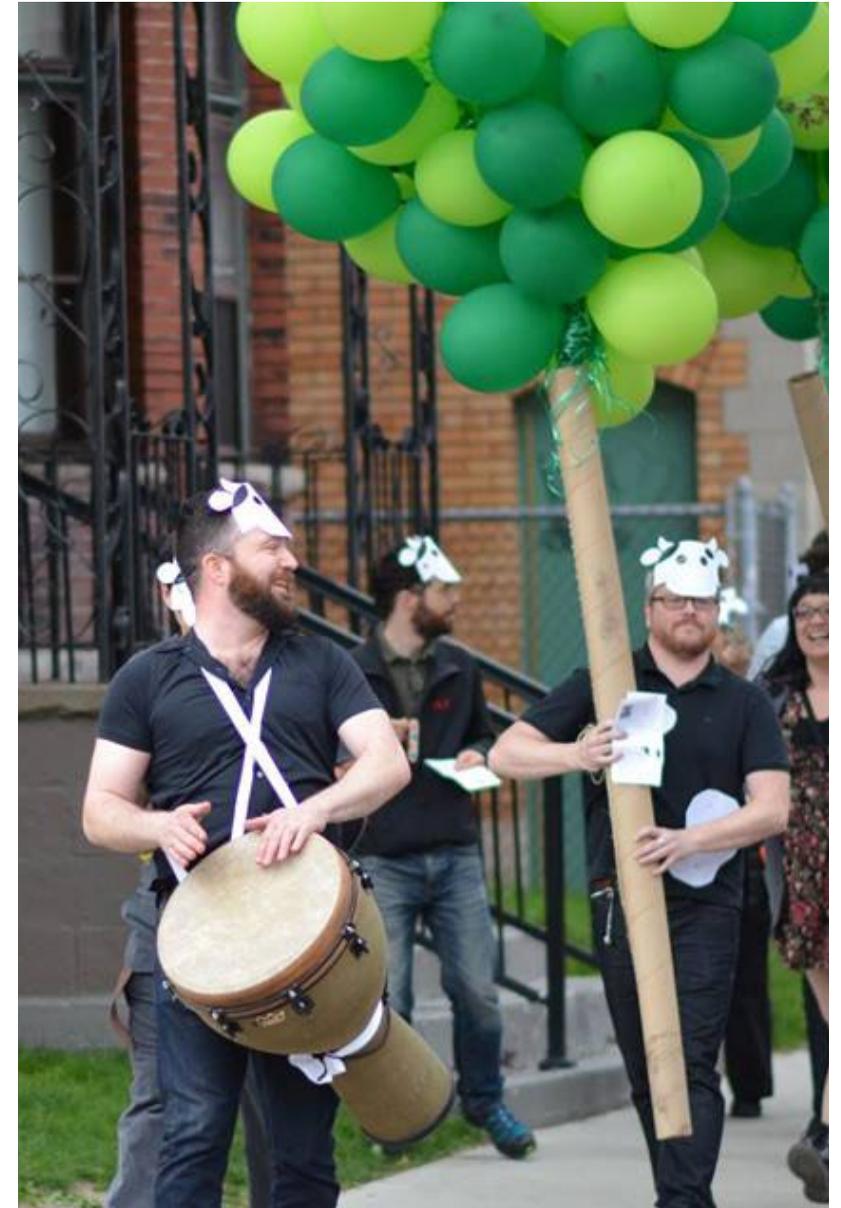


The PLAYCE approach engages a diverse group that includes community leaders, stakeholders, citizens, elected officials, planners, architects, engineers, landscape architects, potential developers, and representatives from local, state and regional agencies and moves them to consensus faster.

### HOW TO PLAYCE?

#### FOCUSING ON THE HUMAN EXPERIENCE

The PLAYCE method focuses on the human experience, working to improve the quality of life for people through the power of the environment surrounding them. The JKLA team understands natural systems in the environment, patterns of people and the development of communities. The PLAYCE method of placemaking provides JKLA with the vital data and community feedback necessary to integrate these elements to create enduring places.





KNOXVILLE'S MARKET HOUSE  
Knoxville's first Market House  
opened on Main Avenue between  
Walnut and Market Streets in 1851  
and the second and third on this  
square in 1914 and 1917. Long served  
for the sale of farm products and  
as a central center of civic life.  
In 1914-15 the Market contained a  
Federal powder magazine. In the  
entirety of citizens. The old Market  
was replaced by the Mall in 1916.

# PROPOSED PROCESS, TIMELINE, AND ESTIMATED COST

### 3 P'S OF PROCESS

Cleveland Heights Town Center is a re-centering of our community's heart towards LIVING at its center. Hospital, doctors offices, City Hall, public green, community grocery, convenient hardware, artistic culture, office parks, spaces for reconnection with old friends, a place to grab a bite to eat, and a chance to live closer by to what's most important to the Heights: Community. We propose a plan to revive the Severance Town Center and reconnect it to the community through the 3 P strategies:



### Program

Hub of the new content economy, a place for creative minds to gather, work, live, and share. An open studio environment invites artists and creative people to start their business there. They can then connect with local schools and community organizations for residents of both old and young. They can run their own business from art works to food to other services. The creativity is the new bluestone and this place is for idea mining.



### Place

The campus will be "organically" re-linked back into the neighborhood with continuing streets, corner café, sidewalk storefronts, and intersection open spaces. These organic links could cut through the existing mall structure to activate and enhance the town center experience. This approach will also encourage a walking community as a stroll down to the place would be a pleasant one.



### People

An assortment of buildings uses, venues and open spaces will allow a broad range of people, such as shoppers, artisans, techies, retirees, families, and more to engage and interact at the Town Center. Diversity and complexity of users will unite financial and business mobility.

## RECAPTURE COMMUNITY IDENTITY AND CONTINUITY



Cleveland Heights was founded on the efforts of a cultivation of rich ore, finding what just laid beneath the soil, what was in plain sight. This latency sparked a movement of industries to grow from a further scratching of the surface to see what else awaited out of the potential of the land. Cleveland Heights is a place of continued potential, and Cleveland Heights Town Center is where it's cultivated today.

The Community's Living Room – Cleveland Heights Town Center is where the community gathers to breathe in new voices, inspiration, ideas, and finds substance.

- A place to gather
- A place to connect
- A place to renew
- A place for all

Cleveland Heights Town Center is the pinnacle to the mineral wealth of our footing as a community and where we come to revive.

## A MEMBER OF AN EXTENDED NETWORK OF MEMORABLE PLACES



Repositioning of residents within the region to Cleveland Heights for the amenities it can attract based on a new town center. Growth will happen from within the borders of the community. Cleveland Heights core needs to be a destination for those who seek an alternative to current hot spots in town.

Being Cleveland Heights Town Center means being about bluestone, being about people, being about main streets, being about the neighborhood.

## TRANSFORMING A 20TH CENTURY TOWN CENTER INTO A 21ST CENTURY COMMUNITY



Per the Redevelopment Strategy outline in the brief, we understand that Cleveland Heights is looking forward towards a Town Center which embodies culture as it's core.

- **Repositioning & Re-branding**  
*New name, new standing*
- **Residential-Anchored Mixed Use**
- **Experience-Oriented Retail Mix**  
*A modern approach to blending retail for the community*
- **Central Public/Park Space**  
*A signature central gathering public lawn for all*

Cleveland Heights seeks a catalytic cultural haven at the center of town, where the community can have a main space of interaction and gathering



## ANALYSIS STAGE

Facilitate Project Launch and Kick-Off session with Leadership team of Cleveland Heights and Community Stakeholders Representatives Group to achieve the following objectives:

**Data Gathering** - Collect all relevant information: Base Maps (Architectural/ Site/Engineering), Previous Studies

**Work Plan** - Develop a detailed schedule for targeted meetings and staged deliveries.

**Project Goals** - Understand Leadership's Strategic Aspirations and Community Stakeholder Expectations

**Market Research** - Commence study

### ENGAGEMENT

**Process Launch** - Establish roles and responsibilities, lines of communication and define guiding principles with Cleveland Heights Leadership,

**Stakeholder Kick-Off:** Identify roles, establish lines of communication and learn primary objectives

### DELIVERABLES

**Capture Document** - Compilation of relevant outcomes from Process Launch and Project Kick-Off in 11x17 booklet format

## ASSESSMENT STAGE

Manage process to facilitate workshop sessions with Leadership and dialogue sessions with Stakeholders to achieve the following objectives:

**Needs and Requirements** - Synthesize Cleveland Heights and Stakeholder Objectives to initiate program

**SWOT Analysis** - High-Level Evaluation for On-site and Surrounding Context Assets

**Benchmarking** - Develop Case Studies of Relevant Precedents

**Market Analysis** - conduct assessment of current Market Study

**Brand/Identity** - Idea generation on alternative Visioning strategies

### ENGAGEMENT

**Strategy Workshop** - Facilitate planning charrette with Cleveland Heights Leadership team to share analysis, discuss first impressions and formulate redevelopment concept ideas

**Stakeholder Engagement:** Share workshop outcomes discussion and gain feedback.

### DELIVERABLES

**Capture Document** - Compilation of relevant outcomes from Benchmarking, SWOT Analysis, Strategy Workshop

## VISIONING STAGE

Manage process and facilitate review sessions with Leadership and Stakeholders to form a framework for the Redevelopment Master Plan:

**Vision Strategy** - Prepare alternative urban form scenarios which build on the brand/ identity.

- Land Use
- Connectivity
- Street/Block Formation
- Public/ Private Space
- Built-Form
- Sustainability

**Economic Strategy** - Prepare high-level assessments of each alternatives:

- Market Assessment
- Financial Assessment

### ENGAGEMENT

**Interim Review** - Presentation of Alternative Strategies

**Stakeholder Engagement:** Present strategies for discussion and gain feedback.

### DELIVERABLES

- Urban Form Strategy Report
- Economic Strategy Report

## PLANNING STAGE

Incorporate feedback from Leadership / Stakeholder reviews and facilitate draft presentation to finalize the Redevelopment Master Plan.

**Draft Redevelopment Plan** Documentation and Packaging to include the following:

- Land Use Framework
- Circulation and Mobility
- Public Realm and Community Facilities
- Conceptual Urban Design
- Conceptual Massing Studies
- Design Standards

### Draft Financial Assessment

- Market Validation
- CRE Development Viability
- Phasing / Implementation

### ENGAGEMENT

**Draft Review** - Presentation of Draft Master Plan to Leadership and Stakeholder

### DELIVERABLES

- Draft Redevelopment Plan Report
- Draft Financial Assessment Report
- Draft Design Standards
- Draft Development Implementation Report

## SUBMITTAL STAGE

Finalize process and facilitate final presentations with Cleveland Heights Leadership to deliver the Redevelopment Master Plan

**Final Redevelopment Plan** Documentation and Packaging to include the following:

- Illustrative Master Plan
- Land Use Plan
- Circulation and Mobility Plan
- Public Realm and Open Space Plan
- Urban / Architectural Character Renderings
- Design Standards

### Final Financial Assessment

- Market Validation
- CRE Development Viability
- Phasing / Implementation

### ENGAGEMENT

**Final Presentation** to Cleveland Heights and Stakeholder Groups

### DELIVERABLES

- Final Redevelopment Plan Report
- Financial Proforma Report
- Design Standards
- Development Implementation Report
- Photo-Realistic Renderings

# SCHEDULE

Our schedule provides delivery of the redevelopment plan in early spring in order to capitalize on the best commercial response.

	MONTH ONE				MONTH TWO				MONTH THREE				MONTH FOUR				MONTH FIVE				MONTH SIX			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
<b>STAGE 1 - ANALYSIS</b>																								
1	Process Launch (Client) & Project Kick-off (Stakeholders)	★																						
2	Data Transfer and Collection																							
3	Review Applicable Zoning, Codes and Planning Criteria																							
4	Identify Budgets, Constraints and Schedules																							
5	Market Study (W-ZHA)																							
6	Milestone - Goals and Objectives Agreed			★																				
7	Milestone - Market Product Types Identified																							
<b>STAGE 2 - ASSESSMENT</b>																								
1	SWOT Analysis																							
2	Benchmark Exercise																							
3	Market Analysis																							
4	Stakeholder Engagement (PLAYCE)																							
5	Strategy Workshops (Cleveland Heights)																							
6	Milestone - Project Brief and Program Agreed																							
<b>STAGE 3 - VISIONING</b>																								
1	Vision I Strategy Formation																							
2	Economic Strategy and Financial Feasibility																							
3	Stakeholder Engagement (PLAYCE)																							
4	Interim Review (Cleveland Heights)																							
5	Interim Review (Stakeholder)																							
6	Milestone - Preferred Redevelopment Strategy Agreed																							
<b>STAGE 4 - PLANNING</b>																								
1	Draft Redevelopment Plan																							
2	Draft Phasing and Implementation																							
3	Draft Development Standards																							
4	Draft Financial Model Validation																							
5	Draft Review (Cleveland Heights)																							
6	Draft Review (Stakeholders)																							
7	Milestone - Draft Redevelopment Plan																							
<b>STAGE 5 - SUBMITTAL</b>																								
1	Final Redevelopment Plan and Report																							
2	Final Phasing and Implementation																							
3	Final Financial Model and Proforma Report																							
4	Design Standards																							
5	Renderings																							
6	Final Presentation and Product Delivery																						★	

## ESTIMATED COST

Service	Consultant	Fee
Preparation of the Redevelopment	AE7	\$112,000
Community Engagement	JKLA	\$24,000
Market Study	W-ZHA/ZVA	\$72,300
Site Master Plan Design Assistance	Langan	\$15,000
<b>TOTAL</b>		<b>\$223,300</b>

- Reimbursables: **\$9,910** including Travel, meals and accommodations.
- Also a Not-to-exceed allowance of **\$2,500** for engagement materials plus any materials we would need to purchase or rent for a tactical event for community engagement, if the client chooses to include one.
- If a suitable site survey is not available for the project, an ALTA Site Survey can be provided by Langan to determine roads, boundaries, buildings, parking, and mall easements, with topography and utilities for the project. A fee of **\$25,000** is proposed for a new survey.

## REIMBURSABLE SCHEDULE

Name	Title
Internal office copying, printing & binding	8 ½ x 11 - b&w \$0.10 Color \$0.50 11 x 17 - b&w \$0.20 Color \$1.00 24 x 36 - b&w \$4.00 36 x 48 - b&w \$7.50 Binding - per unit \$10
Outside office copying, printing & binding	Per vendor
Parking and tolls	Per vendor
Mileage at IRS standard current rate	Per IRS - \$.545 / mile
Postage, mailing and delivery	Per vendor
Approval fees, permits and registration fees	Per municipality
Other products / services requested by the Client not specifically described	Per vendor
Travel (Car rental, train, airfare, travel time for AE7 staff at hourly billable rates, etc)	Per vendor
Meals – If project / client location is over 100 miles round trip from AE7 office	Per diem



# MINORITY AND FEMALE BUSINESS ENTERPRISE INCLUSION

## INCLUSION OF DIVERSE BUSINESSES

Our design team is committed to the utilization of MWDBE, SBE and Veteran-Owned (SVO) firms. We make every good faith effort possible to involve local diverse businesses' in every project and we have had proven success because we do so in a proactive and collaborative way.

The key to achieving a successful MWDBE program not only includes the proper good-faith notification and documentation, but also assuring that firms are submitting responsive bids. If any MWDBE firms require assistance, we provide the necessary support which includes: drawings, specifications, quantities, contract schedule and any other pertinent information. This ensures that the bidders are responsible and responsive to the contract documents.

**AE7 is a self-certified small business enterprise (SBE).**

For this project, we have engaged 3 certified Women Owned Enterprises (WBEs): W-ZHA to provide real estate advisory and feasibility services; Zimmerman/Volk Associates (ZVA) to assist with the residential market study; and JKLA to help with community engagement aspects. We strongly believe that all three business are best suited for this effort.





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**CITY OF CLEVELAND HEIGHTS  
LAW DEPARTMENT  
MEMORANDUM**

TO: Members of Council:  
Carol Roe, Mayor  
Melissa Yasinow, Vice Mayor  
Craig Cobb  
Mary A. Dunbar  
Kahlil Seren  
Jason S. Stein  
Michael N. Ungar

FROM: William R. Hanna, Law Director  
Tiffany A. Hill, Assistant Law Director

CC: Tanisha R. Briley, City Manager

DATE: October 11, 2019

RE: Proposed Dog/Animal Ordinance Amendments

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Below is a summary of the Law Department's draft revision of the Codified Ordinance Chapter 505 relating to dogs and other animals.

**Background/Introduction**

Council has considered the City's ordinances concerning vicious dogs and dog bites for some time, including the relationship between the City's ordinances and State of Ohio law. The Law Department reviewed the ordinance, and the state statutes, and has gathered information about what other cities were doing to deal with vicious and dangerous dogs. The subject has been discussed in Council meetings and in Public Safety Committee meetings. In May 2016, the Public Safety Committee discussed different approaches to dangerous and vicious dog issues in Cuyahoga County. Sunny Simon, a Cuyahoga County Council member, spoke with the Committee as did the warden of the Cuyahoga County Kennel. The discussion largely revolved around the identification of dogs as vicious or dangerous based upon their behavior and history, rather than based upon their breed. At that point in time (and to the present day), the Cleveland Heights Ordinance, found in Chapter 505, continued to define "vicious" dogs to include pit bull terriers, as defined (to include Staffordshire Bull Terriers and American Staffordshire Terriers, or mixed breeds involving those breeds).

The Ohio Revised Code, however, was amended in 2012 so that a dog could no longer be defined as "vicious" simply based upon its breed; rather, that determination is made, under the amended statute, on the basis of the dog's behaviors or actions. The discussion in the May 2016

Public Safety Committee meeting also included discussion of environmental factors that can lead to bad behavior on the part of dogs including “tethering” and excessive confinement.

Cleveland Heights was not the only city that did not immediately change its breed-specific vicious dog ordinances following the change in state law. In 2017, the City of Lakewood found itself in litigation over its ordinances which, among other things, defined pit bulls as “dangerous dogs” and prohibited them within City limits. Following a local determination by the Lakewood Safety Director that a certain dog was indeed a pit bull and therefore a dangerous and prohibited animal under the City’s ordinances, the dog’s owner filed an administrative appeal in common pleas court, as well as a declaratory judgment action in the Lakewood Municipal Court, based upon the same arguments.

In April 2018, Lakewood City Council adopted changes to its dog regulatory ordinances, removing the breed-specific approach which had defined pit bulls and canary dogs as dangerous, and moving instead to a regulatory approach based upon dog behaviors.

The changes proposed in the revisions to Chapter 505 of the Cleveland Heights Codified Ordinances remove breed-specific definitions and instead define dangerous and vicious dogs based upon their behavior and actions. Further, tethering of animals is regulated, and a board specified to hear appeals of determinations by the Animal Warden under the Chapter, including a determination that a dog is vicious or dangerous. The specific changes are described hereinafter. A chart of similar regulations is also attached. Chief Prosecutor Tiffany Hill, who primarily authored the changes reflected in the ordinance before Council, will be available to address Council and answer questions at the October 16, 2019 Council Committee of the Whole meeting.

### **Ordinance Summary**

#### **505.09 DANGEROUS OR EXOTIC ANIMALS.**

- (1) Removes “any lion, tiger or such wild animal” language.
- (2) Expands ordinance to prohibit “wild, dangerous or undomesticated animals” (i.e. an animal whose natural habitat is the wilderness and which, when maintained in human society, is usually confined to a zoological park or exotic animal farm, and which:
  - a. Is a venomous snake or is a snake that is a constrictor; or
  - b. Is an omnivorous or carnivorous animal that weighs more than twenty-five pounds and which is a predator in its natural habitat; or
  - c. Is an animal which, by reason of its size, strength, or appetite, would, if unrestrained and free in the City, cause peril to persons, household pets, buildings, landscape or shrubbery; or
  - d. Is an animal that makes noises with sufficient frequency and volume as to constitute a nuisance to the community; or

- e. Is an animal that emits offensive odors as to constitute a nuisance to the community; or
  - f. Includes but is not limited to the following: lion, tiger, lynx, mountain lion, jaguar, cheetah, leopard, panther, bear, wolverine, elk, moose, caribou, elephant, giraffe, rhinoceros, hippopotamus, wolf, wild ox, boar, crocodile, alligator, caiman or gavial.)
- (3) Adds a new subsection (c) which permits animals kept for temporary exhibit, kept by veterinary hospitals or constrictor snakes kept by bonafide teachers or instructors temporarily when school is not in session.

### **505.091 DEFINITIONS – New Section**

- (1) This section is revised to include definitions used throughout the chapter.
- (2) Subsection (a) adds dangerous dogs to the ordinance.
- (3) Defines dangerous dog as a dog which has chased or approached in either a menacing fashion, or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, or which presents a risk to the safety of any person, or which has caused serious physical injury to another domestic animal.
- (4) Establishes the prima facie evidence that a dog is dangerous if its owner, keeper or harbinger has been notified of such, in writing, by the Animal Warden based on:
1. One or more verified incidents reported to the City that the dog chased or approached in a menacing fashion, or an attitude of attack, or has attempted to bite.
  2. Improper training, neglect, prior history, physical or other characteristics.
- (5) Adds a provision that a determination by the Animal Warden that a dog is dangerous may be appealed as set forth in 505.19
- (6) Adds a definition of “menacing fashion” (i.e. a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.)
- (7) Adds definition of “owner, keeper or harbinger” (i.e. a person who owns, provides shelter or cares for an animal, or otherwise has control of or is responsible for such animal.)
- (8) Adds definition of “police dog” (i.e. a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.)
- (9) Adds definition of “verified” (i.e. substantiated by investigation or confirmed by formal oath or affidavit.)

- (10) Revises definition of vicious dog to mean a dog that has attacked any person with such severity or has caused such physical harm, so as to cause a reasonable person to conclude that the dog presents a substantial risk to the safety of any person or that has killed another domestic animal.
- (11) Removes the requirement for a judicial or administrative determination for a dog to be vicious, if the dog has attacked a human being or other domestic animal.
- (12) Eliminates breed specific language.
- (13) Establishes that it is prima facie evidence that a dog is vicious if its owner, keeper or harbinger has been notified in writing by the Animal Warden that the dog is considered vicious, based upon the following:
  - 1. One or more verified incidents reported to the City that the dog has attacked any person with such severity or has caused such physical harm so as to cause a reasonable person to conclude that the dog presents a substantial risk to the safety of any person; or
  - 2. One or more verified incidents reported to the City that the dog has killed another domestic animal; or
  - 3. If state law is amended to include breed specific language again, provides that its prima facie evidence if it belongs to a particular breed specified by state legislature.

#### **505.092 DANGEROUS AND VICIOUS DOGS (former 505.091)**

- (1) Provisions of former 505.091 now found in **505.092**.
- (2) Amended to include dangerous dogs throughout the section i.e. “dangerous and vicious dogs.”
- (3) Amends section (b) to require that a person of suitable age and discretion control the leash of a dangerous or vicious dog.
- (4) Amends subsection (c) to require a person owning, harboring or having the care or control of a dangerous or vicious dog to post a sign conspicuously visible on the property.
- (5) Removes subsection (c)(2), the prior vicious dog definition which previously read as follows:
  - a. Any dog which has been judicially or administratively determined, pursuant to Section 505.19, to have a propensity, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or other domestic animals; or

- b. Any dog which has been judicially or administratively determined, pursuant to Section 505.19, to have attacked a human being or other domestic animal; or
  - c. Any pit bull terrier, which shall be herein defined as any Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier or American Staffordshire Terrier.
- (6) Amends former subsection (f)(2), now 505.092 (g)(2) to remove the language “without provocation” as an element in the definition of a vicious dog.
- (7) Adds affirmative defense in subsection (k). When the language “without provocation” is removed from the ordinance, the burden shifts to the accused to prove the defense of provocation by showing:
- 1. The dog was teased, tormented or abused by a person.
  - 2. The dog was coming to the aid or defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.
  - 3. The dog caused injury, serious injury, or killed a person while the person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.
  - 4. In the case of another domestic animal, that the dog was attacked by such animal or that such animal was running at large.

**505.093- IMPOUNDMENT OF DOGS INVOLVED IN BITING/ATTACKING INCIDENTS – Former 505.092**

- (1) Removes appeals process before the Health Code Board of Appeals and deletes references to Sections 1701.07 and 1780.08.
- (2) Adds appeals to the board as designated by 505.20.

**505.101 TETHERING ANIMALS – New section**

- (1) Adds anti- tethering to ordinance
- (2) Restricts when an animal cannot be tethered

**505.102 CRUELTY TO COMPANION ANIMALS (former 505.101)**

- (1) Amended to 505.102
- (2) No change in language

**505.17 IMPOUNDING PROCEDURE; REDEMPTION OR DISPOSITION**

- (1) Removes \$25 impounding fee
- (2) Replaces \$25 fee with all lawful costs assessed against the animal
- (3) Adds provision to allow City to collect all costs associated with seizing and impounding

an animal

### **505.19 DESIGNATION OF “DANGEROUS’ AND “VICIOUS”; APPEAL**

- (1) Removes provisions related to breed specific language.
- (2) Removes appeals process language

### **505.20 APPEAL – New section**

- (1) Establishes board to hear appeals of dangerous dog designation
- (2) Adds appeals process language from 505.19
- (3) Removes appeals process before the Health Code Board of Appeals and references to Sections 1701.07 and 1780.08.

### **Other Issues**

#### **Update as of 10/11/2019:**

1. Anti-tethering is now included as 505.101
2. The former 505.101 Cruelty to Companion Animals is now 505.102
3. Appeals to the Health Code Board of Appeal and any references to the Health code were stricken from the ordinance.
4. The appeal process now names a “Board” consisting of the Chairperson of the Safety and Municipal Services committee of Council or other member of City Council, and a member of the Community Relations Division as the venue for appeals. The board needs a name. The Board and process for appeals is under review by the Law Department and warrants discussion.

Proposed: 10/21/2019

ORDINANCE NO. 94-2019 (SMS), *Second Reading*

By Council Member Cobb

An Ordinance repealing Part Five, *General Offenses Code*, of the Codified Ordinances of Cleveland Heights, Chapter 505, *Animals and Fowl*, of the Codified Ordinances, and adopting a replacement Chapter 505, *Animals and Fowl*.

WHEREAS, in 2012, the General Assembly made changes to the Ohio Revised Code, specifically Chapter 955, to eliminate breed specific criteria for designating dogs as vicious or dangerous; and

WHEREAS, Chapter 505 of the Cleveland Heights Codified Ordinance contains breed specific definitions applicable to determining when a dog is a vicious dog; and

WHEREAS, the Council desires to modify Chapter 505 of the Cleveland Heights Codified Ordinance to define a vicious dog without reference to the breed of dog, and to otherwise modify the City's regulation on the keeping and control of dogs.

BE IT ORDAINED by the Council of the City of Cleveland Heights, County of Cuyahoga, State of Ohio, that:

SECTION 1: An amended Chapter 505 of the Codified Ordinance of the City of Cleveland Heights, *Animals and Fowl*, is hereby adopted to read in total as set forth in Exhibit A hereto.

SECTION 2: Current Chapter 505 of the Codified Ordinance of the City of Cleveland Heights, as it existed prior to the effective date of the ordinance, is hereby repealed.

SECTION 3: Notice of passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4: This Ordinance shall take effect and be in force at the earliest time permitted by law.

ORDINANCE NO. 94-2019 (SMS)

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CAROL ANN ROE, Mayor  
President of the Council

---

SUSANNA NIERMAN O'NEIL  
Acting Clerk of Council

PASSED:

**CHAPTER 505  
Animals and Fowl**

<p>505.01 Enforcement by Animal Warden; powers and duties.</p> <p>505.02 Maximum number of dogs and cats permitted; prior acquisition not affected.</p> <p>505.03 Certain animals prohibited; exceptions.</p> <p>505.04 Barking or howling animals; impounding authorized.</p> <p>505.05 Animals prohibited in stores or covered malls except for treatment.</p> <p>505.06 Animals prohibited in public parks.</p> <p>505.07 Animals not under control.</p> <p>505.08 Voiding animal excrement.</p> <p>505.09 Dangerous or exotic animals.</p> <p>505.091 <u>Vicious dogs. Definitions</u></p>	<p>505.092 <u>Dangerous and vicious Dogs</u></p> <p><u>505.093</u> Impoundment of dogs involved in biting/attacking incidents.</p> <p>505.10 Cruelty to animals.</p> <p>505.101 <u>Tethering animals</u></p> <p><u>505.102</u> Cruelty to companion animals.</p> <p>505.11 Administering poison.</p> <p>505.12 Hunting or killing animals prohibited.</p> <p>505.13 Protection of wild life in parks.</p> <p>505.14 Carrier pigeons.</p> <p>505.15 General rabies quarantine.</p> <p>505.16 Quarantine procedure and compliance.</p> <p>505.17 Impounding procedure; redemption or disposition.</p> <p>505.18 Court order to remove or destroy animal.</p> <p>505.19 Designation of dog as <u>“dangerous” and “vicious”</u>; <del>appeal.</del></p> <p><u>505.20</u> <u>Appeal</u></p> <p>505.99 Penalty.</p>
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**CROSS REFERENCES**

Power to restrain and impound animals - see Ohio R.C. 715.23  
 Dog license required - see Ohio R.C. 955.05 et seq.  
 Driving animals upon roadway - see TRAF. 303.05, 303.06

**505.01 ENFORCEMENT BY ANIMAL WARDEN; POWERS AND DUTIES.**

The City Manager shall appoint an Animal Warden or other person(s) including, but not limited to, the Chief of Police and/or City police officers to enforce the terms of this chapter, and for the purposes of this chapter, “Animal Warden” shall be defined to include any such persons so appointed or authorized by the City Manager. Such persons shall have the authority to enter all public and private property, and to do all other things reasonable and necessary to enforce this chapter. Nothing contained herein shall prohibit the Animal Warden from destroying an animal when in his judgement such act is necessary and proper to protect life and property. (Ord. 28-2001. Passed 3-5-01.)

**505.02 MAXIMUM NUMBER OF DOGS AND CATS PERMITTED; PRIOR ACQUISITION NOT AFFECTED.**

(a) Not more than two dogs or cats, or a combination of one each, except puppies and/or kittens not more than three months old, may be kept in any single-family dwelling, or any separate suite in a two-family dwelling, or in any dwelling unit contained within a multiple-family dwelling building within the City.

(b) Whoever violates this section is guilty of a minor misdemeanor and each subsequent violation of this section within a period of three (3) years of the first violation shall be a misdemeanor of the fourth degree.  
(Ord. 66-1987. Passed 7-20-87.)

**505.03 CERTAIN ANIMALS PROHIBITED; EXCEPTIONS.**

(a) No rabbit hutch, goat pen, chicken coop, runway, yard or other place for the keeping of any rabbit, goat, chicken, pigeon, goose, turkey, horse, mule, donkey, sheep, bovine, swine or other such animal or fowl of any kind shall be maintained within the City, except that fowl and rabbits for the purpose of slaughtering or sale in the ordinary course of business may be kept therein in such areas as are permitted under the Zoning Code and other applicable City ordinances. No horse, mule, donkey, bovine, goat, sheep or swine shall be raised or kept in the City.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.  
(Ord. 66-1987. Passed 7-20-87.)

**505.04 BARKING OR HOWLING ANIMALS; IMPOUNDING AUTHORIZED.**

(a) No owner, keeper or person in charge of any animal in the City shall permit such animal to bark, yelp, howl or bay in such manner or to such extent as disturbs the peace and quiet of the City or any resident thereof. The Animal Warden or other designated employee may take up and impound any animal who is found disturbing the peace and quiet of any City residents in this manner.

(b) Whoever violates this section is guilty of a minor misdemeanor and each subsequent violation of this section within a period of three (3) years of the first violation shall be a misdemeanor of the fourth degree.  
(Ord. 66-1987. Passed 7-20-87.)

**505.05 ANIMALS PROHIBITED IN STORES OR COVERED MALLS EXCEPT FOR TREATMENT.**

(a) No person shall take, lead or have in his possession in any store, or covered mall in any shopping area within the City any animal, except to obtain treatment for such animal at a specific store or clinic for animals.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.  
(Ord. 66-1987. Passed 7-20-87.)

**505.06 ANIMALS PROHIBITED IN PUBLIC PARKS.**

(a) No person shall take, lead or have in his possession any animal in any public park located within the City.

(b) Whoever violates this section is guilty of a minor misdemeanor.  
(Ord. 66-1987. Passed 7-20-87.)

**505.07 ANIMALS NOT UNDER CONTROL.**

(a) No owner, keeper or person in charge of a dog or cat shall permit such animal to run at large or shall fail to control such animal anywhere within the City. Testimony that an animal was not on the property of its owner, keeper or person in charge, or was not held securely in leash by a person accompanying such animal when found shall be prima-facie evidence that the animal was not under control. For purposes of subsections (a), (b), (c) and (d) hereof, strict criminal liability is contemplated herein.  
(Ord. 163-2003. Passed 3-15-04.)

(b) Whoever violates subsection (a) hereof is guilty of a misdemeanor of the fourth degree and each subsequent violation of subsection (a) hereof within a period of three (3) years of the first violation shall be a misdemeanor of the third degree.

(c) Notwithstanding the above, a violation of subsection (a) hereof shall be a misdemeanor of the second degree when such animal is found to have attacked or bitten a person either while at large, or when leashed and not on the property of its owner, keeper or person in charge, and a misdemeanor of the third degree when such animal is found to have attacked or bitten another domestic animal while at large, or while leashed but not under control as described herein.

(d) Each subsequent violation of subsection (c) hereof within a period of three (3) years shall be a misdemeanor of the first degree in the event a human being is attacked or bitten and a misdemeanor of the second degree in the event a domestic animal is attacked or bitten.  
(Ord. 66-1987. Passed 7-20-87.)

**505.08 VOIDING ANIMAL EXCREMENT.**

(a) No owner, keeper or person in charge of any animal shall allow or permit such animal to void urine or excrement on any public or private property other than the property of the owner, keeper or person in charge of such animal, except that animals may be allowed or permitted to void urine or excrement between the curbs of public streets or alleys and on vacant, unoccupied and unused public or private land, provided the owner of such unused public or private land does not publicly and prominently post notice thereon that such acts are prohibited.  
(Ord. 66-1987. Passed 7-20-87.)

(b) No owner, keeper or person in charge of any animal shall fail to pick up and properly dispose of any fecal matter left by his animal on any public or private property. Proper disposal shall consist of placing such fecal matter in the trash of the owner, keeper, or person in charge in accordance with Section 1351.14(b) or in a public receptacle clearly intended for waste disposal. No fecal matter shall be placed or permitted to be voided into any catch basin, drainage grate, or watercourse. (Ord. 14-2003. Passed 1-21-03.)

(c) No person shall allow a dog under his or her control to be upon public property or upon the property of another, absent the consent of the owner or occupant of the property, without some device designed or intended for the removal of such dog's feces. (Ord. 146-2005. Passed 11-7-05.)

(d) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (Ord. 66-1987. Passed 7-20-87; Ord. 146-2005. Passed 11-7-05.)

#### **505.09 DANGEROUS OR EXOTIC ANIMALS.**

(a) No person shall keep any ~~lion, tiger or other such~~ wild animal on any premises in the City.

(b) "Wild, dangerous or undomesticated animal" for the purpose of this section 505.09, means an animal whose natural habitat is the wilderness and which, when maintained in human society, is usually confined to a zoological park or exotic animal farm and which:

- (1) Is a venomous snake or is a snake that is a constrictor; or
  - (2) Is an omnivorous or carnivorous animal that weighs more or will weigh more than twenty-five pounds and which is a predator in its natural habitat; or
  - (3) Is an animal which, by reason of its size, strength, or appetite, would, if unrestrained and free in the City, cause peril to persons, household pets, buildings, landscape or shrubbery; or
  - (4) Is an animal that makes noises with sufficient frequency and volume as to constitute a nuisance to the community; or
  - (5) Is an animal that emits offensive odors so as to constitute a nuisance to the community;
- or
- (6) Includes, but is not limited to the following: lion, tiger, lynx, mountain lion, jaguar, cheetah, leopard, panther, bear, wolverine, elk, moose, caribou, elephant, giraffe, rhinoceros, hippopotamus, wolf, wild ox, boar, crocodile, alligator, caiman or gavia.

(c) This section shall not apply to the following:

- (1) The keeping of such animals in bonafide educational or medical institutions or museums where they are kept as live specimens for the public view, or for the purpose of instruction or study.
- (2) The keeping of such animals for temporary exhibition to the public of such animals by a circus, carnival or other exhibit or show.
- (3) The keeping of such animals in a bonafide veterinary hospital for treatment.
- (4) The keeping of a snake which is a constrictor by a bonafide teacher or instructor temporarily during such times when school is not in session.

(d) Except as provided in subsection (a) hereof, no person shall keep any snake, reptile or other exotic or dangerous animal on any premises in the City, unless such animal is at all times kept in a structure, cage or other secure place separating such animal from the public generally, customary invitees to the premises and children who may be on the premises.

~~(ee) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (Ord. 66-1987. Passed 7-20-87.)~~

#### **505.091 VICIOUS DOGS. DEFINITIONS**

As used in this Chapter, and unless otherwise defined in section 505.09, certain terms are defined as follows:

(a) "Dangerous dog" means a dog which, has chased or approached in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any

person, or which presents a risk to the safety of any person, or which has caused serious physical injury to another domestic animal.

(1) A "dangerous dog" shall not include the following:

A. A police dog that is being used to assist one or more law enforcement officers in the performance of their duties.

(2) It shall be prima-facie evidence that a dog is dangerous if its owner, keeper or harborer has been notified in writing by the Animal Warden that the dog is considered dangerous, based on the following:

A. One or more verified incidents reported to the City that the dog (i) has chased or approached in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person or (ii) has caused serious physical injury to any domestic animal; or

B. Because of improper training, neglect, prior history, physical or other characteristics including height and weight, or other good and sufficient cause, the dog presents a risk to the safety of any person.

(3) A determination by the Animal Warden that a dog is dangerous may be appealed as set forth in Section 505.20 of this Chapter.

(b) "Menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

(c) "Owner, keeper or harborer" means a person who owns, provides shelter or cares for an animal, or otherwise has control of or is responsible for such animal.

(d) "Police dog" means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.

(e) "Verified" means substantiated by investigation or confirmed by formal oath or affidavit.

(f) "Vicious dog" means a dog that, has attacked any person with such severity or has caused such physical harm so as to cause a reasonable person to conclude that the dog presents a substantial risk to the safety of any person, or has killed another domestic animal. A "vicious dog" shall not include a police dog.

(1) It shall be prima-facie evidence that a dog is vicious:

A. If its owner, keeper or harborer has been notified in writing by the Animal Warden that the dog is considered vicious, based upon the following:

1. One or more verified incidents reported to the City that the dog has, attacked any person with such severity or has caused such physical harm so as to cause a reasonable person to conclude that the dog presents a substantial risk to the safety of any person; or

2. One or more verified incidents reported to the City that the dog has, killed another domestic animal.

B. If state law is amended to provide that it is prima facie evidence that a dog is vicious if it belongs to a particular breed. In that event, the ownership, keeping, or harboring of such a breed of dog shall be prima facie evidence of the ownership, keeping, or harboring of a vicious dog.

1. A determination by the Animal Warden that a dog is vicious, pursuant to 505.091(f)(1)(B), may be appealed as set forth in Section 505.20 of this Chapter.

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#### 505.092 DANGEROUS AND VICIOUS DOGS

(a) No person owning, harboring or having the care or control of a dangerous or vicious dog shall suffer or permit such animal to go unconfined on the premises of such person.

(b) No person owning, harboring or having the care or control of a dangerous or vicious dog shall suffer or permit such dog to go beyond the premises of such person unless such dog is securely leashed on a chain no more than three (3) feet in length with at least 300 pounds of tensile strength and such dog is muzzled. (~~Ord. 71-1987. Passed 7-20-87.~~)

(c) No person owning, harboring or having the care or control of a dangerous or vicious dog shall fail to post a sign conspicuously on the property visible to any person approaching the property from the street that states that a dangerous dog or vicious dog is present on the premises.

(d) A dangerous or vicious dog is "unconfined" as the term is used in this section if such dog is not confined on the premises of the person described in subsection (a) hereof as follows:

(1) If the dog is outside, it must be in a securely enclosed pen or dog run area which has secure sides and a secure top attached to all sides, and which has a secure floor or bottom attached to all sides of the pen or which is embedded in the ground no less than two (2) feet. Such pen or dog run area shall be locked with a key or combination lock at all times when the animal is within the structure.

(2) If the dog is inside, it may not be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure. A dangerous or vicious dog may not be kept on a patio, porch or in any part of a house or structure which would allow the animal to exit the building on its own volition, whether or not such dog is on a chain or leash. (Ord. 163-2003. Passed 3-15-04.)

(e) No person shall keep, own, harbor, care for, or control a vicious dog within the City of Cleveland Heights until such dog has been registered with the Animal Warden of the City and a permit is obtained. Such dogs shall be registered with the City within ten (10) days of the date the dog is first brought into the City, and thereafter on an annual basis on or before the 31st day of January of each calendar year. The permit fee shall be twenty dollars (\$20.00) per year. No person shall keep, own, harbor, care for or control more than one vicious dog in any dwelling unit in the City at any one time. No person shall keep, own, harbor, care for or control any vicious dog on any premises in the City at any time unless such person is the owner of said premises or unless such person has the written permission of the owner of said premises to keep, own, harbor, care for or control such vicious dog on said premises.

(f) Any person keeping, owning, harboring or having the care or control of any vicious dog shall maintain a policy of liability insurance providing coverage for each occurrence in an amount not less than one hundred thousand dollars (\$100,000) and insuring such person against any claim, loss, damage or injury to persons, domestic animals or property resulting from the acts, whether intentional or unintentional, of the vicious dog. Such person shall produce evidence of such policy of insurance at the time of the initial registration and annual renewal of registration of the vicious dog with the Animal Warden of the City and at any time upon request of a law enforcement agent or other employee of the City. The City shall be named as a certificate holder on all such policies.  
(Ord. 51-2008. Passed 5-19-08.)

(g) Impoundment of Dogs.

(1) Any vicious dog being harbored or cared for within the City that is not registered with the Animal Warden as provided in subsections (f) hereinabove may be seized and impounded by the Animal Warden or his agent or other law enforcement officer until such time as the dog is properly registered and a permit obtained. In the event the Animal Warden or other law enforcement officer seizes such an unregistered vicious dog, notice shall be given the presumed owner within two (2) business days after the seizure by posting a written notice upon the

premises at which the dog was being harbored or kept. The dog shall not be released until the owner registers the dog and pays all accumulated boarding charges. In the event the owner does not register such dog and pay all such boarding charges within five (5) business days of the delivery of the notice of impoundment, such dog shall be deemed abandoned and may be destroyed or otherwise disposed of by the City.

(2) In the event a law enforcement officer has probable cause to believe a dog has attacked a human being or other domestic animal in the City, the law enforcement officer may impound such dog pending trial. In the event the Court finds that such dog attacked a human being or other domestic animal, in addition to any penalty imposed by the Court, the dog shall not be released to the owner until all accumulated boarding and impound charges are paid; provided, however, that nothing herein shall prohibit the Court from ordering the dog destroyed or banished as provided in subsection (j) herein below, in which case the owner shall still be responsible for boarding charges. If the dog is not ordered destroyed or banished, the owner shall reclaim such dog and pay all accumulated boarding and impound charges within five (5) business days after sentencing, otherwise the dog shall be deemed abandoned and may be destroyed or otherwise disposed of by the City.

(3) In the event a law enforcement officer has probable cause to believe that a registered vicious dog is being harbored or cared for in violation of this section, and such animal has not attacked a human being or other domestic animal, the law enforcement officer may petition a court of competent jurisdiction to order the seizure and impoundment of the vicious dog pending trial, with the boarding charges to be paid by the owner.

(Ord. 163-2003. Passed 3-15-04.)

(h) Whoever violates any provision of this section is guilty of a misdemeanor of the second degree for a first violation and shall be guilty of a misdemeanor of the first degree for each such subsequent violation within three (3) years of the first violation.

(i) For purposes of subsections (a) and (b) hereof, testimony that a dangerous or vicious dog was unconfined on the premises of its owner, harborer, or person having the care or control of such dangerous or vicious dog, or that a dangerous or vicious dog was beyond the premises of its owner, harborer, or person having the care or control of such dangerous or vicious dog and was not securely leashed and muzzled according to the provisions of subsection (b) hereof, shall be prima-facie evidence that such owner, harborer, or person having the care or control of a dangerous or vicious dog suffered or permitted such dog to go unconfined on the premises of such person or suffered or permitted such dangerous or vicious dog to go beyond the premises of such person when not securely leashed and muzzled as described in subsection (b) hereof. For purposes of subsections (a), (b), (d) and (e) hereof, strict criminal liability is contemplated. (Ord. 71-1987. Passed 7-20-87.)

(j) Any dangerous or vicious dog which attacks a human being or another domestic animal may be ordered to be destroyed or to be permanently banished from the City when, in the court's judgment, such dangerous or vicious dog represents a continuing threat of serious harm to human beings or other domestic animals. (Ord. 163-2003. Passed 3-15-04.)

(k) In prosecution for a violation of division (a) or (e) of section 505.091 in connection with which a dog has caused injury or serious injury to or the death of a person or companion animal, any of the following may be asserted as an affirmative defense as applicable:

(1) The dog was teased, tormented or abused by a person.

(2) The dog was coming to the aid or defense of a person who was not engaged in

Illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

(3) The dog caused injury or serious injury to a person or killed a person while the person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.

(4) In the case of another domestic animal, that the dog was attacked by such animal or that such animal was running at large. Definitions-

(1) A vicious dog is "unconfined" as the term is used in this section if such dog is not confined on the premises of the person described in subsection (a) hereof as follows:

A. If the dog is outside, it must be in a securely enclosed pen or dog run area which has secure sides and a secure top attached to all sides, and which has a secure floor or bottom attached to all sides of the pen or which is embedded in the ground no less than two (2) feet. Such pen or dog run area shall be locked with a key or combination lock at all times when the animal is within the structure.

B. If the dog is inside, it may not be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure. A vicious dog may not be kept on a patio, porch or in any part of a house or structure which would allow the animal to exit the building on its own volition, whether or not such dog is on a chain or leash. (Ord. 163-2003. Passed 3-15-04.)

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(2) A "vicious" dog as the term is used in this section means:

- A. Any dog which has been judicially or administratively determined, pursuant to Section 505.19, to have a propensity, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or other domestic animals; or
- B. Any dog which has been judicially or administratively determined, pursuant to Section 505.19, to have attacked a human being or other domestic animal; or
- C. Any pit bull terrier, which shall be herein defined as any Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier or American Staffordshire Terrier.

(Ord. 150 2004. Passed 10 4 04.)

(d) No person shall keep, own, harbor, care for, or control a vicious dog within the City of Cleveland Heights until such dog has been registered with the Animal Warden of the City and a permit is obtained. Such dogs shall be registered with the City within ten (10) days of the date the dog is first brought into the City, and thereafter on an annual basis on or before the 31st day of January of each calendar year. The permit fee shall be twenty dollars (\$20.00) per year. No person shall keep, own, harbor, care for or control more than one vicious dog in any dwelling unit in the City at any one time. No person shall keep, own, harbor, care for or control any vicious dog on any premises in the City at any time unless such person is the owner of said premises or unless such person has the written permission of the owner of said premises to keep, own, harbor, care for or control such vicious dog on said premises.

(e) Any person keeping, owning, harboring or having the care or control of any vicious dog shall maintain a policy of liability insurance providing coverage for each occurrence in an amount not less than one hundred thousand dollars (\$100,000) and insuring such person against any claim, loss, damage or injury to persons, domestic animals or property resulting from the acts, whether intentional or unintentional, of the vicious dog. Such person shall produce evidence of such policy of insurance at the time of the initial registration and annual renewal of registration of the vicious dog with the Animal Warden of the City and at any time upon request of a law enforcement agent or other employee of the City. The City shall be named as a certificate holder on all such policies. (Ord. 51-2008. Passed 5-19-08.)

(f) Impoundment of Dogs:

(1) Any vicious dog being harbored or cared for within the City that is not registered with the Animal Warden as provided in subsections (d) and (e) hereinabove may be seized and impounded by the Animal Warden or his agent or other law enforcement officer until such time as the dog is properly registered and a permit obtained. In the event the Animal Warden or other law enforcement officer seizes such an unregistered vicious dog, notice shall be given the presumed owner within two (2) business days after the seizure by

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~~posting a written notice upon the premises at which the dog was being harbored or kept. The dog shall not be released until the owner registers the dog and pays all accumulated boarding charges. In the event the owner does not register such dog and pay all such boarding charges within five (5) business days of the delivery of the notice of impoundment, such dog shall be deemed abandoned and may be destroyed or otherwise disposed of by the City.~~

~~(2) In the event a law enforcement officer has probable cause to believe a dog has attacked a human being or other domestic animal in the City, the law enforcement officer may impound such dog pending trial. In the event the Court finds that such dog attacked a human being or other domestic animal without provocation, in addition to any penalty imposed by the Court, the dog shall not be released to the owner until all accumulated boarding and impound charges are paid; provided, however, that nothing herein shall prohibit the Court from ordering the dog destroyed or banished as provided in subsection (i) hereinbelow, in which case the owner shall still be responsible for boarding charges. If the dog is not ordered destroyed or banished, the owner shall reclaim such dog and pay all accumulated boarding and impound charges within five (5) business days after sentencing, otherwise the dog shall be deemed abandoned and may be destroyed or otherwise disposed of by the City.~~

~~(3) In the event a law enforcement officer has probable cause to believe that a registered vicious dog is being harbored or cared for in violation of this section, and such animal has not attacked a human being or other domestic animal, the law enforcement officer may petition a court of competent jurisdiction to order the seizure and impoundment of the vicious dog pending trial, with the boarding charges to be paid by the owner.~~

~~(Ord. 163-2003. Passed 3-15-04.)~~

~~(g) Whoever violates any provision of this section is guilty of a misdemeanor of the second degree for a first violation and shall be guilty of a misdemeanor of the first degree for each such subsequent violation within three (3) years of the first violation.~~

~~(h) For purposes of subsections (a) and (b) hereof, testimony that a vicious dog was unconfined on the premises of its owner, harborer, or person having the care or control of such vicious dog, or that a vicious dog was beyond the premises of its owner, harborer, or person having the care or control of such vicious dog and was not securely leashed and muzzled according to the provisions of subsection (b) hereof, shall be prima facie evidence that such owner, harborer, or person having the care or control of a vicious dog suffered or permitted such dog to go unconfined on the premises of such person or suffered or permitted such vicious dog to go beyond the premises of such person when not securely leashed and muzzled as described in subsection (b) hereof. For purposes of subsections (a), (b), (d) and (e) hereof, strict criminal liability is contemplated. (Ord. 71-1987. Passed 7-20-87.)~~

~~(i) Any vicious dog which attacks a human being or another domestic animal may be ordered to be destroyed or to be permanently banished from the City when, in the court's judgment, such vicious dog represents a continuing threat of serious harm to human beings or other domestic animals. (Ord. 163-2003. Passed 3-15-04.)~~

**505.092 505.093      **IMPOUNDMENT OF DOGS INVOLVED IN BITING/ATTACKING INCIDENTS.****

(a) The Animal Warden may take up and impound any dog which is alleged to have bitten or attacked a human being or other domestic animal in violation of this chapter, pending the completion of criminal proceedings arising from such incident. Such dog shall be boarded

and housed in an animal shelter, animal hospital, kennel or other place which the Animal Warden deems equally secure until such time as the owner, harborer, or other person having custody or control of such dog shall be tried or enter a guilty or no contest plea to any and all charges arising out of the biting/attack incident, and until such further time as the Court enters sentence, unless otherwise ordered by the Court.

(b) Any dog impounded shall be released at the earlier of the following times, unless a longer period of impoundment is authorized or permitted by this chapter:

- (1) At least ten working days have passed since the biting or attack incident and no charges are pending against the owner, harborer or person caring for or in control of such dog;
- (2) The owner, harborer or person caring for or in control of the dog has been acquitted of all criminal charges arising out of the attack/biting incident.

(c) Any person aggrieved by an order of the Animal Warden pursuant to subsection (a) herein may appeal such order to the ~~Health Code Board of Appeals pursuant to Sections 1701.07 and 1780.08 of Part Seventeen of these Codified Ordinances as established in 505.20.~~ Any such appeal shall be heard within five working days of the date the notice of appeal is filed. Notice of such ~~hearing shall~~ hearing shall be given to the person(s) who has allegedly been bitten or attacked by the dog, the parent(s) or guardian(s) of any minor(s) who has allegedly been the victim of such an attack, and the owner(s) of any domestic animal(s) which has allegedly been bitten or attacked by the dog.

(d) The costs of the boarding and lodging of the dog shall be charged to the owner, harborer, and/or person caring for or in control of the dog, unless the dog has been released pursuant to the provisions of subsection (b) hereof.

(e) The provisions of this section shall be in addition to any other procedures, penalties and/or remedies provided in this chapter or otherwise available at law. (Ord. 150-1994. Passed 12-19-94.)

#### **505.10 CRUELTY TO ANIMALS.**

(a) No person shall overdrive, overload, torture, torment or deprive of necessary sustenance, whether food or water, unnecessarily or cruelly beat, whip or maltreat or needlessly mutilate or kill, or cruelly expose to natural elements, any animal, nor by any act either of commission or omission do or fail to do anything which is cruel to a domestic animal.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree. (Ord. 66-1987. Passed 7-20-87.)

#### **505.101 CRUELTY TO COMPANION ANIMALS; TETHERING ANIMALS**

(a) ~~—(a) Unlawful restraint of animals: The owner of an animal may restrain an animal on a tether for a reasonable period, not to exceed three hours in a 24-hour period. The tether must be not less than 20 feet or five times the length of the dog, must keep the animal within the owner's property and must not touch a fence. Further, the animal must have access to shade, dry shelter, and tip-proof water supply.~~

(b) ~~Tethering is prohibited:~~

- ~~(1) Between the hours of 10 p.m. and 6 a.m.;~~
- ~~(2) If a heat advisory has been issued by a local or state authority or the National Weather Service;~~
- ~~(3) If a severe weather warning has been issued for the jurisdiction by the National Weather Service;~~
- ~~(4) If the tether is attached by means of a pinch type, prong type, or choke type collar or if the collar is unsafe or is not properly fitted;~~
- ~~(5) If the tether inhibits the animal's free movement or causes injury or entanglement;~~
- ~~(6) If the tether is made of a material that is unsuitable for the animal's size and weight or that causes any unnecessary discomfort to the animal;~~

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(c) As used in this section, "tether" means a rope, chain, cord, dog run or pulley, or similar restraint for holding an animal in place, allowing a radius in which it can move about.

(c) Whoever violates this section is guilty of a minor misdemeanor on the first offense, a misdemeanor of the fourth degree on the second offense, and a misdemeanor of the first degree on the third or any subsequent offense. Notwithstanding the foregoing penalties, if an animal becomes sick or injured as a result of a violation of this section, then whoever violates this section is guilty of a misdemeanor of the first degree.

#### 505.102 CRUELTY TO COMPANION ANIMALS

(a) As used in this section:

- (1) "Companion animal" means any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept, including a pet store as defined in Ohio R.C. 956.01. "Companion animal" does not include livestock or any wild animal.
- (2) "Cruelty", "torment" and "torture" have the same meanings as in Ohio R.C. 1717.01.
- (3) "Residential dwelling" means a structure or shelter or the portion of a structure or shelter that is used by one or more humans for the purpose of a habitation.
- (4) "Practice of veterinary medicine" has the same meaning as in Ohio R.C. 4741.01.
- (5) "Wild animal" has the same meaning as in Ohio R.C. 1531.01.

- (6) "Federal animal welfare act" means the "Laboratory Animal Act of 1966", Pub. L. No. 89-544, 80 Stat. 350 (1966), 7 U.S.C.A. 2131 et seq., as amended by the "Animal Welfare Act of 1970", Pub. L. No. 91-579, 84 Stat. 1560 (1970), the "Animal Welfare Act Amendments of 1976", Pub. L. No. 94-279, 90 Stat. 417 (1976), and the "Food Security Act of 1985", Pub. L. No. 99-198, 99 Stat. 1354 (1985), and as it may be subsequently amended.
- (7) "Dog kennel" means an animal rescue for dogs that is registered under Ohio R.C. 956.06, a boarding kennel or a training kennel.

(b) No person shall knowingly torture, torment, needlessly mutilate or maim, cruelly beat, poison, needlessly kill, or commit an act of cruelty against a companion animal.

(c) No person who confines or who is the custodian or caretaker of a companion animal shall negligently do any of the following:

- (1) Torture, torment or commit an act of cruelty against the companion animal;
- (2) Deprive the companion animal of necessary sustenance, or confine the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water, if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the deprivation or confinement;
- (3) Impound or confine the companion animal without affording it, during the impoundment or confinement, with access to shelter from heat, cold, wind, rain, snow, or excessive direct sunlight if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the lack of adequate shelter.

(d) No owner, manager or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal shall negligently do any of the following:

- (1) Torture, torment, or commit an act of cruelty against the companion animal;
- (2) Deprive the companion animal of necessary sustenance, or confine the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water, if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the deprivation or confinement;
- (3) Impound or confine the companion animal without affording it, during the impoundment or confinement, with access to shelter from heat, cold, wind, rain, snow or excessive direct sunlight if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the lack of adequate shelter.

- (e) Subsections (b), (c) and (d) of this section do not apply to any of the following:
- (1) A companion animal used in scientific research conducted by an institution in accordance with the federal animal welfare act and related regulations;
  - (2) The lawful practice of veterinary medicine by a person who has been issued a license, temporary permit, or registration certificate to do so under Ohio R.C. Chapter 4741;
  - (3) Dogs being used or intended for use for hunting or field trial purposes, provided that the dogs are being treated in accordance with usual and commonly accepted practices for the care of hunting dogs;
  - (4) The use of common training devices, if the companion animal is being treated in accordance with usual and commonly accepted practices for the training of animals;
  - (5) The administering of medicine to a companion animal that was properly prescribed by a person who has been issued a license, temporary permit, or registration certificate under Ohio R.C. Chapter 4741.  
(ORC 959.131)
- (f)
- (1) Whoever violates subsection (b) hereof is guilty of a misdemeanor of the first degree on a first offense. On each subsequent offense such person is guilty of a felony and shall be prosecuted under appropriate State law.
  - (2) Whoever violates subsection (c) hereof is guilty of a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on each subsequent offense.
  - (3) Whoever violates subsection (d) hereof is guilty of a misdemeanor of the first degree.
  - (4)
    - A. A court may order a person who is convicted of or pleads guilty to a violation of this section to forfeit to an impounding agency, as defined in Ohio R.C. 959.132, any or all of the companion animals in that person's ownership or care. The court also may prohibit or place limitations on the person's ability to own or care for any companion animals for a specified or indefinite period of time.
    - B. A court may order a person who is convicted of or pleads guilty to a violation of this section to reimburse an impounding agency for the reasonably necessary costs incurred by the agency for the care of a companion animal that the agency impounded as a result of the investigation or prosecution of the violation, provided that the costs were not otherwise paid under Ohio R.C. 959.132.
  - (5) If a court has reason to believe that a person who is convicted of or pleads guilty to a violation of this section suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling. The court shall order the offender to pay the costs of the evaluation or counseling. (ORC 959.99)

**505.11 ADMINISTERING POISON.**

(a) No person, with intent to injure or kill any animal, shall maliciously administer poison to any dog, bird, fowl or other animal, the property of another, except rodents, nor shall any person with such intent place any poisoned food, liquid or other substance about where it may be easily found or consumed by any such dog, bird, fowl or other animal, except rodents, either upon his own premises, the premises of another or in any public place within the City.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree.  
(Ord. 66-1987. Passed 7-20-87.)

**505.12 HUNTING OR KILLING ANIMALS PROHIBITED.**

(a) Except as otherwise specifically provided in this chapter, no person shall hunt, kill or attempt to kill any animals within the City.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree.  
(Ord. 66-1987. Passed 7-20-87.)

**505.13 PROTECTION OF WILD LIFE IN PARKS.**

(a) No person shall, within any park, molest, hunt, take, chase, shoot or throw any object at any animal, or remove or have in his possession any animal or the eggs or young of any such animal.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.  
(Ord. 66-1987. Passed 7-20-87.)

**505.14 CARRIER PIGEONS.**

(a) No person shall shoot, kill or maim an Antwerp or homing pigeon, commonly known as "carrier" pigeon, nor shall any person, except the owner thereof, entrap, catch or detain a carrier pigeon, provided it has the name of the owner stamped upon its wing or tail or a band with the owner's name, initial or number on its leg.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.  
(Ord. 66-1987. Passed 7-20-87.)

**505.15 GENERAL RABIES QUARANTINE.**

Whenever, in the judgment of the Director of Public Safety, he determines that rabies is or may be prevalent in the City, he shall quarantine all animals in the City. During such quarantine, no owner, keeper or person in charge of any animal shall, with knowledge of such quarantine, permit an animal to leave the premises where such animal lives. Such a quarantine order shall be considered an emergency. Animals found at large in violation of such quarantine order may be impounded or destroyed within the discretion of the Director of Public Safety.

**505.16 QUARANTINE PROCEDURE AND COMPLIANCE.**

(a) Whenever it is shown that any animal has bitten any person or shows signs of being infected with rabies, the owner, keeper or person having custody or possession of such animal, shall, within twenty-four hours following the biting incident, upon notice from the Cuyahoga County Board of Health, or upon direction from the Cuyahoga County Board of Health and/or Animal Warden for any reason stated in this section, take and remove such animal to a qualified veterinarian for examination and, subsequently, on the tenth day following such original examination by the veterinarian, permit re-examination of such animal by the veterinarian. After such animal is first examined, it shall be confined during the ten-day period until the second examination is completed in either the animal clinic, kennel or hospital where examined, or secured at the home of the owner, keeper or person having custody or possession of the animal, in an area inaccessible to the public at large. The owner, keeper or person having custody or possession of such animal shall then submit to the Animal Warden or Cuyahoga County Board of Health, within twenty-four hours following the last examination, a written report signed by the examining veterinarian, setting forth therein the dates of examination of such animal and the results thereof.

If the animal dies prior to the tenth day of examination, as hereinbefore provided, the owner, keeper or person having custody or possession of such animal shall immediately contact the Animal Warden or Cuyahoga County Board of Health, who shall arrange for the removal of the animal to a qualified laboratory for examination. Under no circumstances shall the owner or keeper of the animal purposely destroy the animal prior to compliance with the requirements of this section.

No owner, keeper or person having custody or possession of such an animal shall fail or refuse to remove and take such animal for the examinations required herein, or fail to comply with the submission of the report as required, or fail to notify the Animal Warden or Cuyahoga County Board of Health immediately upon the death of the animal, or purposely destroy such animal prior to compliance with the requirements of this section. (Ord. 28-2001. Passed 3-5-01.)

(b) If the owner or person having custody or possession of such animal fails to comply with any such order of the Animal Warden within twenty-four hours of the notification that such order has been issued and served upon such owner or person having custody or possession, the Animal Warden or any police officer may take such animal into custody and place the same in quarantine, at the expense of the owner or person having custody or possession of such animal.

(c) Whoever violates this section is guilty of a misdemeanor of the first degree. (Ord. 66-1987. Passed 7-20-87.)

**505.17 IMPOUNDING PROCEDURE; REDEMPTION OR DISPOSITION.**

(a) In addition to other procedures and penalties applicable to violations of this chapter, the Animal Warden may take up and impound any animal found in violation hereof. If such animal is not wearing a valid license tag, the Animal Warden may, within three (3) days after taking up such animal, turn such animal over to an officer charged by law with the custody and disposal of such animals. If the animal is wearing a license tag or some other type of identification showing the name and address of its owner, the Animal Warden shall immediately give such person notice that the animal has been found and taken up. The animal shall not be released to its owner except upon payment to the City of ~~twenty five dollars (\$25.00)~~ all lawful costs assessed against the animal to cover the cost of taking it up, plus such additional costs as may be incurred by the City for impounding the animal.

Such release payment shall be tendered within five (5) days of receipt of notice by the animal's owner; however, no period of holding by the City shall exceed seven (7) days unless the seventh (7th) days falls on a weekend. Any animal not reclaimed within the respective time periods may be destroyed or otherwise disposed of at the discretion of the Animal Warden. "Otherwise disposed of" shall include the right to sell these animals to suitable individuals for the cost to the City of the animal's boarding. When such a sale does occur, the City shall not charge the buyer with the ~~twenty five dollar (\$25.00)~~ impounding fee. No sale will be transacted until a valid registration tag, if required, is obtained.  
(Ord. 66-1987. Passed 7-20-87.)

(b) The City may assess against or charge the owner, keeper or harbinger of any domestic animal the actual costs relative to the seizure and/or impoundment of such animal for its seizure, shelter, food, and any veterinary care found necessary during impoundment. Such costs may include the cost to have the animal spayed or neutered and vaccinated.

~~(bc)~~ The Animal Warden's Office may keep a register of people interested in obtaining an animal impounded by the City. Such register may be categorized by the breed desired and should be set up to give the person who has been registered the longest period of time the first chance to obtain the animal.  
(Ord. 117-1979. Passed 11-5-79.)

#### **505.18 COURT ORDER TO REMOVE OR DESTROY ANIMAL.**

In addition to any penalty provided herein, if the court determines that any animal, on one or more occasions, has bitten or attacked any person or domestic animal without provocation, or if the court determines that the owner of the animal has habitually permitted such animal to run at large, or violated this chapter on one or more occasions, the court may, in order to protect the health, welfare, safety and property of the City's inhabitants, order that such animal be destroyed or permanently banished from the City.  
(Ord. 163-2003. Passed 3-15-04.)

#### **505.19 DESIGNATION OF DOG AS "DANGEROUS" AND "VICIOUS"; APPEAL.**

(a) A dog may be determined to be "dangerous" or "vicious", as defined in subsections ~~A. and B. of subsection 505.091(c)(2)~~ 505.091(a) and 505.091(f), and thus subject to the requirements of Section ~~505.091092~~, in one of the two following ways:

- (1) A court of competent jurisdiction may declare the dog to be vicious in an independent or related civil or criminal proceeding; or
- (2) The Animal Warden may provide written notice to the owner or other person harboring or having care or control of the dog that the Animal Warden has determined the dog to be vicious. Such notice shall be given by personal service, ordinary mail, or by posting on the property at which the person resides. ~~Any person aggrieved by the order of the Animal Warden hereunder may appeal such order in writing to the Health Code Board of Appeals pursuant to Sections 1701.07 and 1780.08 of Part Seventeen of these Codified Ordinances. Such appeal shall be filed within five (5) working days of the date of notice, and heard within ten (10) working days of the date the appeal is filed. The filing of a notice of appeal hereunder shall stay the requirements of Section 505.091, but shall not preclude the Animal Warden or Cuyahoga County Board of Health from impounding the dog if otherwise permitted by this chapter or other provisions of law and shall not in any way relieve the owner or other person harboring or having care or control of the dog from civil or criminal liability for injury or damage caused by the dog or for violations of provisions of this chapter other than Section 505.091.~~

(b) The provisions of this section are not applicable to dogs classified as vicious pursuant to the provisions of subsection (c)(2)C. of Section 505.091. (Ord. 150-2004. Passed 10-4-04.)

#### 505.20 APPEAL

(a) There is hereby created a board consisting of the Chairperson of the Safety and Municipal Services committee of Council or other member of City Council appointed by the Mayor, and the City manager or designee, and a member of the City's Community Relations Division appointed by the City manager. The Board shall have jurisdiction to hear appeals from notices and orders issued pursuant to this Chapter. The presence of two (2) members shall constitute a quorum. Any action of the Board shall require two (2) affirmative votes.

(b) Any person aggrieved by the order of the Animal Warden hereunder may appeal such order in writing to the board. Such appeal shall be filed within five (5) working days of the date of notice, and heard within ten (10) working days of the date the appeal is filed. The filing of a notice of appeal hereunder shall stay the requirements of Section 505.091, but shall not preclude the Animal Warden or Cuyahoga County Board of Health from impounding the dog if otherwise permitted by this chapter or other provisions of law and shall not in any way relieve the owner or other person harboring or having care or control of the dog from civil or criminal liability for injury or damage caused by the dog or for violations of provisions of this chapter other than Section 505.091

(c) The provisions of this section are not applicable to dogs classified as vicious pursuant to the provisions of subsection (c)(2)C. of Section 505.091.

#### **505.99 PENALTY.**

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

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**Ohio Laws Regarding Dogs, Proposed Senate Bill 151 (passed 12/6/16) and Surrounding Municipalities as of September 27, 2019**

<b>State/Municipality</b>	<b>Definition of Vicious Dog</b>	<b>Definition of Nuisance Dog</b>	<b>Definition of Dangerous Dog</b>	<b>Dog Bites</b>	<b>Subsequent Dog Bites</b>	<b>Tethering Laws</b>	<b>Animal Warden</b>	<b>Civil Fines</b>
<b>Ohio Revised Code 955.99</b>	"Any dog that has seriously injured or killed a person while on or off the owner, keeper, or harbored's property." §955.11	"Nuisance dog" means a dog that without provocation and while off the premises of its owner, keeper, or harbored has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person. §955.11	"Dangerous dog" means a dog that, without provocation, has done any of the following: Caused injury, other than killing or serious injury, to any person; Killed another dog; or been the subject of a third or subsequent violation. §955.11	If death results from the bite, 4th Degree Felony, \$15,000 and up to 18 months in jail. If there is no death, -First Degree Misdemeanor, \$1,000, up to 180 days in jail	Not Applicable	Not Applicable - Note: Proposed Bill H.B. 94 introduced 3/2/15 - To amend section 959.99 and to enact section 959.133 of the Revised Code to prohibit a person from negligently allowing an animal to be tethered outdoors under specified circumstances.	Except as provided in section 955.121 of Revised Code, a board of county commissioners shall appoint or employ a county dog warden and deputies in such number, for such periods of time, and at such compensation as the board considers necessary to enforce sections 955.01 to 955.27, 955.50 and 955.53 of the Revised Code.	Not Applicable
<b>Proposed Senate Bill 151; Revises provisions of the Dog Laws covering nuisance dangerous, and vicious dogs. (It should be noted that this Bill is still pending. It is currently in the State Agriculture Committee.) SB 151 passed unanimously on 12/6/16</b>	"Vicious dog" means a dog that has killed any person or any companion animal. § 955.11(A)(1)	"Nuisance dog" means a dog that while off the premises of its owner, keeper, or harbored has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person. § 955.11(C)(1)	"Dangerous dog" means a dog that, has done any of the following: (a) caused injury or serious injury to any person; (b) caused injury or serious injury to any companion animal; (c) been the subject of a third or subsequent violation of division (B) of section 955.22 of the Revised Code. § 955.11(B)(1)	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
<b>Cleveland Heights Codified Ordinances: Chapter 505</b>	A "vicious dog" is defined as any dog which has been judicially or administratively determined, pursuant to Section 505.19, to have a propensity, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or other domestic animals; or Any dog which has been judicially or administratively determined, pursuant to Section 505.19, to have attacked a human being or other domestic animal; or any pit bull terrier, which shall be herein defined as any Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier or American Staffordshire Terrier. § 505.091 VICIOUS DOGS	Not Applicable	Not Applicable	Second degree misdemeanor, \$750, up to 90 days jail time.	First degree misdemeanor, \$1,000, up to 180 days in jail.	Not Applicable	The City Manager shall appoint an Animal Warden or other person(s) including, but not limited to, the Chief of Police and/or City police officers to enforce the terms of this chapter, and for the purposes of this chapter, "Animal Warden" shall be defined to include any such persons so appointed or authorized by the City Manager. Such persons shall have the authority to enter all public and private property, and to do all other things reasonable and necessary to enforce this chapter. Nothing contained herein shall prohibit the Animal Warden from destroying an animal when in his judgment such act is necessary and proper to protect life and property. §505.01	Not Applicable
<b>Proposed Changes to Cleveland Heights Codified Ordinances: Chapter 505</b>	§505.091(f) - "Vicious dog" means a dog that, has attacked any person with such severity or has caused such physical harm so as to cause a reasonable person to conclude that the dog presents a substantial risk to the safety of any person, or has killed another domestic animal. A "vicious dog" shall not include a police dog.	X	§505.091(a) - "Dangerous dog" means a dog which, has chased or approached in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person, or which presents a risk to the safety of any person, or which has caused serious physical injury to another domestic animal.	X	X	<p>§505.101(a) - Unlawful restraint of animals: The owner of an animal may restrain an animal on a tether for a reasonable period, not to exceed three hours in a 24-hour period. Tethering is prohibited:</p> <ol style="list-style-type: none"> <li>(1) Between the hours of 10 p.m. and 6 a.m.;</li> <li>(2) If a heat advisory has been issued by a local or state authority or the National Weather Service;</li> <li>(3) If a severe weather warning has been issued for the jurisdiction by the National Weather Service;</li> <li>(4) If the tether is less than 20 feet, provided the tether does not allow the animal to touch the fence or cross the property line or cross onto a public easement;</li> <li>(5) If the tether is attached by means of a pinchtype, prongtype, or choke-type collar or if the collar is unsafe or is not properly fitted;</li> <li>(6) If the tether inhibits the animal's free movement or causes injury or entanglement;</li> <li>(7) If the animal does not have access to shade, dry shelter, and a tipproof water supply.</li> <li>(8) If the tether is made of a material that is unsuitable for the animal's size and weight or that causes any unnecessary discomfort to the animal;</li> </ol> <p>(b) As used in this section, "tether" means a rope, chain, cord, dog run or pulley, or similar restraint for holding an animal in place, allowing a radius in which it can move about.</p> <p>(c) Whoever violates this section is guilty of a minor misdemeanor on the first offense, a misdemeanor of the fourth degree on the second offense, and a misdemeanor of the first degree on the third or any subsequent offense. Notwithstanding the foregoing penalties, if an animal becomes sick or injured as a result of a violation of this section, then whoever violates this section is guilty of a misdemeanor of the first degree.</p>	X	Not Applicable

**Ohio Laws Regarding Dogs, Proposed Senate Bill 151 (passed 12/6/16) and Surrounding Municipalities as of September 27, 2019**

<i>State/Municipality</i>	<i>Definition of Vicious Dog</i>	<i>Definition of Nuisance Dog</i>	<i>Definition of Dangerous Dog</i>	<i>Dog Bites</i>	<i>Subsequent Dog Bites</i>	<i>Tethering Laws</i>	<i>Animal Warden</i>	<i>Civil Fines</i>
<b>Cleveland Codified Ordinances: Chapter 603 &amp; Chapter 604</b>	A Level-Two (2) Threat dog is one that, without provocation, and subject to division (b) of this section, has killed or caused serious injury to any person, or has killed or caused serious injury to another domestic animal. §604.01(d)	Not Applicable	(1) A dog designated as a Level-One (1) threat is one that, without provocation, and subject to division (c) of this section, has chased or approached a person, including a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner, keeper, or harboree's property in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper, or harboree, or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard, or other locked enclosure, which has a top. A level-one (1) threat dog may also be one who has repeatedly exhibited a propensity, tendency or disposition to attack, without provocation, or otherwise threatens the safety of humans or domestic animals.  (2) Any dog that on three (3) separate occasions within a twelve (12) month period has been impounded by the City Animal Control Officer for being unrestrained or uncontrolled off its owner's, keeper's, or harboree's premises is a level-one (1) threat. §604.01(b)	Misdemeanor of the second degree, \$750 and up to 90 days jail.	First degree misdemeanor, \$1,000 and up to 6 months in jail. §604.99(b)	§ 603.092 - No person shall tether an animal in any of the following circumstances:  (1) For more than six (6) hours total in a twenty-four (24) hour period and not more than two (2) consecutive hours with no less than a one (1) hour period between tetherings;  (2) Between the hours of 10:00 p.m. and 6:00 a.m.;  (3) If a heat or cold advisory has been issued by a local or state authority or the National Weather Service;  (4) If a severe weather warning has been issued by a local or state authority or the National Weather Service;  (5) If the tether is less than twenty (20) feet in length;  (6) If the tether allows the animal to touch the fence or cross the property line or cross onto public property;  (7) If the tether is attached by means of a pinch-type, prong-type, or choke-type collar or if the collar is unsafe or is not properly fitted;  (8) If the tether may cause injury or entanglement;  (9) If the animal is not provided with its needs as identified in division (b) of Section 603.091;  (10) If the tether is made of a material that is unsuitable for the animal's size and weight or that causes any unnecessary discomfort to the animal.  (11) If no owner or occupant is present at the premises.  (b) As used in this section, "tether" means a rope, chain, cord, dog run or pulley, or similar restraint for holding an animal in place, allowing a radius in which it can move about.  (c) Whoever violates this section is guilty of a minor misdemeanor on the first offense, a misdemeanor of the fourth degree on the second offense, and a misdemeanor of the first degree on the third or any subsequent offense. Notwithstanding the foregoing penalties, if an animal becomes sick or injured as a result of a violation of this section, then whoever violates this section is guilty of a misdemeanor of the first degree.	§604.01 (a) There is established in the Department of Public Safety, a Division of Animal Care and Control, which shall consist of one (1) Chief Animal Control Officer and at least one (1) animal control officer permanently assigned to each of the five (5) police districts on a full-time basis, and other animal control officers as the Director of Public Safety deems necessary. All of these employees shall be uniformed employees under the control and management of the Director, who shall designate the kind of uniform to be worn and direct the operation of the Chief and other animal control officers.  (b) The Chief Animal Control Officer and all other animal control officers are authorized to give notice and issue citations, in compliance with Rule 4.1 of the Ohio Rules of Criminal Procedure, to anyone found to be in violation of Section 603.01, Section 603.02 or Section 603.04. The Chief Animal Control Officer and all other animal control officers are hereby established as "dog wardens" for purposes of enforcing applicable statutes pertaining to animals under the Ohio Revised Code. The Chief Animal Control Officer and all other animal control officers are authorized with the power and duty to enforce and prosecute the provisions of Chapters 603 and 604.r	Not Applicable
<b>Lakewood Codified Ordinances: Chapter 506</b>	(f) "Vicious dog" means a dog that, without provocation, has killed or caused serious injury to any person. "Vicious dog" does not include either of the following:  (1) A police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;  (2) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harboree of the dog.  (g) "Without provocation" means that a dog was not teased by a person or animal, tormented by a person or animal, or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity. §506.01(f)	(c) "Nuisance dog" means a dog that without provocation and while off the premises of its owner, keeper, or harboree, including within common areas of multiple-unit properties, has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person. "Nuisance dog" does not include a police dog that while being used to assist one or more law enforcement officers in the performance of official duties has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person. §506.01(c)  (h) "Potential nuisance dog" means a dog that, without provocation, while off the premises of its owner, keeper, or harboree, including within common areas of multiple-unit properties, either aggressively bites any domestic animal or displays threatening or aggressive behavior toward or otherwise threatens or endangers the safety of any animal; or, while on the premises of its owner, keeper or harboree, displays threatening or aggressive behavior toward or otherwise threatens or endangers the safety of any domestic animal or person. §506.01(h)	a) "Dangerous dog" means a dog that, without provocation, has done any of the following:  (1) Caused injury, other than killing or serious injury, to any person;  (2) Killed another dog;  (3) Been the subject of a third or subsequent violation of Section 505.02 of the Code. §506.01(a)	The first bite is charged as violation of an animal running at large. The charge is a minor misdemeanor. The fine is \$150 and no jail time.	After the first bite, a hearing is held and if the dog is found to be dangerous or vicious, it is ordered out of the city.	(b) No person shall tether an animal in a way that causes the animal to:  (1) Suffer from a condition that is known, by that person, to be exacerbated by tethering;  (2) Become entangled in a manner that is harmful to the animal or become entangled with other tethered animals;  (3) Be tethered with a lead that (A) is more than one eighth of the animal's body weight or (B) is a tow chain or a log chain;  (4) Be tethered with a lead fixed onto the ground or a stationary structure or object that measures, when rounded to the nearest whole foot, fewer than 10 feet in length;  (5) Be tethered with an improperly fitting harness or collar; or a pinch, prong, or choke-type collar;  (6) Be tethered with a lead fixed onto the ground or a stationary structure or object in a manner that will allow the animal to move upon the property of another person, a public walkway or a road, or be a menace to or injure another person or animal on a neighboring property, public walkway or road;  (7) Be tethered for more than six (6) hours total in a twenty-four (24) hour period and not more than two (2) consecutive hours with no less than a one (1) hour period between tetherings;  (8) Be tethered between the hours of 10:00 p.m. and 6:00 a.m.;  (9) Be tethered if a heat or cold advisory has been issued by a local or state authority or the National Weather Service;  (10) Be tethered if a severe weather warning has been issued by a local or state authority or the National Weather Service.	(a) The Animal Control Officer shall hold the position as established by ordinance and shall be appointed by the Director of Public Safety. The Animal Control Officer shall not be on the classified list of the Division of Police, nor eligible for participation in the Police Pension Fund.  (b) It shall be the duty of the Animal Control Officer, and the Animal Control Officer shall have the authority, to enforce the provisions of the Codified Ordinances of the City and laws of the State, relative to the licensing, impounding, boarding and disposition of animals, livestock or poultry within the corporate limits; however, no police or other officer of this City, charged with the responsibility of enforcing the ordinances of this City and the laws of this State, shall be relieved of such responsibility.  (c) The Animal Control Officer shall be provided with a badge designating his office, and such other uniform, vehicles and equipment necessary to carry out his duties; however, any vehicles used for picking up and impounding animals, livestock or poultry shall be clearly marked on both sides with the following: "Animal Control".  (d) In the exercise of his duties, the Animal Control Officer is hereby authorized to issue, on a form provided by the City, a citation to any person found by him to be in violation of this chapter. §505.01	Not Applicable

**Ohio Laws Regarding Dogs, Proposed Senate Bill 151 (passed 12/6/16) and Surrounding Municipalities as of September 27, 2019**

<b>State/Municipality</b>	<b>Definition of Vicious Dog</b>	<b>Definition of Nuisance Dog</b>	<b>Definition of Dangerous Dog</b>	<b>Dog Bites</b>	<b>Subsequent Dog Bites</b>	<b>Tethering Laws</b>	<b>Animal Warden</b>	<b>Civil Fines</b>
<p><b>Shaker Heights Codified Ordinances: Chapter 705</b> <i>(It should be noted that Shaker Heights had proposed amendments to their animal ordinances. In early January 2016, the proposed amendments were voted down by Shaker City Council.)</i></p>	<p>(f) "Vicious dog" means a dog that, without provocation, has attacked any person with such severity or has caused such physical harm so as to cause a reasonable person to conclude that the dog presents a substantial risk to the safety of any person, or has killed another domestic animal. §705.01(f)</p>	<p>Not Applicable</p>	<p>"Dangerous dog" means a dog which, without provocation, has chased or approached in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person, or which presents a risk to the safety of any person, or which has caused serious physical injury to another domestic animal. §705.01(b)</p>	<p>First degree misdemeanor- \$1,000 fine and up to 6 months in jail.</p>	<p>The Municipal Court may order the owner, keeper or harbinger of any animal which is determined by the Court to be vicious, or a perennial and continued nuisance, or which constitutes a serious threat to the health or safety of the public, to forthwith remove such animal from the City, or the Court may order the Chief of Police to cause the animal to be impounded and destroyed, or otherwise disposed of as the Court shall determine.</p>	<p>Not Applicable</p>	<p>"Animal Warden" means the Director of Public Works and his or her designee, who may be a City employee or a contractor hired to act as Animal Warden on behalf of the City, and those employees of the City or its contractor designated by the Director as Animal Wardens. §705.01(a)</p>	<p>Not Applicable</p>
<p><b>South Euclid Codified Ordinances: Chapter 505</b></p>	<p>(4) "Vicious dog."                      A. A dog that, without provocation and subject to division (a)(4)B. of this definition, meets any of the following requirements:                      1. Has killed or caused serious physical harm to any person; or                      2. Has killed or caused serious physical harm to any domestic animal. §505.01(4)</p>	<p>Not Applicable</p>	<p>A dog that, without provocation, has chased or approached in either a menacing fashion or an apparent attitude of attack, or has bitten or attempted to bite or has otherwise endangered any person, or domestic animal, while that dog is off the premises of its owner, keeper or harbinger and not under the reasonable control of its owner, keeper, harbinger or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top. §505.01(1)</p>	<p>Misdemeanor of the fourth degree, \$250 and up to 30 days in jail.</p>	<p>Misdemeanor of the first degree, \$1,000 and up to 6 months in jail.</p>	<p>Unlawful restraint of animals: The owner of an animal may restrain an animal on a tether for a reasonable period, not to exceed three hours in a 24-hour period. Tethering is prohibited:                      (1) Between the hours of 10 p.m. and 6 a.m.;                      (2) If a heat advisory has been issued by a local or state authority or jurisdiction;                      (3) If a tornado warning has been issued for the jurisdiction by the National Weather Service;                      (4) If the tether is less than 20 feet, provided the tether does not allow the animal to touch the fence or cross the property line or cross onto a public easement;                      (5) If the tether is attached by means of a pinstripe, prong type, or choke-type collar or if the collar is unsafe or is not properly fitted;                      (6) If the tether inhibits the animal's free movement or causes injury or entanglement;                      (7) If the animal does not have access to shade, dry shelter, and a tipproof water supply.                      §505.071(e)</p>	<p>§131.03 - There is established in the Department of Public Safety the position of City Animal Warden who shall be appointed by the Mayor.                      §131.05 - (a) The City Animal Warden or any person having the authority of a police officer in the City shall enforce the laws of the State and the City relative to the impounding of animals, and shall take up and impound animals at large in public or private places in violation of Chapter 505 of the General Offenses Code.                      (b) The City Animal Warden shall keep a record of all animals seized and impounded, shall be responsible for the collection of charges provided in this chapter for the taking up or boarding of any animals and shall have general supervision of the City Pound. He/she shall turn over all moneys together with a complete record of his activity for the month at the end of each month to the Director of Finance.</p>	<p>Not Applicable</p>

Proposed: 11/4/2019

RESOLUTION NO. (RCER)

By Council Member

A Resolution declaring November 30, 2019, “Small Business Saturday;” and declaring an emergency.

WHEREAS, the City of Cleveland Heights celebrates our local small businesses and the vital contributions they make to our local economy and community; and

WHEREAS, small businesses employ more than Forty-Seven Percent (47%) of the employees in the private sector in the United States; and

WHEREAS, the City of Cleveland Heights supports our local businesses that create jobs, boost our local economy and preserve our neighborhoods; and

WHEREAS, the health of Cleveland Heights’ small businesses depends on the support of the community; and

WHEREAS, public and private organizations across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday; and

WHEREAS, the Cleveland Heights City Council invites residents and visitors to shop in our business districts on November 30, 2019, in honor of Small Business Saturday.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council does hereby proclaim November 30, 2019, as “Small Business Saturday,” and urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and through the year.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to timely recognize Small Business Saturday. Wherefore, provided it received the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

RESOLUTION NO. (RCER)

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CAROL ANN ROE, Mayor  
President of the Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED:

Proposed: 11/04/2019

RESOLUTION NO. (SMS)

By Council Member

A Resolution authorizing the City Manager to enter into an agreement with the County of Cuyahoga to perform certain services to help maintain the City's sanitary and storm sewers; and declaring an emergency.

WHEREAS, the City owns and operates sanitary and storm sewers and catch basins, which require regular maintenance; and

WHEREAS, Section 171.02(b) of the Cleveland Heights Codified Ordinances authorizes the purchase of services without obtaining competitive bids where the price for services offered by a political subdivision is less than the price that would be obtained by taking bids from private persons; and

WHEREAS, the City Manager has determined that Cuyahoga County offers certain maintenance services for sanitary and storm sewers and catch basins at a price less than would be obtained by taking bids from private persons and that it would be in the City's best interests to retain the County for such services.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The City Manager be, and she is hereby, authorized to execute an agreement necessary to retain the County of Cuyahoga to provide certain services to maintain the City's sanitary and storm sewers and catch basins, in accordance with the requirements set forth in Section 171.02(b) of the Cleveland Heights Codified Ordinances. The agreement shall be similar to the one on file with the Clerk of Council. Term of the agreement shall expire on December 31, 2020, and the total amount to be paid by the City shall not exceed the sum of Six Hundred Thousand Dollars (\$600,000). The agreement and any related documents shall be approved as to form and subject to the final approval of the Director of Law.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to proceed with the maintenance of the City's sewer and storm systems as soon as possible. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

RESOLUTION NO. (SMS)

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CAROL ANN ROE, Mayor  
President of Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED:

**2020 AGREEMENT**  
**FOR**  
**SANITARY & STORM SEWER MAINTENANCE WITHIN THE**  
**CITY OF CLEVELAND HEIGHTS, OHIO**

This AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2020 (“Effective Date”), by and between the County of Cuyahoga, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the effective date hereof (hereinafter referred to as “COUNTY”), on behalf of the Cuyahoga County Department of Public Works, and the **City of Cleveland Heights** (hereinafter referred to as “CITY”), a municipal corporation of the State of Ohio, pursuant to the authority of Resolution No. \_\_\_\_\_ passed by City Council on \_\_\_\_\_, 2020.

**WHEREAS**, the entire territory within the limits of CITY is designated as County Sewer District 17; and

**WHEREAS**, CITY is serviced by sanitary and storm sewer systems; and

**WHEREAS**, CITY owns and operates certain sanitary and storm sewers, catch basins, manholes, culverts and storm water detention and retention basins located in the public right-of-way and in or along easements (hereafter referred to as the “City Sewers”) and any future improvements to the City Sewers or newly-constructed City Sewers may similarly be owned by the CITY; and

**WHEREAS**, CITY desires to retain the COUNTY to perform certain services relative to the City Sewers, as determined from time-to-time, to further advance CITY’s sanitary and storm sewer maintenance program as part of County Sewer District No.17; and

**WHEREAS**, CITY desires the COUNTY to direct bill the CITY for performing said services; and

**NOW THEREFORE**, it is agreed that in consideration of the covenants and agreements contained herein and the conditions enumerated below, CITY and COUNTY agree as follows:

**SECTION I. GENERAL CONDITIONS**

- A. This AGREEMENT shall supersede all other agreements heretofore made between the COUNTY and the CITY relative to the maintenance and repair of the City Sewers.
- B. By entering into this AGREEMENT, CITY agrees on behalf of its respective elected officials, officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring COUNTY signatures may be executed by electronic means, and that the electronic signatures affixed by the COUNTY to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. CITY also agrees to be bound by the

provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of the COUNTY.

- C. All COUNTY agreements, including this AGREEMENT, are subject to the Cuyahoga County Code and all applicable laws, resolutions, regulations, rules and policies of the COUNTY, including, but not limited to, Title 4 pertaining to Cuyahoga County Ethics and the Inspector General, and Title 5 pertaining to Cuyahoga County Contracting and Purchasing Procedures. The County Code is available on the County Council's web site at <http://council.cuyahogacounty.us/>. CITY agrees that the charter provisions and all ordinances, resolutions, rules and regulations of the COUNTY now or hereafter applicable shall be included in this AGREEMENT for all purposes.
- D. CITY represents and warrants that it is not subject to an “unresolved” finding for recovery under Ohio Revised Code Section 9.24.
- E. This AGREEMENT has been properly authorized pursuant to the required provisions of any and all charter provisions, ordinances, resolutions and regulations of the COUNTY and the CITY. The individuals signing on behalf of the parties to this AGREEMENT are authorized to execute this AGREEMENT on behalf of the COUNTY and the CITY. CITY recognizes and agrees that no public official or employee of the COUNTY may be deemed to have apparent authority to bind the COUNTY to any contractual obligations not properly authorized pursuant to the COUNTY’S Contracting and Purchasing Procedures.

## **SECTION II. STORM AND SANITARY SEWERS**

- A. Scope of Services:
  - (1) Upon written request from the CITY, the COUNTY agrees to provide the following storm and sanitary sewer system services (“Core Services”) to the CITY:
    - a. Mainline storm and sanitary sewer cleaning and televising; and
    - b. Maintenance and repair of mainline storm and sanitary sewers in the public right-of-way or public easements; and
    - c. Maintenance and repair of storm and sanitary sewer lateral service lines in the public right-of-way and public easements. COUNTY shall not be responsible for cleaning storm and sanitary sewer lateral service lines and lateral connections located on private property; and
    - d. Engineering Services; and
    - e. Pump Station Maintenance; and
    - f. Cleaning, maintenance and repair of catch basins and manholes; and
    - g. Construction Inspection; and
    - h. Emergency services such as sewer backups, breaks and other malfunctions of the City Sewers as described in paragraph 4; and
    - i. Inflow & Infiltration inspection.

The parties agree that the CITY may, by written submission, request additional services from the COUNTY in addition to the Core Services. The CITY agrees to pay the actual cost incurred by the COUNTY in providing such additional services.

- (2) Each request for Core Services from the CITY shall include all existing record plans, a map describing the area where the work is to be performed and a detailed scope of services.
- (3) In response to the CITY's request, the COUNTY will perform a field investigation and prepare a cost estimate for the Core Services described in the detailed scope of services submitted by the CITY. The COUNTY will bill the CITY for the actual number of hours expended for performing a cost estimate for each request. If the COUNTY determines that the request for Core Services necessitates additional work than originally estimated, the COUNTY will contact the CITY for further instruction on how to proceed. The COUNTY shall start performing the Core Services requested by the CITY upon receiving written approval from the CITY.
- (4) In addition to the Core Services, the CITY may request Emergency Services from the COUNTY, including, but not limited to, response to sewer backups, sewer breaks and other malfunctions of the City Sewers. In the event the CITY requires the COUNTY to perform Emergency Services, the CITY shall submit to the COUNTY a description of the scope of services for a specific location. COUNTY will make best efforts to respond within two (2) hours of receipt of a written or verbal request for Emergency Service, except in circumstances of extreme weather or other circumstances beyond its control. In any such circumstances that prevent the response by the COUNTY in this time periods, the COUNTY shall advise the the CITY verbally or in writing immediately and provide an alternative time for response.
- (5) The CITY shall be responsible for acquiring and paying for any and all permits, easements and rights of entry necessary for the construction, operation, maintenance and repair of City Sewers requested by the CITY to be performed by the COUNTY.

B. Term:

- (1) The initial term of this AGREEMENT shall begin on January 1, 2020 and expire on December 31, 2020, unless sooner canceled or terminated as permitted in this AGREEMENT.
- (2) The parties may exercise the option to renew this AGREEMENT for an additional term of twelve (12) calendar months thereafter if both parties so agree in writing.

C. Compensation:

- (1) In consideration for providing the Core Services, including performing preliminary field investigations and cost estimates, the CITY shall pay the COUNTY according to the rate structure set forth in the Hourly Rate Schedule, attached hereto and incorporated in this AGREEMENT as Exhibit A. The CITY agrees that the Hourly Rate Schedule applies only to Core Services performed by the employees of the COUNTY. All other Core Services performed by parties other than employees of the COUNTY will be billed for actual costs incurred.

- (2) In consideration for performing Emergency Services, the CITY shall pay the COUNTY on a time and materials/force account basis. In the event the emergency services are performed by parties other than employees of the Sewer Division, the CITY shall pay for actual costs incurred by the COUNTY.
- (3) The COUNTY shall provide detailed invoices to the CITY after completion of Core Services and emergency services, but no more frequently than monthly. The invoices shall provide a detailed explanation of the work completed, the time for completion, the hourly rate, or if a lump sum is agreed to, the agreed price.
- (4) The total amount to be paid by the CITY to the COUNTY for work performed under this AGREEMENT shall not exceed \$600,000.00 unless the CITY agrees in writing to additional compensation. COUNTY shall not provide any services under this agreement that would cause the contract amount for the year 2020 to exceed the maximum amount stated in this paragraph unless the CITY has agreed in writing to pay the additional compensation.
- (5) The CITY shall pay any invoice within thirty (30) days after receipt unless the CITY advises the COUNTY of any discrepancy in the invoice. Once any claimed discrepancy is resolved, the CITY shall pay within 30 days thereafter. No interest, fees, or charges shall be added to any invoice.

D. Termination and Suspension:

- (1) This AGREEMENT may be terminated by either party to the AGREEMENT upon thirty day (30) written notice. Any notice of termination shall be by certified mail, addressed to the person designated for receipt of notices in this AGREEMENT. Upon termination of the AGREEMENT, the CITY shall pay any and all outstanding expenses relating to the Core Services requested and authorized within thirty (30) days of the receipt of an invoice for such services.
- (2) If the CITY determines that there is any imminent risk to public safety or property, the CITY may suspend the work of the COUNTY immediately upon verbal or written notice and shall provide a written explanation of the suspension and steps needed to resume work.

E. Liability and Insurance

- (1) Each party assumes responsibility for its own acts, omissions, negligence and intentional acts that may cause damage or injury.
- (2) COUNTY shall have self-insurance or an insurance policy sufficient to cover the work of the COUNTY pursuant to this AGREEMENT. The CITY shall be named an additional insured on any policy of insurance and provided a certificate of insurance showing such additional insured status.

F. Independent Contractor

The COUNTY shall be considered an independent contractor, and its employees and the employees of COUNTY shall not be considered employees of the CITY.

G. Notices:

Any notices provided under this AGREEMENT shall be provided to the following, unless a party notifies the other party in writing of a change of contact:

- (1) For the CITY:  
Director of Public Works  
40 Severance Circle  
Cleveland Heights, OH 44120
  
- (2) For the COUNTY:  
Director of Public Works  
Cuyahoga County Department of Public Works  
2079 East 9<sup>th</sup> Street  
Cleveland, Ohio 44115

H. Ownership and Construction of Sewers

- (1) The CITY owns and operates all City Sewers, as defined herein, within its municipal limits.
  
- (2) The CITY shall be responsible for the construction, extension or expansion of the City Sewers.
  
- (3) Before the CITY constructs, extends or expands any City Sewers, the plans shall be reviewed and approved by the CITY's Engineer. COUNTY shall review the plans, if requested by the CITY, per the established rate structure. The parties agree that the design for such work will be in accordance with the Uniform Standards for Sewage Improvements dated December 1998 and the County Rules and Regulations dated October 2010, and as such standards, rules and regulations may be hereafter amended.
  
- (4) Except as otherwise provided herein, any construction, extension or expansion of any sanitary and/or storm sewer main lines, catch basins, catch basin laterals, manholes, culverts and storm water detention and retention basins shall be paid for, permitted, performed, and inspected by the CITY. COUNTY shall inspect new work or construction, if requested by the CITY; COUNTY shall invoice the CITY for the costs of such inspection in accordance with the established rate structure.

**IN WITNESS WHEREOF**, authorized representatives of each party to this AGREEMENT, indicating their party's approval of the terms herein, have signed as of the dates set forth below.

**COUNTY OF CUYAHOGA, OHIO**

By: \_\_\_\_\_  
Armond Budish – County Executive

Date: \_\_\_\_\_

The legal form and correctness of the within instrument is approved.

Gregory G. Huth  
Law Director  
Cuyahoga County

By: \_\_\_\_\_  
Anka M. Davis  
Assistant Law Director

Date: \_\_\_\_\_

**CLEVELAND HEIGHTS, OHIO**

By: \_\_\_\_\_  
Tanisha R. Briley, City Manager

Date: \_\_\_\_\_

The legal form and correctness of the within instrument is approved.

\_\_\_\_\_  
William R. Hanna  
Director of Law  
City of Cleveland Heights

Date: \_\_\_\_\_

Proposed:

RESOLUTION NO. (SMS)

By Council Member

A Resolution authorizing the City Manager to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the 2020 Member Community Infrastructure Grant Program for the Delamere Drive Basement Flooding Relief Project; and declaring an emergency.

WHEREAS, the Northeast Ohio Regional Sewer District (“NEORS”) is interested in assisting member communities with water quality issues associated with sewer infrastructure that adversely impact human health; and

WHEREAS, Ohio law authorizes regional water and sewer districts to enter into grant agreements with political subdivisions for water resource projects; and

WHEREAS, pursuant to Ohio Revised Code Chapter 6119, generally, and Ohio Revised Code Section 6119.06(F), NEORS established a Member Community Infrastructure Program to provide water resource project funding opportunities to member communities or other eligible political subdivisions for sewer infrastructure projects in NEORS’s service area; and

WHEREAS, the Delamere Drive Basement Flooding Relief Project would focus on relieving chronic basement and overland flooding concentrated on Delamere Drive and nearby Nottinghill Lane, Tudor Drive and Woodmere Road; and

WHEREAS, NEORS has determined, and this Council concurs, that the project will address water quality and quantity issues associated with sewer infrastructure that adversely impacts human health and the environment.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The City Manager be, and she is hereby, authorized to enter into an agreement with the Northeast Ohio Regional Sewer District (“NEORS”) to accept funds under the 2020 Member Community Infrastructure Grant Program in the amount of \$1,337,898.00 for the Delamere Drive Basement Flooding Relief Project and any and all related documents or agreements with NEORS for the Delamere Drive Basement Flooding Relief Project. The agreement and any related documents shall be approved as to form and subject to the final approval of the Director of Law.

SECTION 2. The total cost of the project is anticipated not to exceed \$1,337,898.00, and the City further agrees to pay One Hundred Percent (100%) of the cost over and above the maximum amount provided by the Northeast Ohio Regional Sewer District.

RESOLUTION NO. (SMS)

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to timely accept the funds. Wherefore, provided it receives the affirmative vote of five or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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CAROL ANN ROE, Mayor  
President of the Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED:

**MEMBER COMMUNITY INFRASTRUCTURE GRANT PROGRAM AGREEMENT**

**BY AND BETWEEN**

**NORTHEAST OHIO REGIONAL SEWER DISTRICT**

**AND**

**CITY OF CLEVELAND HEIGHTS**

**FOR**

**DELAMERE DRIVE BASEMENT FLOODING RELIEF PROJECT**

**THIS AGREEMENT** (“Agreement”) is entered into as of the 1<sup>st</sup> day of January, 2020 (“Effective Date”), by and between the Northeast Ohio Regional Sewer District (“District”), a regional sewer district organized and existing as a political subdivision under Chapter 6119 of the Ohio Revised Code, pursuant to the authority of Resolution No. 235-19, adopted by the District’s Board of Trustees on September 19, 2019 (Exhibit “A”), and the City of Cleveland Heights (“Member Community”), a municipal corporation of the State of Ohio, acting pursuant to Ordinance No. \_\_\_\_\_, passed on \_\_\_\_\_, 2019 (Exhibit “B”). The District and the Member Community may be collectively referred to herein as “Parties.”

**RECITALS:**

WHEREAS, the District is interested in assisting member communities with water quality and quantity issues associated with sewer infrastructure that adversely impact human health and the environment; and

WHEREAS, Ohio law authorizes regional water and sewer districts to enter into grant agreements with political subdivisions for water resource projects; and

WHEREAS, pursuant to Ohio Revised Code Chapter 6119, generally, and Ohio Revised Code Section 6119.06(F), the District established the Member Community Infrastructure Program (“MCIP”) to provide water resource project funding opportunities to member communities or other eligible political subdivision for sewer infrastructure projects in the District’s service area; and

WHEREAS, the District issued a Request for MCIP Proposals (Exhibit “C”); and

WHEREAS, in response to the District’s Request for MCIP Proposals, the Member Community, a District member community, or other eligible political subdivision

submitted an application for the Delamere Drive Basement Flooding Relief project (the “Project” or “MCIP Project”), attached hereto as Exhibit “D;”

WHEREAS, the District has determined that the MCIP Project will address water quality and quantity issues associated with sewer infrastructure that adversely impacts human health and the environment.

NOW THEREFORE, in consideration of the foregoing, the grant to be made by the District and the mutual promises contained in this Agreement, the parties agree as follows:

**Article 1. The MCIP Project**

- 1.1 The MCIP Project. The Member Community will manage, design, procure and construct the MCIP Project, which generally consists of relieving chronic basement and overland flooding concentrated on Delamere Drive and nearby Nottingham Lane, Tudor Drive and Woodmere Road, and is included in the Tier 1 solutions for the Heights Hilltop Interceptor-LSSSES, as set forth in Exhibit “D.”
- 1.2 Performance Goal and Verification. The performance goal for the MCIP Project is set forth in Exhibit D. At the request of the District, the Member Community will provide data relevant to the project performance verification as set forth in Exhibit C. The Member Community agrees to provide the District with post-construction verification of the performance goal. Failure to do so may impact future grant awards.
- 1.3 Compliance with District’s Code of Regulations. The MCIP Project shall be designed and constructed to ensure compliance with the District’s Code of Regulations. The goal of the MCIP is to reduce water quality and quantity issues that impact human health and the environment associated with combined or separate sanitary and/or storm sewer infrastructure problems.
- 1.4 Permits and Approvals. The Member Community shall obtain and pay the cost of all required federal, state, and local approvals, including permits, necessary to initiate and complete the MCIP Project.
- 1.5 Affected Property Owners. The Member Community shall obtain all easements, rights of entry, and other necessary legal agreements with affected property owners to perform construction and to bind any successor in title to maintain compliance as required in this Agreement. The costs of obtaining such legal agreements are eligible for MCIP fund reimbursement, if they are part of the proposal and approved by the District.

- 1.6 MCIP Project Modifications. The Member Community shall submit requests to modify the budget, deadlines, deliverables, or other components of the Project to the District Representative for approval at least fifteen (15) business days prior to the requested execution timeframe of the modification. Any modification to the MCIP Project must be approved by the District Representative in writing.
  
- 1.7 Photographs of MCIP Project. The District shall have the right to observe, monitor, inspect, and photograph the MCIP Project at any and all stages of design and construction, as well as post-construction.

**Article 2. Design and Construction of the MCIP Project**

- 2.1 District Review of Design Work. The Parties agree that the District shall have the right to review and comment on the final MCIP Project design plans prior to construction. The Member Community shall submit the final MCIP Project design plans to the District Representative as stated in Article 11 below in a timely manner that provides the District with at least fifteen (15) business days to review. Any modification to the MCIP Project must be submitted to the District Representative in writing.
  
- 2.2 MCIP Project Meetings. The District shall have the right to attend all MCIP Project progress meetings and shall receive at least five (5) business days advance notice of all such meetings.
  
- 2.3 Member Community to Bid and Construct MCIP Project. After the District's review of the MCIP Project design in accordance with Article 2.1 above, the Member Community shall bid and complete the construction work pursuant to the final MCIP Project plans and specifications and in accordance with all applicable laws and regulations. The Member Community shall be responsible for construction procurement, supervision, and inspection in accordance with the terms of this Agreement. The Member Community shall provide the District Representative a copy of the awarded bid.
  
- 2.4 Construction Schedule. The District shall have the right to review and provide written comments to the proposed MCIP Project construction schedule, prior to the selected contractor beginning field activities.
  
- 2.5 Pre-Construction and Construction Meetings. The District shall have the right to attend all pre-construction and construction meetings with the MCIP Project contractor. The Member Community shall notify the District Representative, in

writing or via e-mail, of such meetings at least five (5) business days prior to the meeting date.

- 2.6 Daily Construction Supervision. The District is not required to and will not provide any daily construction supervision, or inspection and testing services for the MCIP Project.
- 2.7 As-Built Drawings. At the District's request, the Member Community shall provide the District Representative with "as-built" drawings for the MCIP Project.
- 2.8 Record Drawings. The Member Community shall provide to the District Representative record drawings, approved by the Member Community's Engineer, at the closure of the MCIP Project.
- 2.9 District Request for Construction Progress Meetings. The Member Community agrees to meet with the District to review the MCIP construction project status and progress, as may be requested by the District.
- 2.10 Payment of Prevailing Wage. The Member Community shall be responsible for determining whether the payment of prevailing wages, as set forth in Chapter 4115 of the Ohio Revised Code, are required for labor used in constructing the MCIP Project, and shall ensure compliance with any prevailing wage requirements in such Chapter.

**Article 3. Ownership, Operation, and Maintenance**

- 3.1 Member Community Operation and Maintenance Responsibilities. During construction and after construction, the Member Community shall own, operate, and maintain the MCIP Project. The Member Community shall reimburse the District in an amount equal to one hundred percent (100%) of the District Funds provided by the District under this Agreement if this provision is violated. In the event that the District determines a violation of this section has occurred, the District shall notify the Member Community in writing. The Parties agree to resolve any dispute relating to such alleged violation in accordance with the procedure set forth in Article 9 of this Agreement.
- 3.2 Post-Construction Operation and Maintenance Plan. The Member Community shall provide the District with a letter referencing the post-construction operation and maintenance plan for the MCIP Project. Operation and maintenance plans shall be updated by the Member Community, as may be necessary, and as may be requested by the District.

- 3.3 Maintenance Inspection Records. The Member Community shall maintain a record of the Member Community's maintenance inspections and overall performance of the MCIP Project for at least three (3) years and shall submit a copy to the District upon reasonable request.

**Article 4. Project Costs and Funding**

- 4.1 District Funds. The District agrees to pay the Member Community an amount not to exceed One Million Three Hundred Thirty-Seven Thousand Eight Hundred Ninety-Eight Dollars (\$1,337,898.00) (the "District Funds") on a reimbursement basis, estimated to be paid in 2020, in accordance with the terms of this Article and Article 6. Yearly anticipated reimbursement amounts may only be altered in writing at the discretion of the District's Director of Watershed Programs. The District shall withhold five percent (5%) or \$66,894.90 of the District Funds until the District receives:
- a) final record drawings for the MCIP Project,
  - b) final report of audit prepared in connection with and specific to the Project,
  - c) a letter referencing the post-construction operation and maintenance plan.
- 4.2 Member Community Funds. The Member Community agrees to pay all MCIP Project costs that exceed the amount of the District Funds ("Member Community Funds"). Under no circumstance, shall the District be responsible for payment of any costs that, in aggregate, exceed the amount of the District Funds, including, but not limited to, differing site conditions or other unforeseen situations. Prior to the Member Community issuing a notice-to-proceed for any MCIP Project related work or service, the Member Community shall provide the District a copy of the certification by the Member Community's Finance Director that the Member Community Funds have been lawfully appropriated by the Member Community for the Project. This certification is attached hereto as Exhibit "E."
- 4.3 Use of District Funds - Reimbursement Requests and Quarterly Progress Reports. The District Funds must be used for activities and expenses approved by the District that are related to the MCIP Project accrued on or after January 1, 2020 and in accordance with the project schedule requirements set forth in Article 6. In accordance with the provisions of this Agreement, the District shall reimburse the Member Community for eligible MCIP Project expenses based upon paid invoices, prepared and submitted by the Member Community to the District, in the form prescribed by the District, and including all supporting

documentation as required by this Agreement and the MCIP Policy, Process, and Procedures, attached hereto as Exhibit “F.”

The Member Community will provide a copy of the award bid with the first reimbursement request.

Quarterly progress reports shall be submitted to the District in accordance with the following:

- First Request: Due April 30, 2020 for work completed January 1, 2020– March 31, 2020;
- Second Request: Due July 31, 2020 for work completed April 1, 2020- June 30, 2020;
- Third Request: Due October 31, 2020 for work completed July 1, 2020 – September 30, 2020;
- Fourth Request: Due January 31, 2021 for work completed October 1, 2020 – December 31, 2020;

Failure to submit the quarterly progress report in accordance with these deadlines may result in the revocation of the Agreement by the District.

The Member Community agrees to meet with District staff, as requested, to review MCIP Project progress and to use the reimbursement request and progress report form provided by the District available at: <http://www.neorsd.org/mcip.php>.

- 4.4 Third Party Payments. The Member Community shall bear the risk and remain solely responsible for any payments made by the Member Community to third parties for work not approved for reimbursement by the District.
- 4.5 Records Retention. The Member Community shall keep all records and documents relevant to the MCIP Project, including but not limited to, an accurate, current, and complete accounting of all financial transactions for the MCIP Project. Such records and documents shall be available at reasonable times and places for inspection and copying by the District or any authorized representative thereof and shall be submitted to the District upon request along with any other compliance information which may be reasonably required.
- 4.6 District Funds Not Used. Any District Funds that are not used to complete the MCIP Project shall be retained by the District.

- 4.7 Final Project Costs. If final project costs decrease from the project proposal estimate, then the amount of the District's final contribution shall be adjusted to maintain the same District contribution percentage of the final project cost. (Exhibit C).

**Article 5. Public Participation and Outreach**

- 5.1 Educational Signage and Public Outreach. The Member Community shall coordinate any educational signage and any public outreach with the District. The Member Community shall acknowledge the District on MCIP Project related outreach communications and in public meetings that discuss the MCIP Project.
- 5.2 District Right to Reject. The District reserves the right to reject any signage, related to the MCIP Project.

**Article 6. Project Schedule and Warranty Period.**

- 6.1. Project Schedule. The MCIP Project schedule shall be as set forth in the Project Schedule and Budget Section of Exhibit "D." Any change to the Project schedule must be approved in writing by the District Representative.
- 6.2 MCIP Project Warranty. The Member Community's construction agreement shall require the contractor to provide a minimum of a one (1) year warranty period that commences upon final completion of the MCIP Project construction ("Warranty Period"). Prior to the conclusion of the Warranty Period the Member Community shall perform a CCTV inspection of the installed Project, if applicable, and provide a report to the District.

**Article 7. Term.**

- 7.1 Term. This Agreement shall begin on the date first above written and expire upon successful completion of the obligations contained herein.

**Article 8. Insurance.**

- 8.1 Insurance. The Member Community shall require MCIP Project consultants and contractors to name the Northeast Ohio Regional Sewer District as an Additional Insured for general liability, automobile liability, and property liability insurance coverages.

**Article 9. Dispute Resolution.**

- 9.1 Continuation of Obligations. The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute. The

District reserves the right to deposit District Funds in an escrow account until the dispute is resolved.

9.2 Designated Representatives. The Parties shall first try to resolve the dispute at the level of the designated representatives as follows:

District Representative	Member Community Representative
Director of Watershed Programs	City Engineer

If the Parties are unable to resolve the dispute at that level within ten (10) working days, the Parties shall escalate the dispute to the following level to resolve the dispute:

District Representative	Member Community Representative
District Chief Legal Officer or CLO's designee	Law Director

9.3 Mediation. If the Parties remain unable to resolve the dispute within an additional ten (10) working days, the Parties shall proceed to mediation upon request by either party. The Parties shall mutually select a mediator who is experienced in public utility infrastructure engagements. The mediator shall review all documents and written statements, in order to accurately and effectively resolve the dispute. The mediator shall call a meeting between the Parties within ten (10) working days after the mediator appointment, which meeting shall be attended by at least the respective representatives in Article 9.2 above. The Parties shall attempt in good faith to resolve the dispute. The Parties agree to follow the Uniform Mediation Act, Chapter 2710 of the Ohio Revised Code. The Parties shall share the cost of the mediator equally.

9.4 Mediation Resolution. Such mediation shall be non-binding between the Parties and, to the extent permitted by law, shall be kept confidential. If the dispute is resolved and settled through the mediation process, the decision will be implemented by a written agreement signed by both Parties. If the dispute is unable to be resolved through mediation, the Parties agree to submit the dispute to the appropriate jurisdiction as per Article 10, Remedies, below.

**Article 10. Remedies.**

10.1 Remedies and Ohio Law. The Parties agree that, after exhausting the dispute resolution process outlined above, all claims, counterclaims, disputes and other matters in question between the Parties arising out of or relating to this Agreement, or the breach thereof, will be decided at law. This Agreement shall be governed by and interpreted according to the law of the State of Ohio. A party may file a lawsuit in a court of competent jurisdiction in Cuyahoga County, Ohio.

**Article 11. Notifications.**

11.1 Points of Contact. The Parties hereby designate the following individuals to serve as the primary points of contact under this Agreement:

<b>District Representative</b>	<b>Member Community Representative</b>
Grant Programs Administrator	City Engineer

**Article 12. Release of Liability.**

12.1 Release of All Liability. The Parties understand and agree that the District has no responsibilities or interest in the MCIP Project with respect to ownership, operation and maintenance and is acting solely as a funding source. The Member Community hereby releases the District from all liability related to the grant funding provided by the District hereunder. The Member Community further releases the District from all liability for: (i) the design, construction, implementation, operation, maintenance, and inspection of the Member Community's MCIP Project; (ii) any damages to third parties caused by the design, construction, implementation, operation, maintenance, inspection and every other aspect of the Member Community's MCIP Project; (iii) any defective performance of the Member Community's MCIP Project by the Member Community and/or its agents; and (iv) any damages caused by malfeasance or misfeasance of the grant funds by the Member Community.

**Article 13. Miscellaneous.**

13.1 Limit of Commitment. This grant is made with the understanding that the District has no obligation to provide other or additional support, including maintenance of the Member Community's MCIP Project. This grant does not represent any

commitment to, or expectation of, future support, including maintenance of the Member Community's MCIP project from the District.

- 13.2 Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between the Parties, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.
- 13.3 Authority to Execute. Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing.
- 13.4 Counterpart Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which counterparts when taken together shall constitute one Agreement.
- 13.5 Modification of Agreement. This Agreement may only be modified by written instrument executed by each party.
- 13.6 Merger Clause. This Agreement, along with any exhibits attached hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written.
- 13.7 Binding on Successors. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.
- 13.8 Prohibition on Assignment and Subcontracting. The Member Community may not assign or subcontract its rights or duties under this Agreement, in whole in part, whether by operation of law or otherwise, without the prior consent of the District. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect.
- 13.9 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, such provision shall be stricken from this Agreement and such provision shall not affect the validity of the remainder of this Agreement.
- 13.10 Headings. The headings in this Agreement are included for convenience only and shall neither affect the construction nor the interpretation of any provision in this Agreement.
- 13.11 Relationship of Agreement to Exhibits. The exhibits to this Agreement are attached for reference purposes only. Nothing in this Agreement shall be construed to modify, alter, clarify, or give effect to the terms and conditions of the various exhibits attached to this Agreement.

**Article 14. Exhibits.**

It is mutually understood and agreed that all Exhibits attached hereto are made a part hereof as if fully written herein. In the case of any conflict or variance between the terms of this Agreement and the terms of referenced documents, the terms of this Agreement shall govern.

The following Exhibits attached hereto are hereby incorporated with and made a part of this Agreement:

Exhibit "A" – District Resolution

Exhibit "B" – Member Community's Authorizing Ordinance

Exhibit "C" – Request for MCIP Proposals

Exhibit "D" – Member Community's MCIP Application

Exhibit "E" – Member Community's Certification of Funds

Exhibit "F" – MCIP Policy, Process, and Procedures

<< INTENTIONALLY LEFT BLANK >>

The parties hereto have executed and delivered this Agreement as of the date first above written.

**NORTHEAST OHIO REGIONAL SEWER DISTRICT**

By: \_\_\_\_\_  
Kyle Dreyfuss-Wells  
Chief Executive Officer

and: \_\_\_\_\_  
Darnell Brown, President  
Board of Trustees

**CITY OF CLEVELAND HEIGHTS**

By: \_\_\_\_\_

Title: \_\_\_\_\_

The legal form and correctness of this instrument is approved.

By: \_\_\_\_\_  
Assistant/Director of Law  
City of Cleveland Heights

Date: \_\_\_\_\_, 2019

This Instrument Prepared By:  
Katarina Waag  
Assistant General Counsel  
Northeast Ohio Regional Sewer District

Each party agrees that this Agreement may be executed and distributed for signatures via email, and that the emailed signatures affixed by both parties to this Agreement shall have the same legal effect as if such signatures were in their originally written format.

**[FOR NEORS D USE ONLY]**

**AGREEMENT NO.**

NORTHEAST OHIO REGIONAL SEWER DISTRICT

WITH

CITY OF CLEVELAND HEIGHTS

FOR

2020 MEMBER COMMUNITY INFRASTRUCTURE  
PROGRAM PROJECT:

DELAMERE DRIVE BASEMENT FLOODING RELIEF

\_\_\_\_\_  
Total Approximate Cost:        \$1,337,898.00  
\_\_\_\_\_

The legal form and correctness of the within  
instrument are hereby approved.

\_\_\_\_\_  
CHIEF LEGAL OFFICER

\_\_\_\_\_  
Date

**CERTIFICATION**

It is hereby certified that the amount required  
to meet the contract, agreement, obligation,  
payment or expenditure, for the above, has  
been lawfully appropriated or authorized or  
directed for such purpose and is in the  
Treasury or in process of collection to the  
credit of the fund free from any obligation or  
certification now outstanding.

\_\_\_\_\_  
CHIEF FINANCIAL OFFICER

\_\_\_\_\_  
Date

**[FOR NEORS D USE ONLY]**

**COMMUNITY COST-SHARE AGREEMENT  
BY AND BETWEEN  
THE NORTHEAST OHIO REGIONAL SEWER DISTRICT  
AND  
CITY OF CLEVELAND HEIGHTS**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Northeast Ohio Regional Sewer District (District) acting pursuant to Resolution No. 114-13, adopted by the Board of Trustees of the District on May 16, 2013 (Exhibit “A”), and City of Cleveland Heights (City) acting pursuant to Ordinance/Resolution No. \_\_\_\_\_, adopted on \_\_\_\_\_, 20\_\_\_\_ (Exhibit “B”).

**Recitals**

WHEREAS, the District, as a component of implementing a regional stormwater management program, manages a financial account termed the “*Community Cost-Share Account*” that is for the aggregation and dissemination of funds derived from revenues collected from the Stormwater Fee; and

WHEREAS, the purpose of the Community Cost-Share Account is to provide funding to assist the City with District-approved projects through the Community Cost-Share Program; and

WHEREAS, the Community Cost-Share Program funds are used for construction, operation, and maintenance of the Local Stormwater System or Regional Stormwater System, including administrative costs directly associated with such projects as well as costs related to repair or upgrade; and

WHEREAS, the District supports the Community Cost-Share Delamere Drive Basement Flooding Relief project (the “Project”) as a Community Cost-Share project proposed by the City; and

NOW THEREFORE, in consideration of the foregoing, the payment and the mutual promises contained in this Agreement, the parties agree as follows:

**Article 1.0    City Obligations**

- 1.1    The City agrees to perform as follows:
  - 1.1.1    Complete work as detailed in the District approved Community Cost-Share application. (Exhibit “C”)
  - 1.1.2    Complete and submit Progress Reports when submitting Request for Payment as needed, or within 30 days of close of the Project, per Section 5.0 of the *Community Cost-Share Program Policy*.

- 1.1.3 Notify the City's Watershed Team Leader at least 7 business days prior to the start of the Project.
  - 1.1.4 Meet with District staff when requested to review the Project status.
  - 1.1.5 Obtain all necessary legal agreements with affected property owners to perform the Project and to bind any successor in title to maintain compliance as specified in this Agreement between the District and City for the Project.
  - 1.1.6 Comply with all applicable local, state and federal requirements. This may include, but is not limited to, U.S. Army Corp of Engineers Section 404, Ohio EPA Section 401 water quality certification, and Ohio Department of Natural Resources Dam Safety Laws.
  - 1.1.7 If the City fails to maintain the Project in accordance with this Agreement, the City shall be liable for the full amount of any Community Cost-Share Program funds paid for the Project. Such amount shall be offset against the City Community Cost-Share Account.
  - 1.1.8 Submit requests for approval to modify the budget, deadline, deliverables, or other components of the Project to the City's Watershed Team Leader at least 30 business days prior to the desired date of execution of the modification.
  - 1.1.9 Acknowledge the District on any public advertisement or outreach efforts including all publications and signage related to the Project which shall include the following disclaimer:

*This project was funded in part or totally through the Northeast Ohio Regional Sewer District (NEORS) Community Cost-Share Program in coordination with City, under the provisions of the NEORS Regional Stormwater Management Program. The contents and views, including any opinions, findings, or conclusions or recommendations, contained in this publication are those of the authors and have not been subject to NEORS review and may not necessarily reflect the views of NEORS, and no official endorsement should be inferred.*
  - 1.1.10 Provide the District the opportunity to have design approval for any signage or public education and outreach efforts related to the Project.
  - 1.1.11 Permit the District to photograph the Project and to incorporate the Project into the District's overall public education and outreach efforts for stormwater management.
- 1.2 Failure to meet any of the requirements listed in Article 1.1 may result in termination of this Agreement and reimbursement of disbursed funds to the District.

**Article 2.0**    **District’s Obligations**

- 2.1    The District agrees to perform as follows:
  - 2.1.1    Allocate \$393,544.00 to the City for the Project from the City’s Community Cost-Share Account.
  - 2.1.2    Provide reimbursement of funds up to \$393,544.00 to the City within 60 days of receipt of a complete Request for Payment from the City, detailing costs related to the Project.
  - 2.1.3    Timely review and approval or disapproval of requests to modify the budget, deadline, deliverables, or other components of the Project.
  - 2.1.4    Acknowledge the City in presentations or publications related to the Project.

**Article 3.0**    **Dispute Resolution**

- 3.1    The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute.
- 3.2    The Parties shall first try to resolve the dispute at the level of the designated representatives as follows:

<b>District Representative</b>	<b>City Representative</b>
Senior Watershed Team Leader	Director of Public Works

If the Parties are unable to resolve the dispute at that level within ten (10) working days, the Parties shall escalate the dispute to the following level to resolve the dispute:

<b>District Representative</b>	<b>City Representative</b>
Director of Watershed Programs	City Manager

- 3.3    If the Parties remain unable to resolve the dispute within an additional ten (10) working days, the Parties shall proceed to mediation upon request by either party. The mediator shall review all documents and written statements, in order to accurately and effectively resolve the dispute. The mediator shall call a meeting between the Parties within ten (10) working days after mediator appointment, which meeting shall be attended by at least the respective representatives listed in paragraph 3.02 above. The Parties shall attempt in good faith to resolve the dispute. The Parties agree to follow the Uniform Mediation Act, Chapter 2710 of the Ohio Revised Code. The Parties shall share the cost of the mediator

equally.

- 3.4 Such mediation shall be non-binding between the Parties and, to the extent permitted by law, shall be kept confidential. If the dispute is resolved and settled through the mediation process, the decision will be implemented by a written agreement signed by both Parties. If the dispute is unable to be resolved through mediation, the Parties agree to submit the dispute to the appropriate jurisdiction as per Article 4, Remedies, below.

**Article 4**      **Remedies**

- 4.1 The Parties agree that, after exhausting the dispute resolution process outlined above, all claims, counter-claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement, or the breach thereof, will be decided at law. This Agreement shall be governed by and interpreted according to the laws of the State of Ohio.

**Article 5**      **Counterpart Signatures**

- 5.1 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which counterparts when taken together shall constitute one Agreement.

**Article 6**      **Governing Law**

- 6.1 The terms and provisions of this Agreement shall be construed under and governed by the laws of Ohio (to which all Parties hereto consent to venue and jurisdiction).

**Article 7**      **Disclaimer of Joint Venture**

- 7.1 This Agreement is not intended to create a joint venture, partnership or agency relationship between the Parties, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

**Article 8**      **Authority to Execute**

- 8.1 Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing.

**Article 9**      **Exhibits**

The following exhibits are attached hereto and incorporated herein:

- Exhibit “A” – District Resolution
- Exhibit “B” – City Ordinance/Resolution
- Exhibit “C” – District-Approved Community Cost Share Application

The parties have executed this Agreement on the day and year first above written.

**NORTHEAST OHIO REGIONAL SEWER DISTRICT**

BY: \_\_\_\_\_  
Kyle Dreyfuss-Wells  
Chief Executive Officer

AND

BY: \_\_\_\_\_  
Darnell Brown, President  
Board of Trustees

**CITY OF CLEVELAND HEIGHTS**

By: \_\_\_\_\_

Title: \_\_\_\_\_

The Legal Form and Correctness of this Instrument is hereby Approved:

**CITY OF CLEVELAND HEIGHTS**

\_\_\_\_\_  
Assistant/Director of Law

This Instrument Prepared By:  
Katarina K. Waag  
Assistant General Counsel  
Northeast Ohio Regional Sewer District

Each party agrees that this Agreement may be executed and distributed for signatures via email, and that the emailed signatures affixed by both parties to this Agreement shall have the same legal effect as if such signatures were in their originally written format.

**[FOR NEORS D USE]**

**CONTRACT NO.**

NORTHEAST OHIO REGIONAL SEWER  
DISTRICT

WITH

CITY OF CLEVELAND HEIGHTS

FOR

COMMUNITY COST-SHARE PROJECT:  
DELAMERE DRIVE BASEMENT FLOODING  
RELIEF

---

Total Approximate Cost:           \$393,544.00

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The legal form and correctness of the within  
instrument are hereby approved.

---

CHIEF LEGAL OFFICER

---

Date

**CERTIFICATION**

It is hereby certified that the amount required to  
meet the contract, agreement, obligation, payment  
or expenditure, for the above, has been lawfully  
appropriated or authorized or directed for such  
purpose and is in the Treasury or in process of  
collection to the credit of the fund free from any  
obligation or certification now outstanding.

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CHIEF FINANCIAL OFFICER

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Date