

333 James E. Bohanan Drive • Vandalia, OH 45377 • (937) 898-5891

April 2, 2021

Honorable Mayor & Esteemed City Councilmembers:

Thank you for another great week in service to our community. This week, while managing the day-to-day, I reflected on *goal horizons*. Everyday we need to carve out time to think about the *big picture* impact of our actions on the future of the community.

We have opportunities on the horizon. There are challenges. There are competing points-of-view and valid truths on all sides. Let's embrace the complexity, try to listen twice as much as we speak, and honor the Vandalia community by building on the successes of the leaders that came before us.

Please consider reviewing the updates below and the enclosed attachments.

- 1. Income Tax Assistance Extended Hours: Tax office staff will be available to assist taxpayers in the preparation of Vandalia city income tax returns during extended hours in April. The Income Tax Division will be open Saturday, April 3 from 8:00 am noon; Saturday, April 10, from 8:00 am noon; Tuesday, April 13 from 7:30 am 6:00 pm; Wednesday, April 14 from 7:30 am 6:00 pm; and Thursday, April 15 from 7:30 am 6:00 pm. The deadline for filing for Tax Year 2020 is Monday, May 17, 2021.
- 2. 2021 Oakwood Water & Sewer Rate Survey: Each year the City of Oakwood collects and compiles water and sanitary sewer rate information from jurisdictions in Southwest Ohio and presents the results in the form of comparative bar charts (report enclosed). Water and sewer rates are established to address the costs of providing the utility service. The rates are a function of annual operating expenses and capital expenses, which can vary dramatically depending on the scope and timing of major capital investments. To standardize the report, rates are based on 22,500 gallons or 3,000 cubic feet of water in a three-month period. Rates were quoted as having been in effect on March 1, 2021. Of 63 jurisdictions, Vandalia has the 5th lowest combined water and sewer rates at \$189.93 per month, while the mean rate is \$301.60 per month. Vandalia sewer rates are the 2nd lowest among all respondents at \$77.73 per month compared to the mean rate of \$158.52 per month. Finance Director Leiter has previously reported declining fund balances in the sewer fund a point of concern that will need to be addressed to ensure the enduring sustainability of the City utility.

- 3. Compensation and Benefits Study: The City received four responses to the RFP/RFO. ACM Holloway, Finance Director Leiter, and Human Resources Manager Dewberry, and I are in the process of evaluating the submissions. I am continuing to update job descriptions and organizational charts for each department. In order to ensure that this study is productive and it is maintained, I plan to propose an updated personnel and staffing policy to City Council. I anticipate that I will present an introductory recommendation for launching the study and personnel policy at the Council Study Session on April 19th.
- 4. General Manager Recruitment for Tri-Cities North Region Wastewater Authority (TCA): The first round of interviews for the TCA General Manager position have been completed. The pool has been narrowed to two finalists who will be interviewed next week. The new TCA manager is scheduled to start on May 2, 2021. The position will be vacated when Mr. David Heckler retires later this Spring.
- face-to-face at the Municipal Building with Montgomery County Administrator Michael Colbert and Assistant County Administrator Chris Williams. We discussed many topics relating to economic development, the Vision Vandalia Comprehensive Plan, and planned actions by Montgomery County. I really appreciated Administrator Colbert's willingness to take time and discuss Vandalia's interests in stemming issues relating to commercial truck traffic through town. This week, ACM Holloway, Law Director McDonald, and I interviewed possible consultants who may be able to help us approach administrative and legislative solutions to our growing capital, congestion, and safety problems relating to truck traffic. In the coming months, I may propose that the City seek resolutions of support for several proposed remedies from the legislative bodies of neighboring jurisdictions. Next week, I am meeting with State Representative Phil Plummer for the purpose of building a relationship as a new resident and also to continue to work toward common sense solutions to not so common problems.
- 6. Centralized Tax Collection: Franklin County Court of Common Pleas Judge Karen Phillips has ordered the State of Ohio to refund to municipalities, with interest, the 0.5% administration fee for centralized collection of municipal net profit filings. Finance Director Leiter estimates that the refund received by the City will total \$1,500. The judgement entry ordering the State of Ohio to refund to the plaintiff municipalities, with interest, all funds retained by the State from the plaintiffs' municipal net profit taxes under R.C. 718.85(B) is enclosed.
- 7. VRC @ 20: April 8, 2021 is the 20th anniversary of the opening of the Vandalia Recreation Center. There are several offerings throughout the day. Please see the enclosed poster.

- 8. Website Upgrade & Brand Launch Alignment: After thoughtful consideration, our team has decided to delay the launch of the new website so that it can be unveiled simultaneously with the updated branding platform. This week, our committee held a very productive meeting as we continue to narrow our design guide in an effort to honor our collective culture while looking to the future. I will keep you updated as we reach significant milestones in the project.
- 9. Incode Financial Management Software Migration: Our talented Finance Department is working with Tyler Technologies to launch the Incode financial management software on April 5, 2021. I continue to be impressed by our dedicated Finance Department whose employees are juggling software implementation while enduring two simultaneous audits during tax season.
- **10. National Child Abuse Prevention Month:** April is National Child Abuse Prevention Month. The Vandalia Police Division is partnering with Care House to place a *Pinwheels for Prevention* garden in the front lawn of the Justice Center to raise awareness of child abuse.

April 5, 2021 Study Session Items

1. Resolution 21-R-21 - Motorola Agreement and Repeal 21-R-15: This item is largely a matter of housekeeping. At the March 15 Council Meeting, Council approved Resolution 21-R-15 titled A Resolution Authorizing the Purchase for Three Motorola Radio Consoles, Requested by The Division of Police, to Motorola in the Amount Of \$27,945. This resolution authorized the purchase of three Motorola Radio "consoles" as part of an upgrade to the existing system; however, the purchase was actually for hardware and software "services" for three Motorola Radio consoles as part of an upgrade to the existing system. Therefore, Resolution 21-R-21 repeals 21-R-15 and approves the purchase of said upgrade "services."

April 19, 2021 Items

1. Resolution - Agenda Management Software Upgrade: Since 2013, the City of Vandalia has utilized Granicus as the primary method to process and disseminate paperless agendas and The Blue Letter. The pre-meeting packet assembly process is woefully outdated and inefficient. I am recommending a upgrade software upgrade to streamline cross-departmental workflows, boos post-meeting productivity, and incorporate an indexed video feature. Granicus provides excellent customer service and I anticipate quick implementation of the software platform. As such, I am requesting Council approve a three-year agreement as well as a one-time cost for a hardware and software upgrade. I am pleased to announce that Deputy Clerk of Council Pruszynski aggressively negotiated with Granicus to reduce the price of the upgrade. The new subscription fee is

\$11,480.00 for the first year and a one-time fee of \$6,750.00 for various hardware and online trainings. The 2021 Budget includes \$6,600.53 for the current subscription, and therefore exceeds the appropriated amount by \$11,629.47. I respectfully request Council approve a supplemental appropriation to cover the \$11,629.47 for the upgrade (e.g., hardware, software, and online training). The City's guaranteed pricing for year two is \$12,283.60 and year three pricing is guaranteed at \$13,143.45.

- 2. Resolution Public Works Utility Van: The Public Works Department seeks to replace the 2009 Utility Van, which is used for our water operations. The current Van has over 108,000 miles on it and is used every work day. The 2009 Utility Van will be replaced with a new 2021 Utility Cargo Van from Beau Townsend Ford. Quotes were obtained from the State of Ohio Cooperative Bidding contracts as well as the Sourcewell Cooperative bidding program. Beau Townsend Ford submitted the lowest and best bid totaling \$41,895.
- 3. Resolution Firewall Upgrade: The IT Department is recommending the approval of the 2021 Firewall Upgrade Project, which calls for the upgrade of the City's firewall devices and related monitoring equipment and software. An upgrade is being recommending in order to replace aging equipment, to increase capabilities, and to support changes being implemented by the IT Department that will increase security and account for future network growth. Due to the complexity of the devices and the familiarity with the current manufacturer, the IT Department is recommending that City Council waive formal bidding and purchase an upgraded model from the same manufacturer. The purchase of the firewall equipment and supporting software and hardware will be sourced from a total of four vendors: Cadre, SHI, Discount Low Voltage, and Amazon. The total cost of the project will not exceed \$36,949.16. Cadre will be handing the installation and migration of the firewall and the IT Department will be handing the installation of all supporting hardware and software.
- 4. Resolution Police Riot Gear Purchase: The Police Division's current riot gear, including helmets, shields and gas masks, is in poor condition due to being over 20 years old. The VPD has a limited quantity of gear and is not sufficient for all sworn personnel in the event of a large-scale protest or riot. Based on incidents that occurred over the past year where VPD officers assisted other communities with disturbances and riots, it is important to have adequate safety gear and equipment to protect officers who may respond to these types of situations. The VPD posted a bid for police riot gear in the Daily Court Recorder and on the City website as well as mailed bid packets to five different vendors who specialize in police gear. VPD received bids from two vendors, Pro Tech and Kiesler Police Supply, which included the required documents. Pro Tech offers all the equipment included in the bid specification for a total purchase price of \$26,438.00, which is below the capital budget amount of \$28,300.00. Kiesler Police Supply's bid was

- incomplete because it did not include all the equipment specified in the bid packet. Council will be asked to authorize and approve the purchase of police riot gear from Pro Tech for the total purchase price of \$26,438.00.
- 5. Resolution Police Cruiser Bids: The Vandalia Police Division posted bids in the Daily Court Reporter and on the City website for three new patrol utility vehicles to replace marked patrol vehicles in the fleet. VPD also delivered and/or mailed bid packets to 14 auto vendors who sell police vehicles. VPD received bids from two vendors, Whiteside Chevy of St. Clairsville, Ohio, and Beau Townsend Ford. Whiteside offered the 2021 Chevy Tahoe 4WD with the police package for a unit price of \$44,402.00 per vehicle for a total purchase price of \$133,206.00 for three vehicles. Beau Townsend Ford offered the 2021 Ford Police Interceptor Utility AWD patrol vehicle as a unit price of \$39,949.00 per vehicle for a total purchase price of \$119,847.00. The state bid price for the Ford Police Interceptor Utility AWD patrol vehicle is \$32,089.00 per vehicle. However, after adding the options in the bid specifications and paint to match the current fleet, the state bid price is \$44,029.00. Council approved \$129,000.00 for this 2021 capital purchase. VPD's current fleet consists of Ford Police Interceptor Utility vehicles and certain vehicle equipment is transferable from the older patrol vehicles into the new patrol vehicles based on model design. Council will be asked to authorize and approve the purchase of three 2021 Ford Police Interceptor Utility AWD patrol vehicles from Beau Townsend Ford for the unit price of \$39,949.00 per vehicle for a total purchase price of \$119,847.00.
- 6. Resolution Replat of 110 Imperial Court: VSF Investments 4 LTD, is requesting the replat of 0.4122 acres of land at 110 Imperial Court. The requested replat would result in the vacating a shared property line and an existing 10-foot wide utility easement. The existing apartment building at 110 Imperial Court overlies over both the shared property line and the 10-foot wide utility easement. There are no current or planned utilities within the existing utility easement. Planning Commission voted 5-0 to recommend approval.
- 7. Resolution Vandalia Development Corp. Donation: This resolution authorizes a donation of \$75,000 to the Vandalia Development Corp. \$75,000 is the remainder of the 2020 budgeted amount of \$100,000.
- **8. Executive Session** The purpose is to discuss negotiations with International Association of Firefighters (IAFF) as it relates to City of Vandalia full-time Firefighter-Paramedics.

April 5, 2021 Council Meeting

1. Resolution 21-R-17 Spring Surplus: Department Directors have compiled a list of items that staff would like Council to declare as surplus and grant authorization to dispose of those items. The surplus items would be placed on GovDeals or otherwise disposed of by the City Manager as provided by law.

- 2. Resolution 21-R-18 Montgomery County Special Projects Grant: ACM Holloway submitted an "Intent to Apply" with Montgomery County Culture Works for a special project grant to partially fund a public mural. This grant is available to various arts, cultural, or nonprofit agencies, including government agencies, within Montgomery County. The City's "Intent to Apply" is currently under review. The grant is offered to local government organizations with a 50% match of funds. The City intends to request \$5,000 from Montgomery County Arts & Cultural District (MCACD) for a \$10,000 mural project. With Council's support, the \$5,000 match could be allocated from the Cultural Arts fund in the current 2021 Budget. The plan for the mural project is to organize the painting of a mural in or near the center of the City. The exact location of the mural is yet to be determined, but location will be selected to have maximum visual impact from both pedestrians and those driving by. The City plans to engage a local artist to design and paint this mural. It is my hope to engage the community in this process by having a community paint day. This community day will allow members of the Vandalia community to join in the painting of the mural, which will inspire community pride in the project. The deadline to apply for this grant is April 23, 2021. Should the City elect to apply for this funding and if selected, this project would likely take place between July and October of this year.
- 3. Resolution 21-R-19 Parks and Recreation Fuel Tanks Replacement Project: The two fuel tanks at the Facilities Maintenance Garage must be replaced. The tanks are original to the construction of the Sports Complex and Facility Maintenance Garage and are over 30 years old. The expected life for the design of the current tanks when stored outdoors is 15 - 20 years. The outer steel layer has ruptured in several places on the tanks and has deteriorated over time. Staff has sealed the ruptured areas with fiberglass material over the years as well as painted the tanks several times as was a permissible and acceptable form of normal maintenance. While the maintenance extended the useful life of the tanks, the outer shell has continued to deteriorate and could be a safety concern for the public. The new replacement tanks are a double wall steel design and has a 30-year limited warranty. Bids were advertised on February 12, 2021 and February 19, 2021. Two proposals were received. The lowest and best bid was from Reliable Construction Services in the amount of \$33,492.73. The proposed cost is \$8,492.72 above the budgeted amount. To meet safety requirements and to offset the unanticipated overage, Parks & Recreation Director Clark has directed our maintenance staff to install the required bollards in-house. This will result in a cost savings of \$4,193.75. To offset the remaining overrun of \$4,298.97, the Public Works Department has agreed to complete a portion of the paving maintenance work at the Sports Complex, which will be paid out of the same capital line item. The final project cost will be \$29,298.97. This strategy requires no additional appropriations and will allow the Parks and Recreation Department to complete all necessary work on the asphalt maintenance plan for 2021.

- 4. Resolution 21-R-20 Agreement with Harris Sod and Seed: With the closing of BR Mulch at the end of March, the City has negotiated an agreement with Harris Sod and Seed for the disposal of brush and yard waste debris for the City and our Residents. The City will use the facility as a disposal site for leaf collection each fall.
- 5. Resolution 21-R-21 Motorola Agreement and Repeal 21-R-15: At the March 15 Council Meeting, Council approved Resolution 21-R-15 titled A Resolution Authorizing The Purchase For Three Motorola Radio Consoles, Requested By The Division Of Police, To Motorola In The Amount Of \$27,945. This resolution authorized the purchase of three Motorola Radio "consoles" as part of an upgrade to the existing system; however, the purchase was actually for hardware and software "services" for three Motorola Radio consoles as part of an upgrade to the existing system. Therefore, Resolution 21-R-21 repeals 21-R-15 and approves the purchase of said upgrade "services".
- 6. Resolution 21-R-22 International Association of Firefighters Successor Collective Bargaining Agreement: Legislation authorizing the City Manager to enter into a successor collective bargaining agreement with the Vandalia Professional Firefighters Association, Local 3519 IAFF

Emergency Ordinance

Emergency Ordinance 21-07 - Supplemental Appropriations: Finance Director Leiter is requesting the approval of the following supplemental appropriation Ordinance for a net overall increase in the General Fund in the amount of \$48,100, and an increase in the Crisis Intervention Training Fund in the amount of \$90,000. This supplemental is for the following reasons:

A. General Fund:

- \$30,000: Increase of 2021 budget appropriations to account for rental storage expenses for the Fire Division. The City entered into a lease agreement for space to store various property and equipment. The lease includes a term of 24 months and commenced January 1, 2021 at a rate of \$2,300/month. The rental amount was not included in the 2021 budget and therefore an increase in appropriations to account for the lease payments is necessary.
- \$18,100: Increase of 2021 budget appropriations to account for an unexpected expense regarding an invoice dated April 20, 2019 received by the Police Division from a vendor in late December 2020.

B. Crisis Intervention Training Fund:

\$90,000 - Increase of 2021 budget appropriations to account for expenses related to the agreement with the County for assistance with cases involving addiction, mental health, etc. The City previously entered into a memorandum of understanding with the Montgomery County Alcohol, Drug Addiction and Mental Health Services Board for a period of 12 months in 2020, and again in 2021. The agreement provides for assistance to the City's Police Officers related to police calls involving mental health situations. The City invoices and receives funds from the County, and subsequently reimburses South Community for the same amount. Due to COVID-19, timing of the receipts of the invoices, and funds received from the County to reimburse South Community, the appropriations must be increased for years 2020 (\$45,000) and 2021 (\$45,000).

Reports from Boards and Commissions

- 1. Variance for Drive-Landscaping at 6425 Miller Lane: The purpose of this variance request is to allow for a 10-foot-wide screening between Culver's and New Life Worship Center, where a 30-foot-wide screening is required. If a fence or mound was proposed between the two properties, then only a 15-foot-wide screening would be required. Culver's has provided a landscape plan that, in their opinion, would enhance the existing landscaping and screening between the two properties. Also, Culver's has suggested their landscaping plan would be more visually appealing than a fence. The Board of Zoning Appeals reviewed this request at its March 10, 2021 meeting and voted 5-0 to recommend approval with two conditions.
- 2. Variance for Drive-Through at 6425 Miller Lane: The purpose of this variance request is to allow for a drive-through facility to be located in the front yard, where drive-through facilities are only permitted in the side or rear yard. This request is part of a proposal to demolish the existing building that formerly occupied Ruby Tuesday and construct a new Culver's restaurant with a drive-through facility. Culver's has provided a landscape plan that, in their opinion, would minimize the visibility of the drive-through facility from the public rights-of-way. The Board of Zoning Appeals reviewed this request at its March 10, 2021 meeting and voted 5-0 to recommend approval with a condition.
- 3. Variance for Detached Garage at 4511 Poplar Creek Road: The purpose of this variance request is to allow for a 480 (16′ x 30′) square foot addition to an existing detached garage in the front yard, where detached garages must be located in the side or rear yard. The existing detached garage is 1200 (40′ x 30′) square feet and was approved of a variance in 2006. The detached garage is located approximately 10-feet from the front property line adjacent to S Brown School Road and the requested addition would reduce the setback to approximately 4-feet. The property has several topography challenges which limits the location an accessory structure could be constructed. The Board of Zoning

Appeals reviewed this request at its March 10, 2021 meeting and voted 4-0 to recommend approval.

The April 5 Study Session and City Council Meeting will be a hybrid (in-person & remote) meeting in Council Chambers. The meeting is open to Council, staff, and the public to attend in-person. The City will meet all department of health directives relating to COVID-19. The study session will begin at 6:00 pm followed by the City Council Meeting at 7:00 pm.

Again, it is a privilege to toggle the day-to-day and long-term goals of the City. Please contact me directly with comments and questions. Have a blessed Easter weekend.

Very Respectfully,

Dan Wendt City Manager

Attachments:

- 1. 2021 Oakwood Water and Sewer Rate Study April 2021;
- 2. Judgement entry ordering the State of Ohio to refund to the plaintiff municipalities, with interest, all funds retained by the State from the plaintiffs' municipal net profit taxes under R.C. 718.85(B) March 25, 2021; and
- 3. VRC @ 20 Celebration Poster.

CC:

Board and Commission Members All City Employees

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2021 WATER & SEWER RATE SURVEY

PREPARED BY THE CITY OF OAKWOOD

April 2021

Each year the city of Oakwood collects and compiles water and sanitary sewer rate information from jurisdictions in Southwest Ohio and presents the results in the form of comparative bar charts. Reporting governmental entities use this rate analysis in various ways. Water and sewer rates are established to address the costs of providing the utility service. The rates are a function of annual operating expenses and capital expenses. Rates can vary dramatically depending on the scope and timing of major capital investments.

Each participating jurisdiction is asked to calculate their effective water and sewer cost using a base consumption of 22,500 gallons (or 3,000 cubic feet) over a three month period of time. Since reporting entities may bill on a monthly, bi-monthly or quarterly basis and have minimum consumption fees, multipliers, surcharges, etc., calculations must be done carefully to obtain an accurate presentation of the data. The city uses a calculation worksheet to assist participants in determining their quarterly cost and to ensure data accuracy.

Oakwood staff carefully reviews all responses and contacts jurisdictions to double-check calculations in cases where figures appear to be incorrect or noticeably out of line with prior year numbers.

The methodology used in completing the survey is as follows:

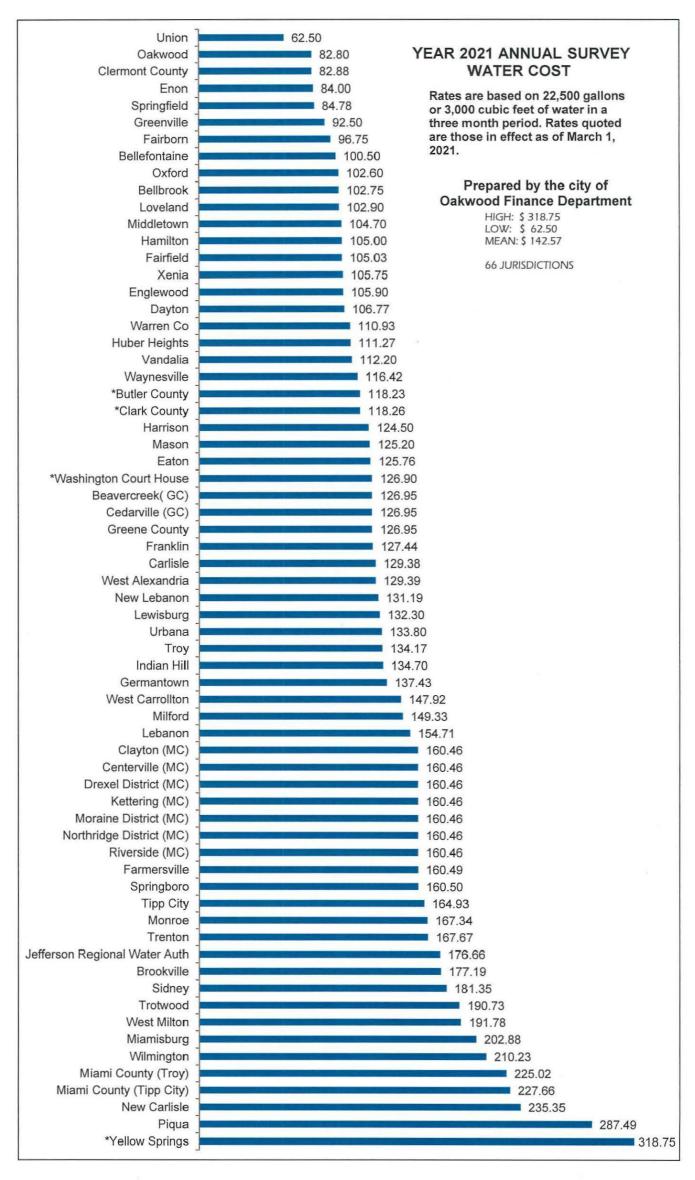
- 1) A survey form is e-mailed to each participating entity in early February.
- 2) Data forms are collected until late February and entered into a tally sheet.
- 3) Second request letters are sent in late February to entities that have not responded.
- 4) The tally sheet is completed once all responses are received.
- 5) The data for each entity is compared to the previous year. Any entity that reports a decrease in rates or an increase in excess of 10% is contacted for verification and recalculation, if necessary. Entities providing water and/or sewer service to multiple jurisdictions, such as the city of Dayton, Montgomery County and Greene County are contacted to verify the correct rate for the various jurisdictions being served.
- 6) The corrected survey information is compiled into bar charts.
- 7) Each responding entity and other interested parties are sent a summary of the survey results.
- 8) Non-responding entities are identified by an asterisk on the survey. Rates for these entities have been calculated by the City of Oakwood using publicly-available data only.

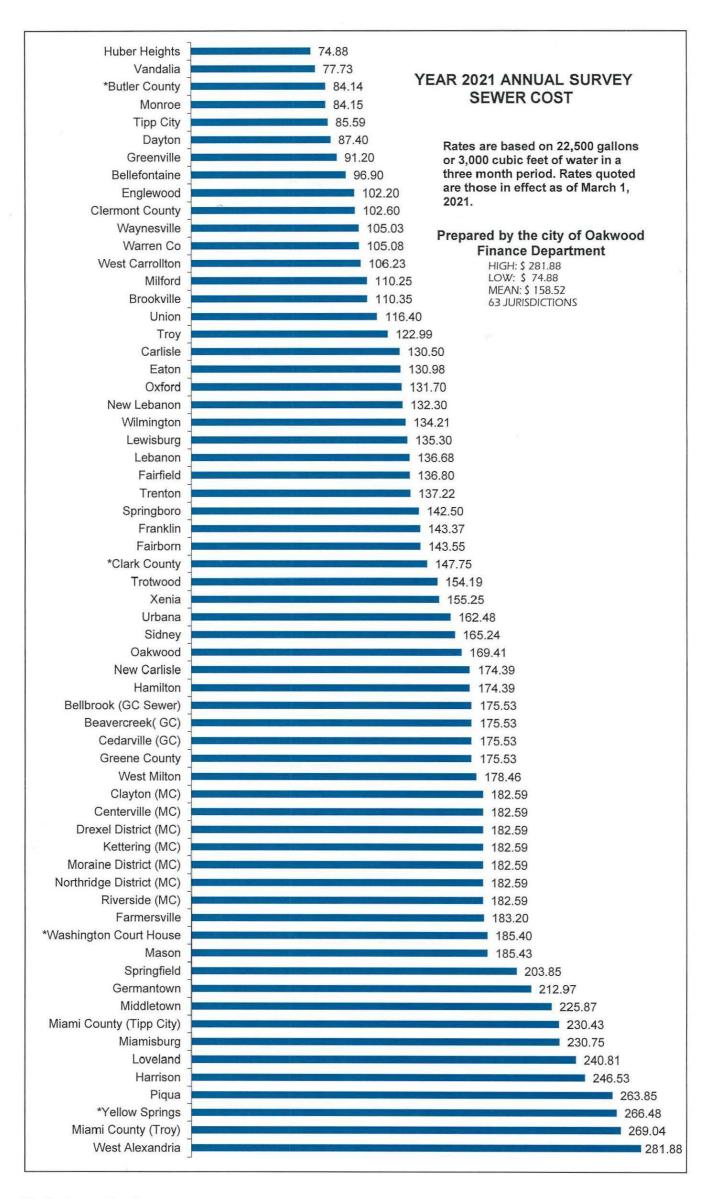
The 2021 survey reflects a collective rate increase compared to 2020, as follows:

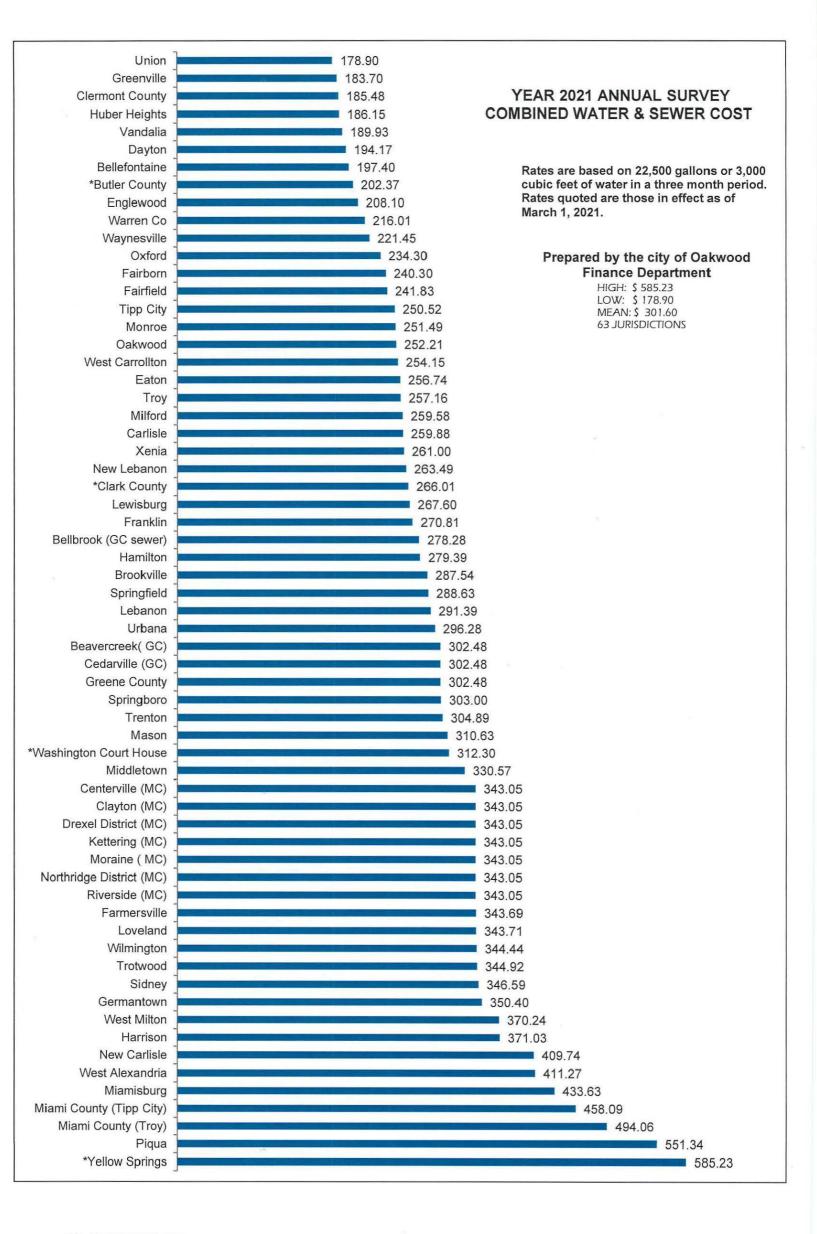
Water: 2.6% Sewer: 1.5%

Combined: 2.0%

Questions regarding the survey should be addressed to Theresa L. Rushlow, Utility Clerk, city of Oakwood, at (937) 298-0400.







IN THE COURT OF COMMON PLEAS FRANKLIN COUNTY, OHIO

CITY OF ATHENS, et al.,

Case Number: 17 CVH 11-10258

Plaintiffs,

v.

Judge Karen Phipps

STATE OF OHIO, et al.,

Defendants.

JUDGMENT ENTRY ORDERING THE STATE OF OHIO TO REFUND TO THE PLAINTIFF MUNICIPALITIES, WITH INTEREST, ALL FUNDS RETAINED BY THE STATE FROM THE PLAINTIFFS' MUNICIPAL NET PROFIT TAXES UNDER R.C. 718.85(B)

"In the unlikely event it is eventually determined that H.B. 49 violates the Home Rule Amendment, the [Ohio Department of Taxation] could simply remit the revenue collected back to Plaintiffs and repeal the regulations, thereby making the Plaintiffs whole and returning them to the current, defective system. In sum, because monetary restitution is possible, and there is an adequate remedy at law, injunctive relief is inappropriate." (State's Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction, February 2, 2018, p. 26).

Thus, the State of Ohio Defendants (hereinafter "the State") previously recognized that if the tax statutory scheme at issue here was found unconstitutional, then Plaintiffs' available remedy would be "monetary restitution," where the State would "remit the revenue collected back to Plaintiffs," "thereby making the Plaintiffs whole." Yet, the State now objects to granting this very relief requested by Plaintiffs¹.

As the parties are well aware, Plaintiffs were not successful in their quest seeking to invalidate in their entirety the Municipal Income Tax Provisions set forth in H.B. 49 and codified within R.C. Chapter 718, but they ultimately prevailed in one aspect. The Ohio Supreme Court declared R.C. 718.85(B) and its retention by the State of 0.5% of the municipal net profit taxes

¹ The Court is in no way applying an estoppel argument against the State. The Court emphasizes the State's prior contradictory position as it sorely undermines and discredits the State's contention now that this result could not have been foreseen and that monetary restitution would be inequitable.

collected as a fee for administering the net profits tax system to be unconstitutional. City of Athens v. McClain, 2020-Ohio-5146, ¶53-57. The high court was clear: "[W]hether the .5 percent retention is viewed as a fee or as a tax, the General Assembly had no authority to impose it." Id. at ¶54. Thus, they reversed the portion of the court of appeals' judgment upholding the .5 percent retention of municipal net-profits taxes by the state, and importantly, remanded "the cause to the trial court" with instructions "to enter judgment in accordance with [their] decision and to take whatever further action may be appropriate to effectuate that judgment." Id. at ¶61.

Therefore, as part of this further action, Plaintiffs² have requested that the Court order the State to return with interest the funds that have been withheld from them under the unconstitutional provision, R.C. 718.85(B). Upon review, of the parties' arguments and the applicable law, the Court finds that, in the absence of language in the *McCain* decision limiting it to prospective-only application, the Supreme Court's decision declaring R.C. 718.85(B) unconstitutional applies retrospectively. As such, R.C. 718.85(B) was never the law, and the State lacked the authority from the law's inception to retain funds under this provision. *Roberts v. Treasurer*, 147 Ohio App. 3d 403, 410, 2001-Ohio-8867, 770 N.E.2d 1085, ¶ 20 (10th Dist.) (citing *Peerless Elec. Co. v. Bowers*, 164 Ohio St. 209, 209, 129 N.E.2d 467, 468 (1955)).

The Court hereby adopts and incorporates the well-reasoned analysis set forth by the Plaintiffs as to the relevant issues, and rejects the State's arguments that the Plaintiffs have not properly sought a refund of the .5% administrative fee; that the Ohio Supreme Court's decision in *McClain* should be applied prospectively only, whether as a matter of law or applying the test set forth in *DiCenzo v. A-Best Prods. Co., Inc.,* 120 Ohio St.3d 149, 2008-Ohio-5327; and that it would be inequitable or would impose an undue burden to order restitution.

² Plaintiff the City of Columbus, an original plaintiff-group member, has not joined this request.

Franklin County Ohio Clerk of Courts of the Common Pleas- 2021 Mar 25 10:09 AM-17CV010258

The Court hereby GRANTS Plaintiffs' request and ORDERS the following:

1. That the State refund to each requesting Plaintiff municipality all of the funds it collected

from the net profit tax revenues of the municipality under R.C. 718.85(B).

2. That the amount refunded to each requesting Plaintiff municipality include interest accrued

from the dates those funds were collected to the date of this Order.

The Court retains jurisdiction of this case.

Finally, Plaintiffs have suggested that the Court issue a briefing schedule regarding an

award of attorney fees. Any party may move for attorney fees, and the issue will be briefed in

accordance with Civ. R. 6(C) and Loc. R. 21.01.

IT IS SO ORDERED

Electronically Signed By: JUDGE KAREN HELD PHIPPS

Franklin County Court of Common Pleas

Date:

03-25-2021

Case Title:

ATHENS CITY ET AL -VS- OHIO STATE TAX COMMISIONER

ET AL

Case Number:

17CV010258

Type:

JUDGMENT ENTRY

It Is So Ordered.

/s/ Judge Karen Held Phipps

Electronically signed on 2021-Mar-25 page 4 of 4

VRC 20 YEAR ANNIVERSARY!



Come on out to the Vandalia Recreation Center and enjoy our 20th anniversary with us!

Childcare and Fitness Classes will be FREE all day

FREE Climbing Wall: 5pm-7pm (6 years or old, closed toe shoes required)

Warehouse 4 Coffee with the City Manager: 8am-10am

Stop by during the day as we will have varous times that our sponsors below will be here:

Premier Health Domino's Beau Townsend Edward Jones

