

WHITEHALL CITY COUNCIL COMMITTEE MEETINGS

AGENDA

TUESDAY, OCTOBER 22, 2019

6:30 P.M. – ADMINISTRATION/COUNCIL OF THE WHOLE MATTERS:

THERE ARE SIX PIECES OF DRAFT LEGISLATION APPEARING IN THE APPROPRIATE COMMITTEES BELOW.

COMMITTEE OF THE WHOLE LEGISLATION/ISSUES:

DRAFT # 1

ORDINANCE NO. 120-2019 (*Comm. Of the Whole. – 1st reading – ADOPT 11/05/19–/*)

AUTHORIZING ADOPTION OF THE NOVEMBER 2019 REPLACEMENT PAGES TO THE CODIFIED ORDINANCES OF THE CITY OF WHITEHALL, AND DECLARING AN EMERGENCY.

WHEREAS, it is desirable and necessary that the City of Whitehall maintain an organized and published code of ordinances; and

WHEREAS, the codified ordinances for the City of Whitehall should be amended regularly to conform with current state law as required by the Ohio Constitution; and

WHEREAS, various ordinances of a general and permanent nature have been passed by council and should be included in the codified ordinances; and

WHEREAS, the Walter H. Drane Company of Cleveland, Ohio has entered into a contract with the City of Whitehall to prepare and publish such revisions twice a year and the November 2019 replacements are now before council; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHITEHALL, OHIO:

SECTION 1. That the ordinances of the City of Whitehall, Ohio, of a general and permanent nature, as revised, recodified, rearranged and consolidated into component codes, titles, chapters and sections within the November 2019 replacement pages to the codified ordinances are hereby approved and adopted.

SECTION 2. That the President of Council and Clerk of Council shall certify that the permanent and general ordinances of the City, as codified in the current replacement pages are correctly set forth therein.

SECTION 3. That the City Auditor is hereby authorized to draw his warrant upon the Treasurer of the City to pay the Walter H. Drane Company for said services and products from previously appropriated monies in the City Council Office Supplies Account (101-100-52000).

SECTION 4. That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, peace, safety and welfare; and for the further reasons that it is necessary that the City of Whitehall maintain an organized and published code of its ordinances and that it conform with current state law

provisions; WHEREFORE, this Ordinance shall go into full force and effect immediately upon its passage and approval by the Mayor.

Requested and Prepared by: Clerk of Council, Julie A. Ogg
Approved as to form: Michael T. Bivens, City Attorney MTB 10/18/2019

SECOND READING:

RESOLUTION NO. 050 -2019 (*Comm. Of the Whole. – 3rd reading – ADOPT 11/19/19– Rodriguez/Morrison*)

AUTHORIZING THE MAYOR TO ENTER INTO A PURCHASE AGREEMENT AND ACCEPT TITLE TO PARCEL NUMBER 090-005414-00, FROM EMPOWERING COLUMBUS LLC. LOCATED WITHIN THE CITY OF WHITEHALL AND PAY ALL FEES ASSOCIATED WITH THE TRANSFER OF PROPERTY.

STANDING COMMITTEES

ADMINISTRATION AND FINANCIAL MANAGEMENT - Chairperson Bob Bailey

Members: Rodriguez, Morrison & Conison

DRAFT # 2

ORDINANCE NO. 121-2019 (*Admin/Fin. Mgmt. – 1st reading – ADOPT 11/05/19–Bailey/*)

APPROVING AND MAKING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00) FROM UNAPPROPRIATED MONIES IN THE GENERAL FUND 101 TO THE INCOME TAX REFUNDS EXPENSE ACCOUNT (101.350.57000) AND DECLARING AN EMERGENCY.

WHEREAS, the year-to-date amount of income tax refunds to be issued is more than anticipated; and

WHEREAS, the income tax refunds expense account requires a supplemental appropriation in order to meet with anticipated refunds until the end of the 2019 fiscal year; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHITEHALL, OHIO:

SECTION 1: That the Council of the City of Whitehall, Ohio approves and makes a supplemental appropriation in the amount of forty thousand and no/100 dollars (\$40,000.00) from unappropriated monies in the General Fund 101 to the Income Tax Refunds Expense Account (101-350-57000).

SECTION 2: That the City Auditor is hereby authorized to draw his warrant upon the Treasurer of the City for these funds for the purpose stated in this ordinance.

SECTION 3: That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, peace, safety and welfare and for further reason that it is necessary to comply with City of Whitehall Codified Ordinances regulating income tax collection and refunds; WHEREFORE, this ordinance shall go into full force and effect immediately upon its passage and approval by the Mayor.

Requested and prepared by: Dan A. Miller, City Auditor 10/16/2019
Approved as to form: Michael T. Bivens, City Attorney MTB 10/16/2019

DRAFT # 3

ORDINANCE NO. 122-2019 (*Admin/Fin. Mgmt. – 1st reading – ADOPT 11/05/19–Bailey/*)

APPROVING AND MAKING AN APROPRIATION TRANSFER IN THE AMOUNT OF TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) FROM THE TECHNOLOGY ACCOUNT (314.000.50000) TO THE IT MAINTENANCE CONTRACTS ACCOUNT (341.000.51000) AND DECLARING AN EMERGENCY.

WHEREAS, the IT Maintenance Contracts account requires an appropriation transfer to be able to pay the maintenance contracts for the remainder of the 2019 fiscal year; and

WHEREAS, it is recommended to move monies from expense accounts where a surplus is forecasted in order to meet the obligations of the City; NOW THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHITEHALL, OHIO:

SECTION 1: That the Council of the City of Whitehall, Ohio approves and makes an appropriation transfer in the amount of ten thousand and no/100 dollars (\$10,000.00) from the Technology account (314.000.50000) to the IT Maintenance Contracts account (314.000.51000)

SECTION 2: That the City Auditor is hereby authorized to draw his warrant upon the Treasurer of the City for these funds for the purpose stated in this ordinance.

SECTION 3: That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, peace, safety and welfare of the community, and for further reason it is necessary to have the funds committed and available per state law; WHEREFORE, the Ordinance shall go into full force and effect immediately upon its passage and approval by the Mayor.

DRAFT # 4

ORDINANCE NO. 123-2019 (*Admin/Fin. Mgmt. – 2nd reading – ADOPT 11/19/19–Bailey/*)

APPROVING AND MAKING A SUPPLEMENTAL APPROPRIATION OF THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00) FROM UNAPPROPRIATED MONIES IN THE GENERAL FUND (101) TO THE SELF-FUNDED HEALTH INSURANCE EXPENSE ACCOUNT (101.900.51015) AND DECLARING AN EMERGENCY.

WHEREAS, the City is experiencing record claims in the General Fund Health Insurance Claims Account, and

WHEREAS, it is advised by the Auditor and Mayor that it will be necessary to add monies to the Self-Funded Health Insurance Expense Account to ensure adequacy of appropriated monies for the remainder of the 2019 fiscal year; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHITEHALL, OHIO:

SECTION 1: That the Council of the City of Whitehall approves a supplemental appropriation from the General Fund (101) to the Self-Funded Health Insurance Expense Account (101-900-51015) in the amount of three hundred thousand and 00/100 dollars (\$300,000.00).

SECTION 2: That the City Auditor is hereby authorized to draw his warrant upon the Treasurer of the City for these funds for the purpose stated in this ordinance.

SECTION 3: That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, peace, safety and welfare and for further reason that the City has to pay these weekly fees; WHEREFORE, this ordinance shall go into full force and effect immediately upon its passage and approval by the Mayor.

Requested by: Kim Maggard, Mayor

Prepared by: Dan A. Miller, City Auditor 10/08/2019

Approved as to form: Michael T. Bivens, City Attorney MTB 10/16/2019

DRAFT # 5

RESOLUTION NO. 051-2019 *(Admin/Fin. Mgmt. – 1st reading – ADOPT 11/05/19–Bailey/)*

RESOLVING TO APPROVE “THEN AND NOW” CERTIFICATES AND DECLARING AN EMERGENCY.

WHEREAS, O.R.C. 5705.41(D)(1) states that “then and now” certificates of three thousand dollars and no/100 (\$3,000.00) and more must be approved by resolution or ordinance within thirty days of receipt of the “then and now” certificate, and

WHEREAS, the City has processed the following “then and now” certificate over the sum of three thousand dollars and now this certificate requires approval by City Council; and

WHEREAS, the Auditor of the City of Whitehall, Ohio has determined that, at the time of the making and execution of the certificate, a sufficient sum was appropriated by Council for the purpose of the requisition, and is currently deposited in the treasury and allocated to the appropriate account and free from any previous encumbrances; NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WHITEHALL, OHIO:

SECTION 1: That the City Council does hereby approve the following “then and now” certificate:

<u>Requisition</u>	<u>Vendor</u>	<u>Amount</u>	<u>Order Date</u>	<u>Purchase Purpose</u>
#2019-Service-00257-A	TCF National Bank	5,077.00	9/28/2019	Street Sweeper Lease

SECTION 2: That the City Council of the City of Whitehall, Ohio, lawfully appropriated this expenditure which the expense originated.

SECTION 3: That this Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare; and for the further reason that O.R.C. 5705.41(D)(1) requires that “then and now” certificates of three thousand dollars and more be approved by the legislative body by resolution or ordinance within thirty days of receipt of the “then and now” certificate; WHEREFORE, this Resolution shall go into full force and effect immediately upon its passage by the Council of the City of Whitehall and approval by the Mayor.

COMMUNITY STANDARDS AND ENFORCEMENT – Chairperson Rodriguez
Members: Kantor, Morrison & Elmore

DRAFT # 6

ORDINANCE NO. 124-2019 (*Comm. Stan. & Enf. – 3rd reading – ADOPT 12/03/19–Rodriguez/*)

AMENDING SECTION 184.03 OF THE CODIFIED ORDINANCES TITLED “DEFINITIONS” AND DECLARING AN EMERGENCY.

WHEREAS, the City of Whitehall is desiring to clarify Section 184.03; and

WHEREAS, the City has identified additional income that can not be taxed and should be codified; and

WHEREAS, the Charter of the City of Whitehall provides its Council the power to amend and/or modify its ordinances pursuant to Section 2(g) and Section 10(b); NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHITEHALL, OHIO:

SECTION 1: That section 184.03 is amended as follows:

184.03 DEFINITIONS.

Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Ohio Revised Code, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Ohio Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.

For purposes of this Section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

As used in this chapter:

(A) "**ADJUSTED FEDERAL TAXABLE INCOME**," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (W)(4) of this section, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(2) Add an amount equal to five per cent of intangible income deducted under division (A)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

(3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(4) (a) Except as provided in division (A)(4)(b) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(b) Division (A)(4)(a) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(6) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Ohio Revised Code;

(8) (a) Except as limited by divisions (A)(8)(b), (c) and (d) of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.

The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

(b) No person shall use the deduction allowed by division (A)(8) of this section to offset qualifying wages.

(c) (i) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty per cent of the amount of the deduction otherwise allowed by division (A)(8)(a) of this section.

(ii) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (A)(8)(a) of this section.

(d) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (A)(8) of this section.

(e) Nothing in division (A)(8)(c)(i) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (A)(8)(c)(i) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (A)(8)(c)(i) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (A)(8)(c)(i) of this section shall apply to the amount carried forward.

(9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (E)(3)(b) of Section 184.063 of this Chapter.

(10) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with division (E)(3)(b) of Section [184.063](#) of this Chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (UU)(2) of this section, is not a publicly traded partnership that has made the election described in division (W)(4) of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (A) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(B) (1) "**ASSESSMENT**" means any of the following:

- (a) A written finding by the Tax Commissioner that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation;
- (b) A full or partial denial of a refund request issued under Section [184.096](#) (B)(2) of this Chapter;
- (c) A Tax Commissioner's denial of a taxpayer's request for use of an alternative apportionment method, issued under Section [184.062](#)(B)(2) of this Chapter; or
- (d) A Tax Commissioner's requirement for a taxpayer to use an alternative apportionment method, issued under Section [184.062](#)(B)(3) of this Chapter.

(e) For purposes of division (B)(1)(a), (b), (c) and (d) of this Section, an assessment shall commence the person's time limitation for making an appeal to the Local Board of Tax Review pursuant to Section [184.18](#) of this Chapter, and shall have "ASSESSMENT" written in all capital letters at the top of such finding.

(2) "**ASSESSMENT**" does not include notice(s) denying a request for refund issued under Section [184.096](#) (B)(3) of this Chapter, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Commissioner's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Commissioner's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (B)(1) of this section.

(C) "**AUDIT**" means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Commissioner, for the purpose of determining liability for a municipal income tax

(D) "**BOARD OF REVIEW**" has same meaning as "Local Board of Tax Review".

(E) "**CALENDAR QUARTER**" means the three-month period ending on the last day of March, June, September, or December.

(F) "**CASINO OPERATOR**" and "**CASINO FACILITY**" have the same meanings as in section 3772.01 of the Ohio Revised Code.

(G) "**CERTIFIED MAIL,**" "**EXPRESS MAIL,**" "**UNITED STATES MAIL,**" "**POSTAL SERVICE,**" and similar terms include any delivery service authorized pursuant to section 5703.056 of the Ohio Revised Code.

(H) "**COMPENSATION**" means any form of remuneration paid to an employee for personal services.

(I) "**DISREGARDED ENTITY**" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

(J) "**DOMICILE**" means the true, fixed and permanent home of the taxpayer to which, whenever absent, the taxpayer intends to return.

(K) "**EXEMPT INCOME**" means all of the following:

(1) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state;

(2) (a) Except as provided in division (K)(2)(b) of this section, intangible income;

(b) A municipal corporation that taxed any type of intangible income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th general assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on November 8, 1988.

(3) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (K)(3) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.

(4) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

(5) Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars for the taxable year. Such compensation in excess of one thousand dollars for the taxable year may be subject to taxation by a municipal

corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(6) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations ;

(7) Alimony and child support received;

(8) Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages;

(9) Income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code. Division (K)(9) of this section does not apply for purposes of Chapter 5745. of the Ohio Revised Code.

(10) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business;

(11) Compensation or allowances excluded from federal gross income under section 107 of the Internal Revenue Code;

(12) Employee compensation that is not qualifying wages as defined in division (HH) of this section;

(13) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.

(14) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.

(15) All of the municipal taxable income earned by individuals under eighteen years of age.

(16) (a) Except as provided in divisions (K)(16)(b), (c), and (d) of this section, qualifying wages described in division (B)(1) or (E) of Section [184.052](#) of this Chapter to the extent the qualifying wages are not subject to withholding for the Municipality under either of those divisions.

(b) The exemption provided in division (K)(16)(a) of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

(c) The exemption provided in division (K)(16)(a) of this section does not apply to qualifying wages that an employer elects to withhold under division (D)(2) of Section [184.052](#) of this Chapter

(d) The exemption provided in division (K)(16)(a) of this section does not apply to qualifying wages if both of the following conditions apply:

(i) For qualifying wages described in division (B)(1) of Section [184.052](#) of this Chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in division (E) of Section [184.052](#) of this Chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

(ii) The employee receives a refund of the tax described in division (K)(16)(d)(i) of this section on the basis of the employee not performing services in that municipal corporation.

(17) (a) Except as provided in division (K)(17)(b) or (c) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the Municipality on not more than twenty days in a taxable year.

(b) The exemption provided in division (K)(17)(a) of this section does not apply under either of the following circumstances:

(i) The individual's base of operation is located in the Municipality.

(ii) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or

public figure. For purposes of division (K)(17)(b)(ii) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section [184.052](#) of this Chapter.

(c) Compensation to which division (K)(17) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

(d) For purposes of division (K)(17) of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

(18) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to section 709.023 of the Ohio Revised Code on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.

(19) Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under division (K) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

(L) **"FORM 2106"** means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(M) **"GENERIC FORM"** means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability, including a request for refund.

(N) **"INCOME"** means the following:

(1) (a) For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (W)(4) of this section.

(b) For the purposes of division (N)(1)(a) of this section:

(i) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (N)(1)(d) of this section;

(ii) The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.

(c) Division (N)(1)(b) of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (K)(14) or division (N)(5) of this Section.

(d) Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.

(2) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the Municipality, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(3) For taxpayers that are not individuals, net profit of the taxpayer;

(4) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in Section [184.081](#) of this Chapter.

(5) For both resident and non-resident individuals, "other compensation" shall mean;

(a) Tips, bonuses, or gifts of any type, and including compensation received by domestic servants, casual employees and other types of employees. These payments are normally reported on a Form 1099 MISC.

(b) If the income appears as part of Medicare wages on a W-2 form and is not shown to be an exception in accordance with section 38.03(K) of this section, it shall be considered other compensation and is therefore taxable to the individual, including but not limited to;

(i) Payments made by an employer to an employee during periods of absence from work are taxable when paid and at the tax rate in effect at the time of payment, regardless of the fact that such payments may be labeled as sick leave or sick pay, sick pay paid by the employer to the employee, severance pay, supplemental unemployment benefits described in section 3402(o)(2) of the Internal Revenue Code, vacation pay, terminal pay supplemental unemployment pay, wage and salary continuation plans, payments made for the release of liability related to termination of employment.

(ii) Tips, bonuses, fees, gifts in lieu of pay, gratuities.

(iii) Strike pay; grievance pay.

(iv) Employer paid premiums for group term life insurance to the extent taxable for federal income tax purposes.

(v) Car allowance, personal use of employer-provided vehicle.

(vi) Incentive payments, no matter how described, including, but not limited to, payments to induce early retirement.

(vii) Contributions by an employee or on behalf of an employee, from gross wages, into an employee or third party trust or pension plan as permitted by any provision of the Internal Revenue Code that may be excludable from gross wages for federal income tax purposes such as 401K, 403(b), and 457 plans.

(viii) Nonqualified Deferred Compensation Plans or programs described in section 3121(v)(2)(C) of the Internal Revenue Code.

(c) Trust payments not made pursuant to employee's retirement.

(d) Where compensation is paid or received in property, its fair market value at the time of receipt shall be subject to the tax and to withholding.

(i) Board, lodging or similar items received by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value.

(ii) Restricted stock awards that vest over a period of time are taxable at their fair market value at the time they become vested and included in Medicare wages, as shown on the employee's IRS Form W-2.

(O) "**INTANGIBLE INCOME**" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(P) "**INTERNAL REVENUE CODE**" means the "Internal Revenue Code of 1986," 100 Sta. 2085, 26 U.S.C.A. 1, as amended.

(Q) "**LIMITED LIABILITY COMPANY**" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

(R) **"LOCAL BOARD OF TAX REVIEW" and "BOARD OF TAX REVIEW"** means the entity created under Section [184.18](#) of this Chapter..

(S) **"MUNICIPAL CORPORATION"** means, in general terms, a status conferred upon a local government unit, by state law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under section 715.691, 715.70, 715.71, or 715.74 of the Ohio Revised Code.

(T) (1) **"MUNICIPAL TAXABLE INCOME"** means the following:

(a) For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the Municipality under Section [184.062](#) of this Chapter, and further reduced by any pre-2017 net operating loss carryforward available to the person for the Municipality.

(b) (i) For an individual who is a resident of a Municipality other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (T)(2) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.

(ii) For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified municipal corporation from the qualified municipal corporation's tax on or before December 31, 2013. If a qualified municipal corporation, on or before December 31, 2013, exempts income earned by individuals who are not residents of the qualified municipal corporation and net profit of persons that are not wholly located within the qualified municipal corporation, such individual or person shall have no municipal taxable income for the purposes of the tax levied by the qualified municipal corporation and may be exempted by the qualified municipal corporation from the requirements of section 718.03 of the Ohio Revised Code.

(c) For an individual who is a nonresident of the Municipality, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the Municipality under Section [184.062](#) of this Chapter, then reduced as provided in division (T)(2) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.

(2) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (T)(1)(b)(i) or (c) of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation.

(U) **"MUNICIPALITY"** means the City of Whitehall.

(V) **"NET OPERATING LOSS"** means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.

(W) (1) **"NET PROFIT"** for a person other than an individual means adjusted federal taxable income.

(2) **"NET PROFIT"** for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (A)(8) of this section.

(3) For the purposes of this chapter, and notwithstanding division (W)(1) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

(4) (a) For purposes of this chapter, "publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.

(b) For the purposes of this chapter, and notwithstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in division (W)(4) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.

(c) A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. Once the election is made, the election is binding for a five-year period beginning with the first taxable year of the initial election. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a C corporation for municipal purposes under division (4)(d) of this section.

(d) An election to discontinue filing as a C corporation must be made in the first year following the last year of a five-year election period in effect under division (4)(c) of this section. The election to discontinue filing as a C corporation is binding for a five-year period beginning with the first taxable year of the election and continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a partnership for municipal purposes. An election to discontinue filing as a partnership must be made in the first year following the last year of a five-year election period.

(e) The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but division (4) of this section applies to all municipal corporations in which an individual owner of the partnership resides.

(f) The individual owners of the partnership not filing as a C Corporation shall be required to file with their municipal corporation of residence, and report partnership distribution of net profit.

(X) **"NONRESIDENT"** means an individual that is not a resident of the Municipality.

(Y) **"OHIO BUSINESS GATEWAY"** means the online computer network system, created under section 125.30 of the Ohio Revised Code, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

(Z) **"OTHER PAYER"** means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.

(AA) **"PASS-THROUGH ENTITY"** means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. "Pass-through entity" does not include a trust, estate, grantor of a grantor trust, or disregarded entity.

~~(BB) "PENSION" means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.~~

(BB) (1) **"PENSION"** means a retirement benefit plan, regardless of whether the plan satisfies the qualifications described under section 401(a) of the Internal Revenue Code, including amounts that are taxable under the "Federal Insurance Contributions Act," Chapter 21 of the Internal Revenue Code, excluding employee contributions and elective deferrals, and regardless of whether such amounts are paid in the same taxable year in which the amounts are included in the employee's wages, as defined by section 3121(a) of the Internal Revenue Code.

(2) **"RETIREMENT BENEFIT PLAN"** means an arrangement whereby an entity provides benefits to individuals either on or after their termination of service because of retirement or disability. "Retirement benefit plan" does not include wage continuation payments, severance payments, or payments made for accrued personal or vacation time.

(CC) **PERSON** includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.

(DD) **POSTAL SERVICE**" means the United States postal service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.

(EE) **"POSTMARK DATE," "DATE OF POSTMARK,"** and similar terms include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course of its business and marked on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery

(FF) (1) **"PRE-2017 NET OPERATING LOSS CARRYFORWARD"** means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the Municipality that was adopted by the Municipality before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such Municipality in future taxable years.

(2) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.

(GG) **"QUALIFIED MUNICIPAL CORPORATION"** means a municipal corporation that, by resolution or ordinance adopted on or before December 31, 2011, adopted Ohio adjusted gross income, as defined by section 5747.01 of the Ohio Revised Code, as the income subject to tax for the purposes of imposing a municipal income tax.

(HH) **"QUALIFYING WAGES"** means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(1) Deduct the following amounts:

(a) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

(b) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.

(c) INTENTIONALLY LEFT BLANK.

(d) INTENTIONALLY LEFT BLANK.

(e) Any amount included in wages that is exempt income.

(2) Add the following amounts:

(a) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

(b) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Division (HH)(2)(b) of this section applies only to those amounts constituting ordinary income.

(c) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (HH)(2)(c) of this section applies only to employee contributions and employee deferrals.

(d) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.

(e) Any amount received that is treated as self-employment income for federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code.

(f) Any amount not included in wages if all of the following apply:

(i) For the taxable year the amount is employee compensation that is earned outside of the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;

(ii) For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;

(iii) For no succeeding taxable year will the amount constitute wages; and

(iv) For any taxable year the amount has not otherwise been added to wages pursuant to either division (HH)(2) of this section or section 718.03 of the Ohio Revised Code, as that section existed before the effective date of H.B. 5 of the 130th general assembly, March 23, 2015.

(II) "**RELATED ENTITY**" means any of the following:

(1) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(2) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(3) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (II)(4) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock;

(4) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (II)(1) to (3) of this section have been met.

SECTION 2: That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, peace, safety and welfare of the community, and for further reason to clarify the Codified Ordinances; WHEREFORE, the Ordinance shall go into full force and effect immediately upon its passage and approval by the Mayor.

Requested and prepared by: Dan A. Miller, City Auditor 10/18/2019

Approved as to form: Michael T. Bivens, City Attorney MTB 10/18/2019

**COMMUNITY AND ELDER ADVOCACY – Chairperson Lori Elmore
Members: Bailey, Rodriguez & Heck**

No drafts or pending legislation.

**ECONOMIC DEVELOPMENT – Chairperson Larry Morrison
Members: Conison, Rodriguez & Elmore**

No drafts or pending legislation.

**INFRASTRUCTURE, MAINTENANCE AND SERVICES – Chairperson Jo Anna Heck
Members: Bailey, Morrison & Kantor**

No drafts or pending legislation.

PUBLIC SAFETY – **Chairperson Karen Conison**
Members: Kantor, Bailey & Heck

No drafts or pending legislation.

PARKS AND RECREATION – **Chairperson Wes Kantor**
Members: Conison, Elmore & Heck

No drafts or pending legislation.