

AGENDA
City Commission Meeting
222 Meigs Street
5:00 p.m.

MONDAY, OCTOBER 22, 2007

Prayer
Pledge of Allegiance
Meeting Called to Order
Roll Call - DE, DK, DM, BC, BF, DW, CS
Minutes -

Charter Officers - (Don) James L. Miers, Interim City Manager; Don Icsman, Law Director,
Ed Widman, Finance Director, B. Joyce Brown, Clerk of the City Commission

Audience Participation – Agenda Items Only (3 minute limit)

PRESENTATION – Sandusky Elks presenting check to Fire Chief Mike Meinzer for Dive Equipment

PUBLIC HEARING – Change name of Cooke Street to Decatur Street between Hayes Avenue and the current Decatur Street

CURRENT BUSINESS

ITEM #1 – Communication – Carrie R. Handy, Chief Planner and Rosanne Bodner, Public Transit Administrator

BUDGETARY INFORMATION: These grants have a significant impact on the Transit System's budget, as they comprise approximately 10% of the total Operating Budget. Without this funding, service would have to be restructured or reduced.

RESOLUTION NO. _____ Filing of applications with the Ohio Department of Transportation for FY 2008 Transportation Grants which may include the Ohio Elderly and Disabled Transit Fare Assistance Program and the Ohio Public Transportation Grant Program. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

ITEM #2 – Communication – Don Miers, Interim City Manager

BUDGETARY INFORMATION: Proceeds from the sale of these items will be placed into the Police Department's General Trust Account, with the exceptions of the proceeds for the traffic lights which will be placed into the Traffic Services Budget, and the bicycle proceeds which will be placed into the City's General Fund.

ORDINANCE NO. _____ Disposal of surplus personal property and equipment as having become unnecessary and unfit for City use pursuant to Section 25 of the City Charter. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

ITEM #3 – Communication – Kathryn K. McKillips, P.E. Engineering Director

BUDGETARY INFORMATION: Proudfoot's lump sum fee for design is currently \$180,485.00. With the approval of the Fourth Amendment in the amount not exceed \$13,900.00, the revised agreement will be \$194,385.00. The additional service fee will be paid with City Capital funds.

ORDINANCE NO. _____ Execute a fourth amendment to the contract with Proudfoot Associates for additional services for the Hayes Avenue Underpass Rehabilitation Project. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

ITEM #4 – Communication – Kim A. Nuesse, Chief of Police

BUDGETARY INFORMATION: The total of invoices requested to be paid is \$18,451.00. Funds were budgeted and are available in the Police Department's 2007 Budget although a transfer of funds will be required to expend funds from the proper line item account.

ORDINANCE NO. _____ Make payment to Firelands Corporate Health Center of Sandusky, Ohio, for Treadmill Stress Tests, Physicals and Drug Screens completed for the Sandusky Police Department in 2007. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

ITEM #5 – Communication – Edward Widman, Finance Director

BUDGETARY INFORMATION: Transfers are included in the appropriations. There is no budgetary impact. The Auditor of State has instructed this office to have the City Commission approve inter-fund transfers before the transfer occurs.

***NO LEGISLATION IS REQUIRED* - A motion is needed by the City Commission approving inter-funds transfers.**

ITEM #6

ORDINANCE NO. _____ Amending Part Five – General Offenses, Chapter 505 – Animals and Fowl, in the manner and way specifically set forth hereinbelow. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

ITEM #7 Motion made to put on the Agenda at October 9th meeting.

ORDINANCE NO. _____ Enter into a Lease Agreement with the Sandusky Sailing Club, Inc. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

City Manager's Report
Old Business
New Business
Audience Participation – open discussion on any item (5 minute limit)
Press Question/Answers
Executive Session
Adjournment

TO: Mr. Don Miears, Interim City Manager

FROM: Carrie R. Handy, Chief Planner
Rosanne Bodner, Public Transit Administrator

DATE: October 12th, 2007

SUBJECT: **CY 2008 Sandusky Transit System Grant Applications for the State of Ohio Elderly and Disabled Fare Assistance Program and the Ohio Public Transit Grant Program**

ITEM FOR CONSIDERATION: Request for Resolution of Authorization to file grant applications with the Ohio Department of Transportation for FY 2008 Elderly and Disabled Fare Assistance Program and Ohio Public Transit Grant Program funds and for the City Manager to execute any grant agreements after grants are awarded.

BACKGROUND INFORMATION: The City of Sandusky is required to pass a resolution in order to complete applications for funding with the Ohio Department of Transportation for the above-referenced transportation grants. The amount of these grants and how they are used by the City is noted below:

- Ohio Elderly and Disabled Transit Fare Assistance Program (E&D) – These grant funds are used to offer discounted fares for STS rides to persons with disabilities and persons over age 65. The City has been notified by the ODOT Office of Public Transit that its allocation for 2008 will be \$71,305. The submission deadline for this grant application is October 28th, 2007
- Ohio Public Transportation Grant Program (OPTGP) – These grant funds are used for the actual operation of the transit system and are also used to leverage our Federal Transit Administration transit grant dollars. The proposed allocation of these funds for 2008 is \$55,000. The submission deadline for this grant application is December 15th, 2007.

It is noted that each grant application has a separate deadline, however, historically the City has combined these annual funding requests in order to reduce the number of legislative items presented to the City Commission.

BUDGET/STRATEGIC PLAN IMPACT: These grants have a significant impact on the transit system's budget, as they comprise approximately 10% of the total operating budget. Without this funding, service would have to be restructured or reduced.

ACTION REQUESTED: Resolution authorizing the filing of E & D Fare Assistance and OPTGP grant applications with the Ohio Department of Transportation and upon approval for the City Manager to execute any necessary grant agreements. It is further requested that this legislation take immediate effect in full accordance with Section 14 of the City Charter in order to meet the Ohio Department of Transportation submission deadlines of October 28th and December 15th, 2007.

I concur with this recommendation:

Don Miears
Interim City Manager

Carrie Handy
Community Development

cc: Donald Icsman, Law Director
Joyce Brown, Commission Clerk

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE FILING OF APPLICATIONS WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR FY 2008 TRANSPORTATION GRANTS WHICH MAY INCLUDE THE OHIO ELDERLY AND DISABLED TRANSIT FARE ASSISTANCE PROGRAM AND THE OHIO PUBLIC TRANSPORTATION GRANT PROGRAM; AND DECLARING THAT THIS RESOLUTION SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the State of Ohio, Department of Transportation, has made funds available through its FY 2008 programs to assist Public Transportation Systems in Ohio; and

WHEREAS, the Sandusky Transit System is the transit operator for the City of Sandusky and is presently providing transit service and observing all Federal and State rules regarding these programs and is required to submit a yearly Resolution with its applications for funding; and

WHEREAS, the Ohio Department of Transportation has allocated \$71,305 in Ohio Elderly and Disabled Transit Fare Assistance Program funds and \$55,000 in Ohio Public Transportation Grant Program funds for FY 2008 to the Sandusky Transit System; and

WHEREAS, this legislation should be passed under suspension of the rules as an emergency measure in accordance with Section 14 of the City Charter in order to file the applications to the Ohio Department of Transportation by the submission deadlines of October 28, 2007, for the Ohio Elderly and Disabled Transit Fare Assistance Program and December 15, 2007, for the Ohio Public Transportation Grant Program; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of Municipal Departments of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio, finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Resolution** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is hereby authorized to execute and file applications on behalf of the City of Sandusky for the FY 2008 Ohio Elderly and Disabled Transit Fare Assistance Program and the Ohio Public Transportation Grant Program for FY 2008 and to execute any contracts or agreements on behalf of the City should they be awarded.

Section 2. The City Manager is authorized to execute and file with the City's applications any assurances or any other documentation required by the Ohio Department of Transportation and to furnish such additional information as the Ohio Department of Transportation may require in connection with the City's applications.

Section 3. The Clerk of the City Commission is hereby directed to furnish a certified copy of this Resolution to be utilized for the filing of any applications for financial assistance from the Ohio Department of Transportation.

Section 4. If any section, phrase, sentence, or portion of this Resolution is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 5. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Resolution were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 6. That for the reasons set forth in the preamble hereto, this Resolution is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

DANIEL J. KAMAN
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:



CITY COMMISSIONERS

DANIEL J. KAMAN, President
DANNIE K. EDMON, Vice President
BRIAN C. CRANDALL
BRETT L. FUQUA, SR.
DENNIS E. MURRAY, JR.
CRAIG H. STAHL
DAVID L. WADDINGTON

DON MIEARS, Interim City Manager
DONALD C. ICSMAN, Law Director
EDWARD A. WIDMAN, Finance Director
B. JOYCE BROWN, Commission Clerk

222 MEIGS STREET
SANDUSKY, OH 44870
Phone: 419.627.5844
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TO: City Commission

FROM: Don Miears

DATE: October 11, 2007

SUBJECT: Disposal of Property

ITEM FOR CONSIDERATION: *It is requested that the City Commission authorize legislation to dispose of bicycles, equipment, and unneeded (3) and confiscated vehicles (1), pursuant to Section 25 of the City Charter.*

BACKGROUND INFORMATION: *The following vehicles have been determined to be beyond their useful life by city staff:*

1999 Ford Crown Victoria w/ police package, VIN No. 2FAFP71W8XX218061, Mileage: 178,121
1994 Chevy Caprice w/ police package, VIN No. 1G1BL52P7RR176472, Mileage: unknown
1997 Ford Crown Vic, police package – rear of car only, rest used for parts, Mileage: unknown; to be salvaged

1995 Olds Aurora, VIN No. 1G3GR62C2S4121493, Mileage: 121,528 – confiscated – junk and of no use (confiscated in an arrest)

In addition, we are requesting four (4) sets of red/yellow traffic lights be disposed of and two (2) sets of red lights which are no longer in good working condition.

The items below have all been confiscated by the Sandusky Police Department; the cases for each of these items have been closed and it is no longer necessary to hold the items (they are of no value to the City of Sandusky).

62 Bicycles
Esab PCS-43 plasma cutter
Everest Jennings wheelchair
Weedeater/leaf blower
Karcher pressure washer
Red toolbox & tools
Benchtop Rockwell disc sander
Craftsman 6" polisher/sander
Jumper cables
Elegan store & slice cheesekeeper
IBICO 1230 calculator
Canon TV lens
Igloo Maxcold cooler
Apple computer system
Swingline hole punch & 2 clipboards
Durex socket set

Paperbag w/ toothbrush
Marinco marine adapter
Puzzle
leather chamois
Paintball gun w/ feeder & tube, co2 tank, Scott faceshield & car charger
2 Monitors
1 keyboard
Writer II printer
Miscellaneous power cords
Metal bat
JVC Receiver unit
Pioneer CD player
FM compact Disc player
2 JVC speakers
Neon light bar

JVC CD player
Stereo system, CD w/ face plate
FM/AM CD Player w/ 2 JVC speakers
Sony CD player
12X Speakers
Kicker AMP
AM/FM CD Stereo
Amplifier
Speaker box & 2 - 8" speakers
Kicker box, 12" speakers, 500 Watt Amp
Sony CD AM/FM Face Plate, Woofer, amplifier, equalizer
BOSE CD player
Pioneer Amp
Orion Speaker

BUDGET IMPACT: *Proceeds from the sale of these items will be placed into the Police Department's General Trust Account, with the exceptions of the proceeds for the traffic lights which will be placed into the Traffic Services budget, and the bicycle proceeds which will be placed into the city's General Fund.*

ACTION REQUESTED: *It is requested the attached legislation be approved authorizing the disposal of the vehicles and equipment listed above. It is further requested this legislation take immediate effect in full accordance with Section 14 of the City Charter; the auction is scheduled to be held on Thursday, October 25, 2007.*

/klk

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO DISPOSE OF SURPLUS PERSONAL PROPERTY AND EQUIPMENT AS HAVING BECOME UNNECESSARY AND UNFIT FOR CITY USE PURSUANT TO SECTION 25 OF THE CITY CHARTER; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, Section 25 of the City Charter authorizes the City Manager to conduct all sales of personal property that has become obsolete, unnecessary and unfit for City use; and

WHEREAS, the following vehicles have been determined to be obsolete, unnecessary and unfit for City use:

Year Make/Model	Vehicle ID Number	Mileage
1999 Ford Crown Victoria w/ police package	2FAFP71W8XX218061	178,121
1994 Chevy Caprice w/ police package	1G1BL52P7RR176472	unknown
1997 Ford Crown Vic, police package	(rear of car only)	unknown
1995 Olds Aurora (confiscated)	1G3GR62C2S4121493	121,528

WHEREAS, the following items have been confiscated by the Sandusky Police Department and the related Court cases have been adjudicated and closed thereby eliminating the need to retain these items as evidence and these items have been determined to be obsolete, unnecessary and unfit for City use:

- 62 Bicycles
- Esab PCS-43 plasma cutter
- Everest Jennings wheelchair
- Weedeater/leaf blower
- Karcher pressure washer
- Red toolbox & tools
- Benchtop Rockwell disc sander
- Craftsman 6" polisher/sander
- Jumper cables
- Elegan store & slice cheesekeeper
- IBICO 1230 calculator
- Canon TV lens
- Igloo Maxcold cooler
- Apple computer system
- Swingline hole punch & 2 clipboards
- Durex socket set
- Paperbag w/ toothbrush
- Marinco marine adapter
- Puzzle
- Leather chamois
- Paintball gun w/ feeder & tube, co2 tank, Scott faceshield & car charger
- 2 Monitor
- 1 keyboard
- Writer II printer
- Miscellaneous power cords
- Metal bat
- JVC Receiver unit
- Pioneer CD player
- FM compact Disc player
- 2 JVC speakers
- Neon light bar
- JVC CD player
- Stereo system, CD w/ face plate
- FM/AM CD Player w/ 2 JVC speakers
- Sony CD player

12X Speakers
Kicker AMP
AM/FM CD Stereo
Amplifier
Speaker box & 2 - 8" speakers
Kicker box, 12" speakers, 500 Watt Amp
Sony CD AM/FM Face Plate, Woofer, amplifier, equalizer
BOSE CD player
Pioneer Amp
Orion Speaker

WHEREAS, in addition City Staff is requesting (4) sets of red/yellow traffic lights and two (2) sets of red lights be disposed of which are no longer in good working condition and have been determined to be obsolete, unnecessary and unfit for City use; and

WHEREAS, the proceeds from the sale of these items will be placed into the Police Department's General Trust Account with the exceptions of the proceeds from the sale of the traffic lights which will be placed into the Traffic Services budget and the proceeds from the sale of the bicycles which will be placed into the City's General Fund; and

WHEREAS, this legislation should be passed under suspension of the rules as an emergency measure in accordance with Section 14 of the City Charter in order to allow for the items to be declared unnecessary and unfit for City use prior to the auction date of October 25, 2007; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to dispose of the personal property described above as having become obsolete, unnecessary and unfit for City use, pursuant to Section 25 of the City Charter, through public auction, with the proceeds received to be placed into the Police Department's General Trust Account, Traffic Services budget and City's General Fund.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

DANIEL J. KAMAN
PRESIDENT OF THE CITY COMMISSION

ATTEST:

B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

To: James L. (Don) Miears, Interim City Manager
From: Kathryn K. McKillips, P.E.
Date: October 10, 2007
Subject: Commission Agenda Item

ITEM FOR CONSIDERATION: Fourth Amendment to the Agreement for Professional Design Services with Proudfoot Associates, Toledo, Ohio for the Hayes Avenue Underpass Rehabilitation Project.

The Hayes Avenue Underpass is located on State Route 4 at the Norfolk Southern railroad. This project involves the replacement of concrete sidewalks and handrails and the repair and painting (or surface treatment) of the abutment and upper retaining walls on both sides of the road from North Depot Street to Filmore Street. The concrete stairs located on three sides will be repaired and new handrail installed. A jersey style lower wall will be constructed on both sides of the street under the bridge. Drainage tiles behind the upper and lower walls will be installed if necessary, directing ground water into the City sewer system. Improved drainage will increase the life of the structures. The project involves relocating a sewer force main to a position under the sidewalk and the repair of the sewer pump station for the underpass.

This amendment will authorize Proudfoot to provide plans and specifications for the lighting under the bridge as well as new light poles on the approaches. The new lighting at the Hayes Avenue Underpass was originally going to be installed by Ohio Edison when the rehabilitation project takes place. Discussions with Ohio Edison have led to the City's contractor doing the installation in order to make sure that the work does not hold up the rest of the project. Since the original scope of Proudfoot's agreement did not include detail design for lighting, an amendment must be approved in order for Proudfoot to proceed with this work.

STRATEGIC PLAN INFORMATION: This item complies with the City's Strategic Plan. The work involved with this amendment will help the project be more successful by improving the pump station and ensure "High Quality/Low Cost Utilities" for our residents (Action Plan Item J).

BUDGETARY INFORMATION: Proudfoot's lump sum fee for design is currently \$180,485.00. With the approval of the Fourth Amendment in the amount not exceed \$13,900.00, the revised agreement will be \$194,385.00. The additional service fee will be paid with City Capital funds.

ACTION REQUESTED: It is recommended that the Fourth Amendment to the Agreement for Professional Design Services with Proudfoot Associates, Inc. be approved and that the necessary legislation be passed under suspension of the rules in full accordance with Section 14 of the City Charter in order to proceed with executing the contract and scheduling the work necessary for the rehabilitation work.

Kathryn K. McKillips, P. E., Director
Department of Engineering Services

I concur with this recommendation:

James L. (Don) Miears
Interim City Manager

cc: Don C. Icsman, Law Director
Joyce Brown, Clerk of City Commission
Edward A. Widman, Finance Director

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE A FOURTH AMENDMENT TO THE CONTRACT WITH PROUDFOOT ASSOCIATES FOR ADDITIONAL SERVICES FOR THE HAYES AVENUE UNDERPASS REHABILITATION PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this Project involves the replacement of concrete sidewalks and handrails and the repair and painting (or surface treatment) of the abutment and upper retaining walls on both sides of the road from North Depot Street to Filmore Street along with repairs and new handrails installed on the concrete stairs; and

WHEREAS, this Project will also include the construction of a jersey style lower wall under the bridge on both sides and the installation of drainage tiles behind the upper and lower walls in order to direct ground water into the City's sewer system, the relocation of a sewer force main to a position under the sidewalk and the repair of the sewer pump station for the underpass; and

WHEREAS, this City Commission upon competitive bid awarded a contract to Proudfoot Associates of Toledo, Ohio, for Professional Design Services for the Hayes Avenue Underpass Rehabilitation Project by Ordinance No. 04-176 passed on October 25, 2004; and

WHEREAS, this City Commission authorized amendments for additional design services by Ordinance No. 06-019 passed on February 13, 2006, Ordinance No. 06-025 passed on February 27, 2006, and Ordinance 06-119 passed on December 11, 2006; and

WHEREAS, originally Ohio Edison was to install the new lighting at the Hayes Avenue Underpass when the rehabilitation project takes place but after discussions with Ohio Edison it was determined the installation should be done by the City's contractor to ensure the work does not delay the rest of the project; and

WHEREAS, this proposed amendment will authorize Proudfoot to provide plans and specifications for the lighting under the bridge as well as new light poles on the approaches which was not included in the original scope of Proudfoot's agreement; and

WHEREAS, Proudfoot's lump sum fee for design is currently \$180,485.00, and with the approval of this Fourth Amendment for additional services in the amount of \$13,900.00 (to be paid with City Capital Funds) the revised agreement amount will be \$194,385.00; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to proceed with executing the contract to allow Proudfoot Associates to schedule the work necessary so as not to delay the completion of the project; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Department of Engineering Services of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. This City Commission approves the amendment to the contract with Proudfoot Associates, and authorizes and directs the City Manager to execute the Fourth Amendment for Professional Design Services for the Hayes Avenue Underpass Rehabilitation Project, in an amount **not to exceed** Thirteen Thousand Nine Hundred and 00/100 Dollars (\$13,900.00).

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

DANIEL J. KAMAN
PRESIDENT OF THE CITY COMMISSION

ATTEST:

B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

Memo

To: Don Miers, Interim City Manager
From: Kim A. Nuesse, Chief of Police
CC: Ed Widman, Finance Director
Joyce Brown, Commission Clerk
Date: 10/11/07
Re: Commission Agenda Item

Items for Consideration:

Requesting legislation for approval of payment by City Commissioners to Firelands Corporate Health Center for Sandusky Police treadmill stress tests, physicals and drug screens which were completed. This is a contractual obligation by the city of Sandusky per the FOP/OLC contract, Article 33 and Appendix G, Fitness Program, and Addendum 1.

In accordance with the current FOP/OLC contract, officers participating in the fitness program received an annual health and physical exam with Firelands Corporate Health Center during the second quarter of this year. Invoices for payment have been received by the Sandusky Police Department for the completed medical tests.

The previous FOP/OLC contract was structured so that officers participating in the physical fitness incentive program received annual health and physical exams based upon their anniversary date, with the medical invoices spread out over a period of time. Due to the changes in the current contract, the annual health and physical exams are to be performed within the second quarter of each year, with the physical agility test performed in the third quarter. This change results in a larger number of invoices being received simultaneously due to all officers being tested during a shorter time frame on a yearly basis as required by the program. Several additional officers opted into the program this year as well. The physical fitness incentive program is designed to encourage officers to maintain a healthy fitness level in order to better perform their duties, which results in a higher level of service delivery to the community.

Budget Impact:

The total of invoices requested to be paid is \$18, 451.00. Funds were budgeted and are available in the Police Department's 2007 budget although a transfer of funds will be required to expend funds from the proper line item account.

Action Requested:

It is requested that the proper legislation be prepared authorizing the payment of invoices to Firelands Corporate Health Center for physicals, treadmill stress tests and drug screens for the Sandusky Police Department. It is further requested that the legislation be passed under suspension of the rules in

accordance with Section 14 of the City Charter to make payment in a timely manner for services that were provided in the 2nd quarter of 2007.

I concur with this recommendation:

James L. (Don) Miers, Interim City Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO MAKE PAYMENT TO FIRELANDS CORPORATE HEALTH CENTER OF SANDUSKY, OHIO, FOR TREADMILL STRESS TESTS, PHYSICALS AND DRUG SCREENS COMPLETED FOR THE SANDUSKY POLICE DEPARTMENT IN 2007; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the City of Sandusky has a current contractual obligation pursuant to the current FOP/OLC contract, Article 33 and Appendix G, Fitness Program, and Addendum 1, and in accordance with the contract, officers participating in the Fitness Program received an annual health and physical exam with Firelands Corporate Health Center during the second quarter of this year and the invoices for these completed medical tests were recently received by the Sandusky Police Department; and

WHEREAS, in the past annual health and physical exams were scheduled based upon the officer's anniversary dates with invoices spread out over a period of time but due to changes in the current contract, annual health and physical exams are to be performed within the second quarter of each year resulting in a larger number of invoices being received simultaneously; and

WHEREAS, the total cost for medical services performed for the Sandusky Police Department as reflected on current unpaid invoices is \$18,451.04; funds were budgeted and available in the Police Department's 2007 budget; and

WHEREAS, this legislation should be passed under suspension of the rules as an emergency measure in accordance with Section 14 of the City Charter in order to make payment in a timely manner for services provided in the 2nd quarter of 2007; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to make payment to Firelands Corporate Health Center of Sandusky, Ohio, for treadmill stress tests, physicals and drug screens completed for the Sandusky Police Department in an amount **not to exceed** Eighteen Thousand Four Hundred Fifty One and 00/100 Dollars (18,451.00), consistent with the invoices submitted to the City.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

DANIEL J. KAMAN
PRESIDENT OF THE CITY COMMISSION

ATTEST:

B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

MEMO

TO: City Commission
FROM: Ed Widman, Finance Director
DATE: October 12, 2007
RE: Commission Agenda Item

ITEM FOR CONSIDERATION:

A motion by the City Commission approving inter-fund transfers. The Auditor of State office has instructed this office to have the City Commission approve inter-fund transfers before the transfer occurs.

BUDGETARY INFORMATION:

Transfers are included in the appropriations. There is no budgetary impact.

ACTION REQUESTED:

The City Commission is requested to approve the attached document which identifies transfers required through the end of October 2007. A motion by the City Commission and evidence in the minutes will provide the needed documentation of the City Commission approval.

If there are any questions, please contact the Finance Director.

Attachments

CC10122007

cc: City Manager
Law Director

ORDINANCE NO. _____

AN ORDINANCE AMENDING PART FIVE - GENERAL OFFENSES, CHAPTER 505 - ANIMALS AND FOWL, IN THE MANNER AND WAY SPECIFICALLY SET FORTH HEREINBELOW; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this City Commission in response to the decision of the Sixth District Court of Appeals in the case of Toledo v. Tellings, decided on March 3, 2006, removed breed specific language in Chapter 505 relating to pit bulls being defined as vicious dogs by the passage of Ordinance No. 06-053, effective on June 12, 2006; and

WHEREAS, on August 1, 2007, the Ohio Supreme Court issued its decision in the appeal of the Toledo v. Tellings Sixth District Court of Appeals case, finding that the classification of pit bulls (as defined) as vicious dogs under the Ohio Revised Code Section 955.11(A)(4)(a)(iii) is constitutional; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter to amend Chapter 505 by the addition of the classification of pit bulls being defined by State Law as vicious dogs as authorized by the Ohio Supreme Court's decision in the Toledo v. Tellings case; and

WHEREAS, it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio, finds that an emergency exists and that it is advisable that the amendments to Chapter 505 of the Codified Ordinances be enacted as soon as possible and that this **Ordinance** be declared an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter upon its adoption and, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. Part Five - General Offenses, Chapter 505 - Animals and Fowl, of the Codified Ordinances of the City is hereby amended as follows:

**NEW LANGUAGE APPEARS IN BOLD PRINT
LANGUAGE TO BE STRICKEN APPEARS WITH A STRIKE THROUGH IT
LANGUAGE TO REMAIN UNCHANGED APPEARS IN REGULAR PRINT**

**CHAPTER 505
ANIMALS AND FOWL**

505.01	Definitions.	505.17	Feeding of Pigeons Restricted.
505.02	Dogs and Other Animals Running at Large.	505.18	Rabies Vaccination.
505.03	Impounding Procedures; Obstruction.	505.19	Dangerous and Vicious Dog, Definitions.
505.04	Annual Registration of Dogs; Tags Required.	505.20	Determination of Dangerous or Vicious Dogs.
505.05	Abandoning Animals.	505.21	Appeal Procedure.
505.06	Killing or Injuring Animals.	505.22	Hearing Procedure.
505.07	Poisoning Animals.	505.23	Registration of Dangerous or Vicious Dogs.
505.08	Cruelty to Animals.	505.24	Insurance for Vicious Dogs.
505.09	Nuisance Conditions Prohibited.	505.25	Confinement or Restraint of Dangerous or Vicious Dogs.
505.10	Animal Bites; Quarantine and Reporting.	505.26	Inspections; Obstruction.
505.11	Hunting.	505.27	Dog May be Killed for Certain

505.12	Animal Owner Liable for Damage to Property.	505.28	Acts; Owner Liable for Damages. Impoundment; Destruction of Dogs.
505.13	Prohibited Areas.	505.29	Keeping Banned Dogs.
505.14	Keeping Dangerous Animals; Permit; Fees.	505.30	Strict Liability.
505.15	Report of Escape of Exotic or Dangerous Animal.	505.99	Penalties.
505.16	Coloring Rabbits or Baby Poultry; Sale or Display Of.		

CROSS REFERENCES

Coloring rabbits or chicks prohibited - see Ohio R.C. Ch. 925
Animals running at large; strays - see Ohio R.C. Ch. 951
Dogs - see Ohio R.C. Ch. 955
Offenses relating to domestic animals - see Ohio R.C. Ch. 959
Persons aiding, driving animals upon roadway - see TRAF. 303.05
Freeway use prohibited by pedestrians, bicycles and animals - see TRAF. 303.06
Excessive animal noise - see GEN. OFF. 519.10(e)
Noxious or offensive odors - see GEN. OFF. 521.09
Hunting - see GEN. OFF. 549.17
Dead animals - see S.U. & P.S. 955.08
No manure in garbage can - see S.U. & P.S. 955.18
Feeding of wildlife and domesticated animals or fowl - see S.U. & P.S. 955.23

505.01 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

- (a) "Whoever" includes owner, keeper, handler or harborer.
- (b) "Owner" includes keeper, handler or harborer.
- (c) "Registration tag" means the metal tag issued annually by the County Auditor evidencing a registered dog.
- (d) "Registered dog" means a dog registered in compliance with O.R.C. Chapter 955.
- (e) "Permit to run at large" means running at will, roaming away from the premises of the owner, acting on its own initiative and not in leash or under the immediate control of the owner.
- (f) "Impound" means to seize summarily, confine and retain in custody of law.
- (g) "Animal" includes dogs, cats, cattle, sheep, horses, geese, ducks, turkeys, chickens or other fowl or any other animal, domestic or wild, maintained or kept as a pet, for work or for a product.
- ~~(h) The "Director of Community Development" means the person employed by the City of Sandusky holding the job title of Director of Community Development pursuant to §143.01 of the Codified Ordinances of the City, or designee. (Ord. 06-053. Passed 6-12-06.)~~
- (h) "Animal Control Officer" means the person(s) employed by the City of Sandusky holding the job title of Animal Control Officer.**
- (i) "Pit Bull" means any Staffordshire Bull Terrier, American Pit 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, American Pit Bull Terrier, or American Staffordshire Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier, American Pit Bull Terrier, or American Staffordshire Terrier.**

505.02 DOGS AND OTHER ANIMALS RUNNING AT LARGE.

- (a) No person being the owner or having charge of any animal as defined in §505.01 shall permit such animal to run at large upon any public place, or upon any unenclosed lands, or upon the premises of another. The owner or person having

charge of every animal shall at all times keep such animal either confined upon the premises of the owner or keeper, or under reasonable control of some person.

- (b) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper or harbinger of any dog shall fail at any time to do either of the following:
 - (1) Keep the dog physically confined or restrained upon the premises of the owner, keeper or harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;
 - (2) Keep the dog under the reasonable control of some person;
 - (3) No owner, keeper, or harbinger of any female dog shall permit it to go beyond the premises of the owner, keeper or harbinger at any time the dog is in heat unless the dog is properly in leash. (O.R.C. §955.22(B)(C))
- (c) The running at large of any such animal in or upon any of the places mentioned in this section is prima-facie evidence that it is running at large in violation of this section.
- (d) Whoever violates this section is guilty of a minor misdemeanor for a first offense and a misdemeanor of the fourth degree for each subsequent offense. (§505.99(1) & (2), O.R.C. §955.99; Ord. 04-140. Passed 8-9-04.)

505.03 IMPOUNDING PROCEDURES; OBSTRUCTION.

- (a) Any animal found running at large shall be impounded.
- (b) Notification shall be made to the County Dog Warden by the ~~Director of Community Development~~ **Chief of Police** or designee or any Law Enforcement Officer or **Animal Control Officer** for any dog found running at large for the purpose of impoundment and disposition as provided in the O.R.C. Sections 955.12, 955.15 and 955.16.
- (c) **Any cat or other animal found running at large shall be impounded by the Chief of Police or designee or any Law Enforcement Officer or Animal Control Officer and held for three (3) days. If the cat or other animal is not claimed by the owner during the three (3) day time period, together with the payment of any applicable redemption fees to the City of Sandusky, the cat or other animal shall be humanely destroyed.**
- (ed) No person shall obstruct, hinder or interfere with anyone lawfully engaged in the enforcement of the procedures contained in this Section.
- (de) Whoever violates subsection (d) hereof is guilty of a minor misdemeanor. (§505.99(b); ~~Ord. 06-053. Passed 6-12-06.~~)

505.04 ANNUAL REGISTRATION OF DOGS; TAGS REQUIRED.

- (a) Except for guide dogs registered under O.R.C. §955.011 and dogs kept by an institution or organization for teaching and research purposes under O.R.C. §955.16, no person shall own, keep or harbor a dog more than three months of age without annually registering such dog with the County Auditor. Failure of any dog at any time to wear a valid registration tag shall be prima-facie evidence of lack of registration and subject such dog to impounding and disposition as provided by O.R.C. §955.10, §955.12 and §955.16.
- (b) Whoever violates this section is guilty of a minor misdemeanor. (§505.99(b), O.R.C. §955.99(B); Ord. 04-140. Passed 8-9-04.)

505.05 ABANDONING ANIMALS.

- (a) No owner, keeper, handler or harbinger of a dog, cat, animal, or companion animal as defined in O.R.C. §959.131, shall abandon such dog, cat, animal, or companion animal. (O.R.C. §959.01)
- (b) Whoever violates this section is guilty of a minor misdemeanor. (§505.99(b), O.R.C. §959.99(E); Ord. 04-140. Passed 8-9-04.)

505.06 KILLING OR INJURING ANIMALS.

- (a) No person shall maliciously, or willfully, and without the consent of the owner, kill or injure a farm animal, dog, cat or other domestic animal that is the property of another. This section does not apply to a licensed veterinarian acting in an official capacity or any law enforcement officer. (O.R.C. §959.02)
- (b) Whoever violates this section, if the value of the animal killed or the injury done amounts to less than three hundred dollars (\$300.00), is guilty of a misdemeanor of the second degree; if the value of the animal killed or the injury done amounts to three hundred dollars (\$300.00) or more, such person is guilty of a misdemeanor of the first degree. (§505.99(c), O.R.C. §959.99(B); Ord. 04-140. Passed 8-9-04.)

505.07 POISONING ANIMALS.

- (a) No person shall maliciously, or willfully and without the consent of the owner, administer poison, except a licensed veterinarian acting in such capacity, to a farm animal, dog, cat, poultry or other domestic animal that is the property of another; and no person shall, willfully and without the consent of the owner, place any poisoned food where it may be easily found and eaten by any of such animals, either upon his own lands or the lands of another. (O.R.C. §959.03)
- (b) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (§505.99(d), O.R.C. §959.99(C); Ord. 04-140. Passed 8-9-04.)

505.08 CRUELTY TO ANIMALS.

- (a) No person shall:
 - (1) Torture an animal, deprive one of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate or kill, or impound or confine an animal without supplying it during its confinement with a sufficient quantity of good wholesome food and water;
 - (2) Impound or confine an animal without affording it, during such confinement, access to shelter from wind, snow, rain or excessive direct sunlight if it can reasonably be expected that the animal would otherwise become sick or in some other way suffer;
 - (3) Carry or convey an animal in a cruel or inhumane manner;
 - (4) Keep animals in an enclosure without wholesome exercise and change of air. (O.R.C. §959.13)
- (b) Whoever violates this section is guilty of a misdemeanor of the second degree. (§505.99(e), O.R.C. §959.99(D); Ord. 04-140. Passed 8-9-04.)

505.09 NUISANCE CONDITIONS PROHIBITED.

- (a) No person shall keep or harbor any animal or fowl in the Municipality so as to create noxious, or offensive odors or unsanitary conditions which are a menace to the health, comfort or safety of the public.
- (b) No person being the owner or in charge or control of any animal shall permit the animal to defecate upon any public or private land other than the land where the owner or person in charge of such animal resides.
- (c) The owner or person in charge or control of any animal which defecates on any such prohibited land shall immediately clean such and cause its removal, in a sanitary manner, to a proper receptacle.
- (d) The owner or person in charge of any animal shall keep the property where he resides in a clean and sanitary condition by regularly removing the defecation of the animal to prevent accumulation.
- (e) The accumulation of defecation of any animal is hereby declared to be a nuisance condition if it creates an unsanitary or unhealthy condition and is a violation of this section.

- (f) Paragraph (b) of this Section shall not apply to any animal, which has been expressly invited to enter upon private property by notification to the owner or person in charge of such animal.
- (g) Whoever violates this section is guilty of a minor misdemeanor. (§505.99(b); Ord. 04-140. Passed 8-9-04.)

505.10 ANIMAL BITES; QUARANTINE AND REPORTING.

- (a) No person, having knowledge of the existence of any rabies, or the fact that any animal has bitten any other person, shall fail to immediately report such information to the Board of Health.
- (b) No person shall remove or transfer any animal that has bitten any person from the City until a quarantine period as specified in subsection (e) has been completed except that a person may transfer a dog to the County Dog Warden **or the Animal Control Officer of the City.**
- (c) No person shall kill a dog or other animal that has bitten any person until a quarantine period as specified in subsection (e) has been completed. This prohibition does not apply to the killing of a dog or other animal in order to prevent further injury or death or if the dog or animal is diseased or seriously injured.
- (d) No person who has killed a dog or other animal that has bitten any person in order to prevent further injury or death or if the dog or animal is diseased or seriously injured shall fail to immediately notify the Board of Health of the facts relative to the bite and the killing and hold the body of the dog or other animal until the Board of Health claims it to perform tests for rabies.
- (e) The quarantine period for a dog or other animal that has bitten any person shall be ten days or any other period as deemed necessary by the Board of Health to observe the dog or other animal for rabies.
- (f) This section does not apply to a police dog that has bitten a person while the police dog is under the care of a licensed veterinarian or has bitten a person while the police dog is being used for law enforcement, corrections, prison or jail security, or investigative purposes. If, after biting a person, a police dog exhibits any abnormal behavior, the law enforcement agency and the law enforcement officer the police dog assists, within a reasonable time after the person is bitten, shall make the police dog available for the Board of Health for the district in which the bite occurred to perform tests for rabies.
- (g) As used in this section, "police dog" has the same meaning in Section 2921.321 [2921.32.1] of the Ohio Revised Code.
- (h) Whoever violates this section is guilty of a minor misdemeanor on a first offense and of a misdemeanor of the fourth degree on each subsequent offense. (~~§505.99(f), O.R.C. §955.261, §955.99(C); Ord. 06-053. Passed 6-12-06.~~)

505.11 HUNTING.

See Codified Ordinance Section 549.17.
(Ord. 04-140. Passed 8-9-04.)

505.12 ANIMAL OWNER LIABLE FOR DAMAGE TO PROPERTY.

- (a) The owner, keeper, handler or harbinger of any animal which damages or destroys public or private property shall be held liable for the full value of the property damaged or destroyed in addition to any penalty imposed for a violation of this chapter.
- (b) Whoever violates this section is guilty of a minor misdemeanor. (§505.99; Ord. 04-140. Passed 8-9-04.)

505.13 ANIMALS PROHIBITED ON POSTED PUBLIC GROUNDS.

No person being the owner of any animal as defined in §505.01 shall permit such animal to

enter upon any posted public property, which includes, but is not limited to, playgrounds, picnic areas, parks, baseball and softball parks, and any other posted public grounds. (§505.99(b); Ord. 04-140. Passed 8-9-04.)

505.14 KEEPING DANGEROUS ANIMALS; PERMIT; FEES.

- (a) As used in this section, “dangerous animal” means and includes any mammal, amphibian, reptile or fowl which is of a species which is wild by nature, and of a species which, due to size, vicious nature or other characteristic is dangerous to human beings. Such animals include, but are not limited to, lions, tigers, leopards, panthers, bears, wolves, apes, gorillas, monkeys of a species whose average adult weight is twenty pounds or more, foxes, elephants, rhinoceroses, alligators, crocodiles and all forms of venomous/poisonous reptiles, including constrictor snakes. The term “dangerous animal” as used in this section shall not include gerbils, hamsters, guinea pigs, mice or rabbits.
- (b) No person shall possess, keep or maintain within the corporate limits of this City, any dangerous animal unless a specified animal permit therefore is first obtained from the ~~Director of Community Development~~ **Chief of Police** or designee. Such permit shall be renewed annually upon or before the anniversary date of the original permit issuance.
- (c) The ~~Director of Community Development~~ **Chief of Police** or designee shall issue a special permit for the keeping or maintenance of a dangerous animal if after inspection and upon recommendation of such City officials as the ~~Director of Community Development~~ **Chief of Police** or **designee** designates, it is found that:
 - (1) The animal is at all times kept or maintained in a safe manner that it is at all times confined securely so that the keeping of such animal shall not constitute a danger to human life or the property of others.
 - (2) Adequate safeguards are made to prevent unauthorized access to such animal by members of the public.
 - (3) The health or well being of this animal is not in any way endangered by the manner of keeping or confinement.
 - (4) The keeping of such animal does not constitute a nuisance and shall not disturb the tranquility of the surrounding neighborhood.
 - (5) The keeping of such animal shall not create or cause offensive odors or constitute a danger to public health.
 - (6) The quarters in which such animal is kept or confined are adequately lighted and ventilated and are so constructed that they may be kept in a clean and sanitary condition.
 - (7) The applicant for such special permit proves his ability to respond in damages in a single limit amount of five hundred thousand dollars (\$500,000) for bodily injury to or death of any person or persons or for damage to property owned by any other person which may result from the ownership, keeping or maintenance of such animal. Proof of liability to respond in damages may be given by filing with the ~~Director of Community Development~~ **Chief of Police** or designee a certificate of insurance from an insurance company authorized to do business in the State stating that the applicant is, at the time of his application, and shall be during the period of such special permit, insured against liability to respond in such damages, or by posting with the ~~Director of Community Development~~ **Chief of Police** or designee a surety bond conditioned upon the payment of such damages during the period of such special permit. Such certificate of insurance or bond shall provide that no cancellation of the insurance or bond shall be made unless ten days written notice is first given to the ~~Director of Community Development~~ **Chief of Police** or designee.
- (d) The ~~Director of Community Development~~ **Chief of Police** or designee in investigating any applicant for a permit under this section or in the enforcement of this section, is authorized to consult with and seek the advice of the Society for Prevention of Cruelty to Animals, the Animal Protective League, and Humane Society or any other individual, agency, organization or society which may be able

- to provide information and advice concerning the keeping of dangerous animals.
- (e) The ~~Director of Community Development~~ **Chief of Police** or designee shall renew such special permit only upon a finding that all criteria listed in subsection (c)(1) to (7) hereof are met. Should the ~~Director of Community Development~~ **Chief of Police** or designee determine during any inspection that any of the conditions therein specified are being violated, he shall refuse to renew any such special permit or revoke such special permit if such violation is not corrected within such period of time as he directs.
 - (f) A separate permit is required for the keeping of each dangerous animal.
 - (g) The provisions of this section shall not apply to the keeping of dangerous animals in the following cases:
 - (1) The keeping of such animals in zoos, bona fide education or medical institutions, museums or any other place 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 exhibition to the public of such animals by circus, carnival or other exhibit or show.
 - (3) The keeping of such animals in a bona fide, licensed veterinary hospital for treatment.
 - (4) The keeping and offering for sale of such animals by a bona fide commercial "pet shop" establishment.
 - (h) In no event shall subsection (g) hereof be construed so as to permit the keeping of a dangerous animal at a private residence located within the corporate limits of the City without the special permit required by this section.
 - (i) No permit or renewal of a permit shall be issued for the keeping of dangerous animals unless all provisions of this section are complied with and a fee of fifty dollars (\$50.00) is paid to the ~~City Manager~~ **Chief of Police or designee**. Permit fees shall be paid annually on or before the start of the permit year.
 - (j) Whoever violates this section is guilty of a misdemeanor of the third degree. A separate offense shall be deemed committed each day during, or on which a violation occurs or continues. (§505.99(g); ~~Ord. 06-053. Passed 6-12-06.~~)

505.15 REPORT OF ESCAPE OF EXOTIC OR DANGEROUS ANIMAL.

- (a) The owner or keeper of any member of a species of the animal kingdom that escapes from his custody or control and that is not indigenous to this State or presents a risk of serious physical harm to persons or property, or both, shall, within one hour after he discovers or reasonably should have discovered the escape, report it to:
 - (1) A law enforcement officer of the Municipality and the sheriff of the county where the escape occurred; and
 - (2) The Clerk of the Municipal Legislative Authority.
- (b) If the office of the Clerk of the Legislative Authority is closed to the public at the time a report is required by subsection (a) hereof, then it is sufficient compliance with subsection (a) hereof if the owner or keeper makes the report within one hour after the office is next open to the public.
- (c) Whoever violates this section is guilty of a misdemeanor of the first degree. (§505.99(h), O.R.C. §2927.21; Ord. 04-140. Passed 8-9-04.)

505.16 COLORING RABBITS OR BABY POULTRY; SALE OR DISPLAY OF

- (a) No person shall dye or otherwise color any rabbit or baby poultry, including, but not limited to, chicks and ducklings. No person shall sell, offer for sale, expose for sale, raffle or give away any rabbit or baby poultry which has been dyed or otherwise colored. No poultry younger than four weeks of age may be sold, given away or otherwise distributed to any person in lots of less than six. Stores, shops, vendors and others offering young poultry for sale or other distribution shall provide and operate brooders or other heating devices that may be necessary to maintain poultry in good health, and shall keep adequate food and water available to the poultry at all times. (O.R.C. §925.62)

- (b) Whoever violates this section is guilty of a misdemeanor of the fourth degree on a first offense; on each subsequent offense the person is guilty of a misdemeanor of the third degree. (§505.99(l), O.R.C. §925.62 and §925.99; Ord. 04-140. Passed 8-9-04.)

505.17 FEEDING OF PIGEONS RESTRICTED.

- (a) No person shall feed, keep or harbor pigeons in the City so as to create thereby offensive odors or unsanitary conditions which are a menace to the health, comfort or safety of the public, or which creates unreasonably loud and disturbing noises of such character, intensity or duration, or at such unreasonable hours, as to disturb the peace, quiet and good order of the City.
- (b) Whoever violates this section is guilty of a minor misdemeanor. (§505.99(b); Ord. 04-140. Passed 8-9-04.)

505.18 RABIES VACCINATION.

- (a) Every person owning, keeping, possessing, harboring, maintaining or having the care, custody or control of a dog or companion animal as defined in O.R.C. §959.131, shall have the dog or companion animal vaccinated against rabies by a licensed veterinarian at least once every three years. Failure of any dog or cat to wear the rabies vaccination tag issued by the licensed veterinarian who administered the vaccine shall be prima facie evidence, which the owner may rebut with proof of proper vaccination, of the dog's or cat's lack of vaccination against rabies.
- (b) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (§505.99(d), O.R.C. §959.99; Ord. 04-140. Passed 8-9-04.)

505.19 DANGEROUS AND VICIOUS DOG, DEFINITIONS.

As used in this section and sections 505.20 through 505.29 of this chapter, certain terms are defined as follows:

- (a) (1) "Dangerous dog" means a dog that, without provocation, and subject to division (a)(2) of this section, 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, 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.
- (2) "Dangerous dog" does not include a police dog that 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 while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.
- (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) "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.
- (d) (1) "Vicious dog" means a dog that, without provocation and subject to division (d)(2) of this section, meets any of the following:
 - (i) Has killed or caused serious injury to any person;
 - (ii) Has caused injury, other than killing or serious injury, to any person, or has killed another dog;
 - (iii) **Belongs to a breed that is commonly known as a pit bull dog. 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.

- (2) "Vicious dog" does not include either of the following:
 - (i) A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or 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;
 - (ii) 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 offenses on the property of the owner, keeper or harborer of the dog.

- (e) "Without provocation" means that a dog was not teased, tormented, 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. (O.R.C. §955.11); ~~Ord. 06-053. Passed 6-12-06.~~

505.20 DETERMINATION OF DANGEROUS OR VICIOUS DOGS.

- (a) Whenever a complaint is made to ~~the Director of Community Development or designee, or the Chief of Police or designee~~ **or the Animal Control Officer** of the presence of a dangerous or vicious dog within the City, ~~the Director of Community Development or designee, or the Chief of Police or designee~~ **or the Animal Control Officer** shall promptly inspect or cause an inspection to be made of the premises on which it is alleged that such animal is being kept.
- (b) The ~~Director of Community Development or designee, or the Chief of Police or designee~~ **or the Animal Control Officer** shall determine that a dog is dangerous pursuant to this chapter upon proof by a preponderance of the evidence of any of the following:
 - (1) Without provocation, the dog has chased or approached any person or domestic animal in either a menacing fashion or in an apparent attitude of attack;
 - (2) Without provocation, the dog has attempted to bite any person; or
 - (3) Without provocation, the dog has bitten or otherwise endangered any animal, or companion animal as defined in O.R.C. §959.131.
- (c) The ~~Director of Community Development or designee, or the Chief of Police or designee~~ **or the Animal Control Officer** shall determine that a dog is vicious pursuant to this chapter upon proof by a preponderance of the evidence of any of the following:
 - (1) Without provocation, the dog has killed or caused physical harm to any person; or
 - (2) Without provocation, the dog has killed any animal, or companion animal as defined in O.R.C. §959.131.
- (d) If the ~~Director of Community Development or designee, or the Chief of Police or designee~~ **or the Animal Control Officer** determines that a dangerous or vicious dog is being kept within the City, ~~the Director of Community Development or designee, or the Chief of Police or designee~~ **or the Animal Control Officer** shall then determine the individual, firm or corporation who from the records in the Auditor's office of Erie County, appears to be the owner of the dog, or if such information is not available, the titled owner of the property upon which the dog is kept, and shall, within five days **of the determination**, cause a written notice to be served on such owner. Notice shall be served by certified mail with a return receipt requested or by personal service. If service of such written notice is unable to be perfected, then ~~the Director of Community Development or designee, or the Chief of Police or designee~~ **or the Animal Control Officer** shall cause a copy of the aforesaid notice to be served by ordinary mail which shall be deemed complete upon mailing, and also left with the individual, if any, in possession of the premises on which the dog is kept, or if there is no individual in possession of the premises, he shall cause a copy of the notice to be posted on the premises.

- (e) The notice required by subsection (d) hereof shall state, in brief, the findings with respect to the dangerous or vicious nature of the dog. The notice shall further state that the owner must comply with the requirements of this chapter within thirty days after service of the notice and the owner's right to appeal under Section 505.21.
- (f) Police dogs are exempt from these provisions for all actions occurring in the course of their duties. (O.R.C. §955.11; ~~Ord 06-053. Passed 6-12-06.~~)

505.21 APPEAL PROCEDURE.

- (a) The owner of a dog who has been served with a notice pursuant to §505.20 may, within seven business days after receipt of such notice, make a written demand to the Department of ~~Community Development~~ **Chief of Police or designee** for a hearing on the question of whether the dog is dangerous or vicious as defined in §505.19.
- (b) Every effort should be made to hold a hearing no later than ten **(10)** business days following receipt of written demand to the ~~Department of Community Development~~ **Chief of Police or designee** and at least three **(3)** business days' notice of the hearing shall be given to the individual who made the written demand for the hearing. (~~Ord. 06-053. Passed 6-12-06.~~)

505.22 HEARING PROCEDURE.

- (a) All hearings requested pursuant to the provisions of §505.21 shall be conducted before the Animal Appeals Board. The Board shall be composed of the Law Director or designee, a doctor of veterinary medicine designated by the ~~City Manager,~~ **Chief of Police or designee** and an Officer or Board Member of the Humane Society of Erie County. The Board may affirm, reverse or modify the finding that a dog is dangerous or vicious by a majority vote.
- (b) A copy of the decision of the Board shall be served upon the person who made the written demand for the hearing, by certified mail with a return receipt requested. The decision of the Board shall be final and conclusive, unless an appeal is timely filed in a court of competent jurisdiction.
- (c) All hearings held by the Board pursuant to this chapter shall be administrative in nature. At all hearings conducted pursuant to this section, any party may be represented by legal counsel. The rules of evidence utilized by the courts shall not be applicable in hearings before the Board. The Board is hereby empowered to subpoena witnesses and take testimony under oath. (~~Ord. 04-140. Passed 8-9-04.~~)

505.23 REGISTRATION OF DANGEROUS OR VICIOUS DOGS.

- (a) Any person owning, keeping, possessing, harboring, maintaining or having the care, custody or control of a dangerous or vicious dog shall:
 - (1) Register the dog with the ~~Department of Community Development~~ **Chief of Police or designee** annually, between January 2 and January 20, and whenever a dog is newly obtained;
 - (2) At the time of registration provide proof of liability insurance as required by §505.24;
 - (3) Identify the dog by having a microchip implanted in the dog by a licensed veterinarian together with registration in the database maintained by the veterinarian;
 - (4) Provide ~~two color photos~~ **photographs** of the dog **showing the front face, side head, and whole body of the dog** to the ~~Department of Community Development~~ **Chief of Police or designee** annually upon registration;
 - (5) Post on the premises, in a conspicuous place where the dog is kept, at least one City issued warning sign available, upon payment of a fee of ten dollars (\$10.00) from the ~~Department of Community Development~~ **Chief**

- of Police or designee.** The sign shall be visible and capable of being read from the public highway or street;
- (6) Notify the ~~Department of Community Development~~ **Chief of Police or designee** within seventy-two hours if the dangerous or vicious dog has died or has been sold or donated, and provide the ~~Department of Community Development~~ **Chief of Police or designee** with the name, address and telephone number of the new owner; and
 - (7) Pay an annual registration fee of twenty-five dollars (\$25.00) **to the Chief of Police or designee** to cover the administrative expenses associated herewith.
- (b) Whoever fails to register a dangerous or vicious dog as provided in this section is guilty of a misdemeanor of the first degree. (§505.99(h), O.R.C. §955.99(H); ~~Ord. 06-053. Passed 6-12-06.~~)

505.24 INSURANCE FOR DANGEROUS AND VICIOUS DOGS.

- (a) No owner, keeper, handler or harbinger of a dangerous or vicious dog shall fail to submit proof of separate canine insurance or a current Homeowners Liability Insurance Policy from an insurance company authorized to issue liability insurance in the State of Ohio at the current minimum level of Homeowners Insurance coverage, which is \$100,000.00 per occurrence due to damage, bodily injury or death of a person caused by the dog.

In addition submission of written proof that the company issuing the Homeowners Liability Policy is aware of the ownership and presence of the dog and that the insurance coverage provided under the policy does not exclude coverage for the dog.

- (b) Whoever violates this section is guilty of a misdemeanor of the first degree. (§505.99(h), O.R.C. §955.22 and §955.99(H); Ord. 04-140. Passed 8-9-04.)

505.25 CONFINEMENT OR RESTRAINT OF DANGEROUS OR VICIOUS DOGS.

- (a) Except when a dangerous or vicious dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper or harbinger of a dangerous or vicious dog shall fail to do either of the following:
- (1) While that dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, except that a
 - (2) While that dog is off the premises of the owner, keeper, or harbinger, keep that dog on chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:
 - (i) Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;
 - (ii) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;
 - (iii) Muzzle that dog.
- (b) If a violation of division (a) of this section involves a dangerous dog, whoever violates that division is guilty of a misdemeanor of the fourth degree on a first offense and of a misdemeanor of the third degree on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the

offender to obtain liability insurance pursuant to §505.24 of this chapter. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the County Dog Warden, or the County Humane Society.

- (c) If a violation of division (a) of this section involves a vicious dog, whoever violates that division is guilty of one of the following:
 - (1) A felony of the fourth degree on a first or subsequent offense if the dog kills or seriously injures a person. Additionally, the court shall order that the vicious dog be humanely destroyed by a licensed veterinarian, the County Dog Warden, or the County Humane Society.
 - (2) A misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the County Dog Warden, or the County Humane Society.
 - (3) A misdemeanor of the first degree if the dog causes injury, other than killing or serious injury, to any person. (§505.99(j) & (k), O.R.C. §955.22 and §955.99; Ord. 04-140. Passed 8-9-04.)

505.26 INSPECTIONS; OBSTRUCTION.

- (a) Any person owning, keeping, possessing, harboring, maintaining or having the care, custody or control of a dangerous or vicious dog shall be deemed to have given consent to an inspection of private property, other than within any private structure unless otherwise authorized by law, by anyone lawfully engaged in the enforcement of this chapter for the purpose of determining compliance.
- (b) No person, with purpose to prevent, obstruct or delay the performance by anyone lawfully engaged in the enforcement of this chapter for of any authorized act within his official capacity, shall do any act which hampers or impedes said official in the performance of any lawful duties under the provisions of this chapter.
- (c) Whoever violates subsection (b) hereof is guilty of a minor misdemeanor. (§505.99(b), O.R.C. §955.26 and §955.99(B); Ord. 04-140. Passed 8-9-04.)

505.27 DOG MAY BE KILLED FOR CERTAIN ACTS; OWNER LIABLE FOR DAMAGES.

- (a) Subject to divisions (c) and (d) of §505.10 of this chapter, a dog that is chasing or approaching in a menacing fashion or apparent attitude of attack, that attempts to bite or otherwise endanger, or that kills or injures a person or a dog that chases, injures, or kills livestock, poultry, other domestic animal, or other animal, that is the property of another person, except a cat or another dog, can be killed at the time of that chasing, approaching, attempt, killing, or injury. If, in attempting to kill such a dog, a person wounds it, he is not liable to prosecution under the penal laws, which punish cruelty to animals.
- (b) The owner, keeper or harbinger of a dog is liable in damages for any injury, death or loss to person or property that is caused by the dog, unless the injury, death, or loss was caused to the person or property of an individual who, at the time, was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger, or was committing or attempting to commit a criminal offense against any person, or was teasing, tormenting, or abusing the dog on the owner's, keeper's or harbinger's property. (O.R.C. §955.28; Ord. 04-140. Passed 8-9-04.)

505.28 IMPOUNDMENT; DESTRUCTION OF DOGS.

- (a) When any person, being the owner or having care, custody or control of any dog is charged with a violation of this chapter, the court may, upon motion of any party or its own motion, order the seizure and impoundment of the dog pending trial.

- (b) In the event that a law enforcement officer or the ~~Director of Community Development or designee~~ **Animal Control Officer** has probable cause to believe that a dangerous or vicious dog is running at large, the County Dog Warden shall be immediately notified pursuant to O.R.C. §955.12 for impoundment pursuant to O.R.C. §955.15 and disposition pursuant to O.R.C. §955.16.
- (c) Nothing within this section shall be construed to prevent a law enforcement officer from seizing or destroying any animal, which presents an immediate risk of physical harm to any person or property. (~~Ord. 06-053. Passed 6-12-06.~~)

505.29 KEEPING BANNED DOGS.

- (a) No person shall own, keep, possess, harbor, maintain or have the care, custody or control of a dog within the City when such dog has been banned by order of a court of competent jurisdiction from any municipality, county, township or other political subdivision.
- (b) Compliance with the requirements of this chapter is not a defense to a violation of this section.
- (c) Whoever violates this section is guilty of a misdemeanor of the first degree. (§505.99(h); Ord. 04-140. Passed 8-9-04.)

505.30 STRICT LIABILITY.

- (d) The provisions of §505.19 through §505.29 are specifically intended to impose strict liability. (Ord. 04-140. Passed 8-9-04.)

505.99 PENALTIES.

- (a) (1) Whoever violates §505.02(a) of the Codified Ordinances is guilty of a minor misdemeanor for a first offense and a misdemeanor of the fourth degree for each subsequent offense.
- (2) Whoever violates §505.02(b) of the Codified Ordinances is guilty of a minor misdemeanor for a first offense and a misdemeanor of the fourth degree for each subsequent offense and shall be fined not less than twenty-five dollars or more than one hundred dollars on a first offense, and on each subsequent offense shall be fined not less than seventy-five dollars or more than two hundred fifty dollars and may be imprisoned for not more than thirty days. In addition, the court may order the offender to personally supervise the dog that the offender owns, keeps, or harbors to cause that dog to complete dog obedience training, or to do both.
- (b) Whoever violates §505.03, §505.04, §505.05, §505.09, §505.12, §505.13, §505.17, or §505.26(b) of the Codified Ordinances is guilty of a minor misdemeanor.
- (c) Whoever violates §505.06 of the Codified Ordinances is guilty of a misdemeanor of the second degree. If the value of the animal killed or the injury done amounts to three hundred dollars or more, whoever violates §505.06 of the Codified Ordinances is guilty of a misdemeanor of the first degree.
- (d) Whoever violates §505.07 or §505.18 of the Codified Ordinances is guilty of a misdemeanor of the fourth degree.
- (e) Whoever violates §505.08 of the Codified Ordinances is guilty of a misdemeanor of the second degree. In addition, the court may order the offender to forfeit the animal or livestock and may provide for its disposition, including, but not limited to, the sale of the animal or livestock. If an animal or livestock is forfeited and sold pursuant to this division, the proceeds from the sale first shall be applied to pay the expenses incurred with regard to the care of the animal from the time it was taken from the custody of the former owner. The balance of the proceeds from the sale, if any, shall be paid to the former owner of the animal.
- (f) Whoever violates §505.10 of the Codified Ordinance is guilty of a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.

- (g) Whoever violates §505.14 of the Codified Ordinance is guilty of a misdemeanor of the third degree. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.
- (h) Whoever violates §505.15, §505.23, §505.24 or §505.29 of the Codified Ordinance is guilty of a misdemeanor of the first degree.
- (i) Whoever violates §505.16 of the Codified Ordinance is guilty of a misdemeanor of the fourth degree for a first offense and a misdemeanor of the third degree for each subsequent offense.
- (j) If a violation of division (a) of §505.25 of the Codified Ordinances involves a dangerous dog, whoever violates that division is guilty of a misdemeanor of the fourth degree on a first offense and of a misdemeanor of the third degree on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to §505.24 of the Codified Ordinances. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society.
- (k) If a violation of division (a) of §505.25 of the Codified Ordinances involves a vicious dog, whoever violates that division is guilty of one of the following:
 - (1) A felony of the fourth degree on a first or subsequent offense if the dog kills or seriously injures a person. Additionally, the court may order that the vicious dog to be humanely destroyed by a licensed veterinarian, the county dog warden or the county humane society.
 - (2) A misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the county dog warden or the county humane society.
 - (3) A misdemeanor of the first degree if the dog causes injury, other than killing or serious injury, to any person. (Ord. 04-140. Passed 8-9-04.)

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

PAGE 15 - ORDINANCE NO. _____

DANIEL J. KAMAN
PRESIDENT OF THE CITY COMMISSION

ATTEST:

B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE SANDUSKY SAILING CLUB, INC.; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments of the City of Sandusky, Ohio, the Lease Agreement with the Sandusky Sailing Club, Inc., should be executed at the earliest possible time and this City Commission finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into a Lease Agreement with the Sandusky Sailing Club, Inc., substantially in the same form as Exhibit "1", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

DANIEL J. KAMAN

PAGE 2 - ORDINANCE NO. _____

PRESIDENT OF THE CITY COMMISSION

ATTEST:

**B. JOYCE BROWN
CLERK OF THE CITY COMMISSION**

Passed:

LEASE AGREEMENT

This Lease Agreement (the "Lease") has been entered into this ____ day of _____, 2007, by and between the City of Sandusky, Ohio, an Ohio chartered municipal corporation (the "City") and the Sandusky Sailing Club, Inc., an Ohio not-for-profit corporation ("SSC").

WHEREAS, the City holds a submerged lands lease with the State of Ohio over certain real property and improvements and appurtenances thereto located in Sandusky, Ohio and commonly known as Sadler Sailing Basin, such property being more particularly described in the legal description attached hereto as Exhibit "A" (the "Submerged Lands"); and

WHEREAS, the City desires to sublease a portion of the Submerged Lands to SSC and SSC desires to lease said portion of property from the City on the terms and conditions set forth herein, such property being more particularly described in Exhibit B hereto (the "Property").

NOW THEREFORE in consideration of the premises above, the mutual covenants and promises set forth below and other good and valuable consideration, the parties agree as follows:

Article I

Demised Property

§1.1 The City hereby leases the Property and all improvements thereon, and all appurtenances thereto, including, but not limited to, Springer's Wharf, all bulkheading, any shoreline, landscaping, parking lots, ramps and other improvements hereafter constructed or installed on the Property or additions hereafter affixed to the Property. All buildings currently located on the Property (hatched in black on the attached Exhibit C) are the property of SSC and shall remain the property of SSC.

Article II

Term

§2.1 Basic Term. The original term ("Basic Term") of this Lease shall commence on _____, and terminate on December 31, ____ unless sooner terminated or extended, as provided herein.

§2.2 Right to Extend. To the extent the City's lease of the Submerged Lands is extended beyond December 31, _____, SSC shall have the right, unless the Lease is sooner terminated as provided herein, to extend the term of this Lease, subject to the same conditions, provisions and obligations specified herein, other than rent, which shall be subject to negotiation and agreement between the parties. The lease shall be extended for the shorter of (i) each of two (2) consecutive periods of ten (10) years each or (ii) the term of the City's lease of the Submerged Lands (the "Extended Terms"). The Basic Term shall automatically be extended for

each Extended Term unless SSC shall deliver to the City written notice of its intention to terminate this Lease as of the end of the then existing term at least ninety (90) days prior to the expiration of the then existing term. Unless sooner terminated as provided herein, any reference in this Lease to the “term of this Lease” shall include the Basic Term and any Extended Term for which SSC’s renewal right is exercised.

§2.3 Holding Over. In the event SSC remains in possession of the Property after the expiration of the term of this Lease and without the execution of a new lease, it shall be deemed to be occupying the Property as a tenant from month-to-month at a monthly rent equal to one-twelfth (1/12th) of 110% of the annual fixed rent payable by SSC at the end of the term of this Lease, subject to all conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy, until terminated by either party by written notice, designating the date for termination, given to the other party at least thirty (30) days before the expiration date of such month-to-month tenancy.

§2.4 Lease Year. For purposes of this Lease, “Lease Year” shall mean each period of twelve (12) calendar months during the term of this Lease commencing on January 1, 2008 and each twelve (12) month period thereafter.

Article III

§3.1 Amount of Rent. SSC shall pay to the City for the Property, in lawful money of the United States of America, annual rent in the following amounts:

- a. Fixed rent of \$20,000 per year.

At the end of each three year period, beginning with 2010, the fixed rent shall increase by the percentage increase in the Consumer Price Index (all Urban Consumers – Midwest Region) from December 2007 to the December of the year preceding the end of the initial period and each three-year period thereafter. (i.e. if the Lease is signed September 2007, the first CPI adjustment would be January 2010 and the CPI increase would be measured by looking at the period December 2007 to December 2009. The next CPI adjustment would take effect January 2013 and would look at the CPI index between December 2009 and December 2012, etc.)

- b. Percentage Rent. In addition to the fixed rent, in each Lease Year SSC shall pay to the City a percentage rent equal to 0.5% of SSC’s gross income from dockage receipts. Such percentage rent will be due and payable to the City not later than March 1, each year, beginning with March 1, 2009, for receipts collected during the 2008 calendar year. SSC will review its dockage rental rates on an annual basis.

All annual fixed rent hereunder shall be payable, in advance, in equal quarterly installments, the first such installment being due on the first day of the Basic Term and the next installment being due on _____ and each successive installment due on the first day of each quarter thereafter.

§3.2 Utilities and Taxes. SSC shall pay all utilities, fees assessed by the State of Ohio in connection with the submerged lands lease for the Property, dock taxes, real estate taxes and assessments that are assessed in connection with the use of the Property. SSC shall have the right to contest the validity or the amount of any such real estate taxes or assessments, or submerged land lease payments.

§3.3 Place of Payment. All payments to the City under this Lease shall be made at the City's address for notice hereunder or otherwise as the City shall designate in writing.

§3.4 Annual Statement. Within fifteen (15) days after it is filed, SSC will deliver to the City Manager, a copy of SSC's IRS Form 990. The City shall have the right, upon written request within thirty (30) days after its receipt of the IRS Form 990 and at the City's sole expense, to have all of SSC's records relevant to dockage receipts inspected at the offices of SSC.

§3.5 Confidentiality. The City shall hold in confidence all financial data or information relating to SSC's operations obtained from SSC or upon inspection of SSC's books, unless, and only to the extent that, the City may be required to disclose such data or information pursuant to a valid public records request or by a court of competent jurisdiction.

Article IV

Covenant Against Liens

§4.1 Liens of SSC. If, because of any act or omission of SSC, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Property, SSC shall, at its own expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to SSC of the filing thereof, unless SSC shall contest the validity of such lien in accordance with §4.3 herein. If SSC shall fail to cause such lien to be discharged or bonded within said aforesaid 90-day period, the City shall have the right, but not the obligation, to cause the same to be discharged. Any and all costs and expenses incurred by the City in connection therewith, shall thereupon be due and payable from SSC to the City, and the same shall be deemed additional rent hereunder.

§4.2 Liens of the City. If, because of any act or omission of the City, any lien, charge or order for the payment of money shall be filed against the Property, the City shall, at its own expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from SSC to the City of the filing thereof. If the City shall fail to cause such lien to be discharged or bonded within said aforesaid 90-day period, or if prior to the expiration of such 90-day period SSC's quiet enjoyment of the Property shall be affected or threatened as a result thereof, SSC shall have the right to cause the same to be discharged. All amounts paid by SSC under this §4.2 may be offset against amounts otherwise due to the City from SSC and deducted from subsequent rent payable hereunder.

§4.3 Contests. SSC may contest, by appropriate proceedings, the amount, validity or application of any lien, charge or order for payment of money filed against SSC. SSC shall notify the City of any such proceedings, and shall conduct all such contests in good faith and

with due diligence and will, promptly after the final determination of such contest, pay and discharge all amounts which shall be determined to be payable therein.

Article V

Insurance

§5.1 Insurance Coverage. It is understood the following minimum City insurance requirements may not be adequate to fully protect SSC and its officials' interests. Indemnification provisions located in another section apply even if insurance coverage does not apply. SSC failure to provide the following insurance at all times during this lease agreement shall be considered a material violation of the lease agreement.

a) Insurance Coverage and Limits

- 1) Marina Operator's or other liability insurance for claims from third parties with at least \$3,000,000 combined single limit per occurrence. This must provide insurance for general liability type bodily injury and personal injury claims. These limits can be combined of primary and excess insurance policies. The City, its employees and officials, are to be included as additionally insured. SSC shall carry \$500,000.00 limit for property damage, including damage to and/or loss of use of boats.

Aggregate limit, if any, must be at least \$4,000,000 and must apply exclusively to this facility. If the aggregate limit is impaired by more than 50% by any single or combined of paid and reserved claims, SSC agrees to promptly replenish the total aggregate limit.

- 2) Workers' Compensation with statutory limits.

All such insurance required to be maintained by SSC shall be written with a company or companies reasonably satisfactory to the City, having a policyholder rating of at least "A" and be assigned a financial asset category of at least "Class XIV" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies, and authorized to engage in the business of insurance in the State of Ohio. Such insurance shall further provide that the same may not be canceled, terminated or modified unless the insurer gives the City at least sixty (60) days prior written notice thereof.

§5.2 Waiver of Subrogation. Each insurance policy furnished under this Article V shall contain provisions by which the insurance company specifically waives its right of subrogation against the City and SSC, and agrees to provide both the City and SSC with notice of the proposed cancellation of such policy, or the revision of coverage therein, at least thirty (30) days prior to such cancellation or revision. Provided the insurance required to be maintained by SSC pursuant to §5.1 is in full force and effect and remains so, the City and SSC each releases the other from any claim for damage or loss covered by such policies and the City and SSC, as between themselves, each agree to look solely to the proceeds of such policies in the event of such damage or loss.

Article VI

Casualty Loss and Restoration

§6.1 Restoration of Property; Payment of Insurance Proceeds. If all or any part of the Property is damaged or destroyed by fire or other casualty including, without limitation, as a result of any matter described in the second paragraph of §12.1, SSC shall repair and restore the Property to the same or similar condition as the same was in immediately prior to such damage or destruction if (a) all insurance proceeds recovered by the City and/or SSC pursuant to the provisions of Article V of this Lease are available to be and are applied to the cost of repair and restoration, (b) the amount of such proceeds is sufficient in the opinion of the City and SSC to complete such repair or restoration and (c) SSC determines that reconstruction or repair of the damaged or destroyed Property (i) is necessary to the successful operation of the entire Property and (ii) is a sound business decision. If the insurance proceeds are not available for repair or restoration of the Property or are deemed insufficient by mutual agreement of the City and SSC to pay the full cost to repair or restore the Property to the same or similar condition as the same was in prior to damage or destruction, or if SSC determines that such repair or restoration is either unnecessary or unwise as described above, then SSC shall have the right to either terminate this Lease pursuant to §6.2 herein, or to continue this Lease on the same terms as provided herein and itself supply any funds in excess of insurance proceeds necessary to repair or restore the Property, or to enter into a new lease on terms and conditions mutually agreed upon by the City and SSC. If SSC elects to terminate this Lease, subject to the rights of any mortgage holder on the damaged or destroyed Property, the City shall be entitled to any insurance proceeds, other than that portion of the proceeds attributable to the current buildings on the Property, which proceeds shall be payable to SSC. If SSC elects to continue this Lease or enter into a new lease, any insurance proceeds in excess of the amount used to repair or restore the Property shall be payable to SSC.

§6.2 Termination. If permitted under §6.1, SSC may terminate this Lease on notice of at least ten (10) days and not more than thirty (30) days. Such notice shall be given within sixty (60) days after the date of such damage or destruction. If this Lease is so terminated, all rent shall be apportioned as of the date of termination.

Article VII

Condemnation

§7.1 Material Condemnation. If all, or materially all, of the Property is taken by any authority for any purpose under the right and power of eminent domain, this Lease shall terminate effective on the date on which SSC is deprived of physical possession of the Property, and rent shall be apportioned as of said date and any rent paid for any period beyond said date shall be repaid to SSC. For the purposes of this Lease, “materially all” of the Property shall be considered to have been taken if that portion of the Property not taken would be insufficient to allow SSC to substantially continue its operations on the remaining Property, to be determined by SSC in its good faith discretion. In the event of material condemnation, each party shall look to the taking authority for any and all damage, loss or injury it may have suffered as a result of such taking.

§7.2 Partial Condemnation. If any portion less than materially all of the Property is taken by any authority for any purpose under the right and power of eminent domain, this Lease shall not terminate as a result of such taking and shall continue unaffected by such taking. Rent will be adjusted proportionate to such taking. The proceeds of any award given to SSC and/or the City as a result of such taking shall be applied to the repair and restoration of the remaining Property and any amount in excess of the amount needed therefore shall be paid to SSC.

Article VIII

Use of Property

§8.1 Mortgage of Property. The City shall not mortgage or convey any interest in or to its interest in the Property or suffer or permit any lien to be placed or filed against its interest during the term of this Lease. SSC shall have the right to mortgage its interest in, to and under this Lease, one or more times during the term hereof as security for any sources of financing obtained by SSC in connection with its obligations hereunder or its use and development of the Property, provided that (a) such mortgage shall be strictly limited to financing obtained by SSC in connection with any permanent improvements to the Property as permitted in this Lease, (b) the City shall not be required to subordinate its interest in the Property to any such mortgage, and (c) the lenders or leasehold mortgagees thereof shall agree to notify the City of any default by SSC under the terms thereof.

§8.2 Use of Premises. During the term of this Lease, SSC shall use and operate the Property for a sailing club and marina and related recreational activities. SSC reserves the right to establish dockage rates for its members, and its members shall receive docks prior to the docks being made available to non-members. Non-member docks shall be available to the general public on a non-discriminatory, first-come, first-served basis at market rates competitive with facilities offering similar amenities, and in accordance with such rules and regulations, as are from time to time established by SSC. SSC shall have the sole and exclusive right to establish and collect dockage fees, charges, fees, assessments or any other monetary impositions with respect to the operations of SSC conducted upon the Property. No rule or regulation of SSC shall violate any City, county, state or federal law applicable to the Property.

§8.3 Non-Exclusive Use. Notwithstanding anything to the contrary in this Lease, the piers commonly known as Springer's Wharf and Washington Street Pier shall be open and accessible to the general public at all times. SSC shall not erect fences that would deter public access nor restrict in any way public access to any areas of such Wharf/Pier. Any requested changes to this must be approved by the City Commission. In its discretion, SSC may place fencing along the inner wall of Springer's Wharf and/or Washington Street Pier to protect the boats docked along such Wharf/Pier.

Article IX

Maintenance, Repairs and Alteration

§9.1 Maintenance and Repairs. SSC shall maintain all improvements now or hereafter located on or comprising a part of the Property and all fixtures, signs, equipment and personal property therein or thereon in good order and condition or repair, safety, cleanliness and appearance, ordinary wear and tear excepted and shall promptly make all repairs and replacements necessary or appropriate to so maintain the Property and all improvements thereon and such fixtures, signs, equipment and personal property, in accordance with the terms of this Lease. SSC's obligations shall include, without limitation, repairs or replacements of all breakwalls, sidewalks, parking lots, driveways, curbs, piers, docks and recreational facilities which are a part of the Property and the mowing and maintenance of all grassy and landscaped areas on the Property, but SSC shall have no obligation to repair or replace any dedicated public street or public parking lot or pier which may be located adjacent to the Property. Whether or not any such damage is covered by insurance, the provisions of §6.1 shall apply and in addition to its rights under such section, in the event of such damage, SSC may continue to operate under this Lease without repair or replacement of the damaged breakwall, unless otherwise mutually agreed by the City and SSC, pursuant to the provisions of §6.1.

§9.2 Alterations. SSC shall have the right to make any alteration, addition, improvement or other change in or to the Property desired by it (hereinafter collectively called an "alteration") provided that: (a) no alteration shall be commenced until SSC has first obtained and paid for all required permits and authorizations of all governmental authorities having jurisdiction; (b) any alteration shall be made promptly and in a good and workmanlike manner and in compliance with all applicable permits, authorizations, building and zoning laws, and all other laws, ordinances, regulations and requirements of all governmental authorities, including, but not limited to; (c) no alteration shall be inconsistent with the permitted uses of the Property as provided in this Lease; and (d) any exterior alteration of a building on the Property in excess of \$10,000 shall be subject to the prior written approval of the City.

§9.3 Personal Property. SSC shall have the right, from time to time, to install and furnish to and on the Property additional signs, equipment, docks, hoists, and other personal property relating to its uses thereon. The floating docks, hoists, flagpole, fencing, signs and flag plaza currently on the Property are the property of SSC. The City shall have no right, title or interest in or to any such signs, fencing, equipment, docks, hoists and other personal property; these shall be and remain personal property of SSC. No free-standing exterior signs shall be erected by SSC without prior written consent of the City. The City shall provide its consent within a period of two (2) weeks from the date of such request, and if the City does not respond to such request within two (2) weeks, consent shall be deemed given. Any such signs shall be in compliance with the City sign ordinance (Ordinance 1143). If requested by SSC or any lender or mortgagee, the City shall waive in writing any interest in any personal property of SSC so that any such lender or mortgagee may obtain and perfect a security interest in such personal property prior in right, and senior to, any interest therein of the City.

Notwithstanding anything to the contrary in this section, any leasehold improvements to the Property, or any property or additions affixed to the Property, shall be and shall remain the property of the City. Moreover, SSC shall have no right to remove from the Property at any

time, any breakwall, bulkheading, landscaping, parking lot, wet well, shoreline improvements, or any other improvements or additions affixed to the Property. Notwithstanding the foregoing, any buildings on the Property are, and shall remain, the property of SSC.

Article X

Compliance with Laws

§10.1 SSC shall promptly comply or cause compliance with all laws, regulations, orders and requirements of all federal, state and local governments, courts or other lawful authorities, which now or at any time during the term of this Lease may apply to or affect the Property as used or operated by SSC. SSC shall obtain, maintain and comply with all permits, licenses and other authorizations required for any use of the Property made by SSC. SSC shall not discriminate against a person because of race, color, religion, sex or national origin in respect to such persons' right of access to, or use of, the Property and improvements located thereon.

Article XI

Assignment and Subletting

§11.1 Subject to the prior written consent of the City, SSC may assign this Lease or sublet the Property in whole or in part to any person or entity so long as the Property is to be used and operated in accordance with the provisions of this Lease, provided that no such assignment or sublease shall affect or reduce any obligations of SSC hereunder, and all the obligations of SSC hereunder continue in full effect as the obligations of a principal and not as guarantor or surety, to the same extent as though no assignment or sublease had been made (hereinafter "SSC's Continuing Liability"). Any act require to be performed by SSC pursuant to the provisions of this Lease may be performed by any sublessee or assignee of SSC and the performance of such act shall be deemed to be performance by SSC and shall be acceptable as SSC's act by the City. Notwithstanding anything herein to the contrary, SSC shall have the right to mortgage or assign its interest hereunder as provided in Article VIII.

Article XII

Default

§12.1 Events of Default. Each of the following shall be deemed an event of default under this Lease:

- (a) Failure by SSC to pay any installment of the rent as set forth in Article III of this Lease, or any other charge required to be paid by SSC hereunder, within thirty (30) days after receipt of written notice from the City.
- (b) Failure by SSC to perform or observe any other obligation or condition to be performed or observed by SSC hereunder, within sixty (60) days after receipt of written notice thereof from the City, or if, because of the nature of such obligation or condition, it cannot be corrected within such 60-day period, failure by SSC to commence correction

within such 60-day period and thereafter to diligently pursue such correction to completion.

Except as otherwise provided herein, neither the City nor SSC shall be considered in default in their obligations to be performed hereunder if delay in the performance of such obligations is due to unforeseeable causes beyond its control and without its fault, including but not limited to, acts of God or of a public enemy, acts of terrorism, acts of the Federal or state government, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes, but not including lack of financing or financial capacity by SSC or the City. SSC and the City each shall, however, use its best efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations hereunder.

§12.2 Right to Cure. If SSC fails to perform and observe any obligation or condition to be performed by it under this Lease, the City may, but shall not be obligated to, cause the performance or observance of such obligation or condition, and any and all costs and expenses incurred by the City in connection therewith, shall thereupon be due and payable from SSC to the City, and the same shall be deemed additional rent hereunder.

§12.3 Remedies Upon Default. Whenever any event of default under §12.1 of this Lease shall have happened and be subsisting, the City may take any one or more of the following remedial steps:

- (a) Reenter and take possession of the Property without terminating this Lease, and sublease the Property for the account of SSC, holding SSC liable for the difference between the rent and other amounts payable by such sublessee in such subleasing and all rent and other amounts payable by SSC hereunder;
- (b) Terminate this Lease, exclude SSC from possession of the Property and lease the Property to another, but holding SSC liable for all rent and other amounts payable up to the effective date of such releasing; and
- (c) Take whatever action at law or in equity may appear necessary or desirable to collect any rent and other amounts payable hereunder which are then due, or to enforce performance and observance of any obligation, agreement or covenant of SSC under this Lease;

provided, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Lease shall not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that the City should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Lease because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by SSC under this Lease be considered or treated as a waiver of the rights of the City with respect to any other defaults by SSC under this Lease or with respect to the particular default except to the extent specifically waived in writing.

§12.4 No Personal Liability. All covenants, obligations and agreements of the City, SSC and any successors or assigns contained in this Lease shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or officer, or employee of the City in other than their official capacity or of any individual person who is an officer, member, director or volunteer of SSC or any successors or assigns other than in their capacity as an officer, member, director or volunteer, and neither the members of the City Commission nor any City official executing this Lease, or any individual person executing this Lease on behalf of SSC, shall be liable personally by reason of the covenants, obligations or agreements of the City or SSC contained in this Lease.

Article XIII

Quiet Enjoyment and Title

§13.1 Landlord's Title. The City covenants and represents that to the best of its knowledge and belief it has full right and power to execute and perform this Lease and to grant the estate demised herein, and covenants and agrees that SSC, upon paying rent herein reserved and performing and observing the covenants and conditions hereof shall and may peaceably hold and enjoy the Property during the term hereof, without any interruption or disturbance from the City, subject, however, to the terms of this Lease.

§13.2 Existing Leases/Management Agreement. [SSC acknowledges the City's existing submerged lands lease with the State of Ohio (Department of National Resources) dated January 18, 2000 and recorded in Erie County Official Records RN20003050.] Such lease currently expires January 31, 2050. Effective on the commencement of the Basic Term, SSC will become a sublessee from the City under such lease for the portion of the Submerged Lands constituting the Property and SSC will assume all obligations as the lessee therein as it relates to the Property, arising from and after the date thereof. The parties acknowledge and agree that the lease between the City and the Sandusky Sailing Club dated November 29, 1978, and recorded in Volume 35, Page 123, Erie County Lease Records shall be cancelled by the parties upon the execution of this Lease. The parties further agree that the Management Agreement between the City of Sandusky and Sadler Sailing Basin, Inc., dated November 2, 1988, shall also be cancelled upon the execution of this Lease. The City hereby reserves unto itself the right to operate, maintain, repair and replace any existing sewer and water lines across and under the Property.

Article XIV

Surrender

§14.1 Upon termination of this Lease for any reason, SSC shall surrender possession of the Property and any improvements to the Property, or additions affixed to the Property, peaceably and promptly to the City in as good condition as at the time SSC took possession thereof or, in the case of said improvements made by SSC, in as good condition as on the date of completion of said improvements, damage by fire or other casualty, loss by eminent domain, ordinary wear and tear and obsolescence excepted. Upon termination of this lease for any reason, City will compensate SSC for the value of its buildings and improvements as follows:

There will be no compensation for the value of the buildings and improvements as they exist on the date that this lease is executed. To the extent that any capital improvements or replacements are made after the date that this lease is executed, City will compensate SSC for same at the “depreciated value”, i.e. - cost less IRS depreciation allowable on such buildings and improvements.

Said compensation shall be paid by City to SSC within sixty (60) days of termination of this lease.

Article XV

Indemnification

§15.1 SSC hereby (i) releases the City from, (ii) covenants and agrees that the City will not be liable for, and (iii) covenants and agrees to indemnify the City for and to hold the City harmless against, all liabilities, claims, costs, penalties, fines, damages, losses and expenses (including without limitation, to the extent permitted by law, reasonable attorneys’ fees and expenses), joint or several, imposed upon or asserted against the City on account of any injury to or death of any SSC member or guest, or loss of or damage to any SSC member’s or guest’s property, that may be occasioned by any cause whatsoever pertaining to the Property or any part thereof, or occurring otherwise on or about the Property, or any part thereof. SSC will reimburse any reasonable legal or other expenses incurred by the City in connection with investigating or defending any liability, claim, cost, loss, penalty, fine, damage, expense, action or proceeding described above; provided, however, that indemnification under this section shall not extend to damages resulting from gross negligence or bad faith of the City or any of its agents.

Article XVI

Miscellaneous

§16.1 Notices. All demands, notices, approvals or requests shall be in writing and shall be sent by registered or certified mail, or hand delivered, to the City at the Office of The City Manager, City Building, 222 Meigs Street, Sandusky, Ohio 44870, and to SSC at P.O. Box 814, Sandusky, Ohio 44871, unless either party shall have designated a different address by delivering written notice of such change to the other party.

§16.2 Cumulative Rights and Remedies. Each right or remedy of the City or SSC under this Lease, now or hereafter available by statute, at law, in equity or otherwise shall be cumulative and concurrent and shall be in addition to every other such right or remedy and neither the existence, availability, nor the exercise of any one or more of such rights or remedies shall preclude or otherwise affect the simultaneous or later exercise by the City or SSC of any or all such rights or remedies.

§16.3 Memorandum of Lease. This Lease shall not be recorded; however, at the request of either the City or SSC, the other party shall execute, acknowledge and deliver a memorandum of this Lease for purposes of giving public notice of the rights and obligations of the City and SSC under this Lease.

§16.4 Landlord's Access. The City and its designees shall have the right to enter the Property at any reasonable times for the purposes of inspecting the Property and performing any work which the City elects to undertake, provided, that none of the foregoing shall unreasonably interfere with SSC's use and occupancy of the Property or adversely affect the improvements located thereon. Nothing herein shall imply any right or duty upon the City to do any such work which under any provision of this Lease SSC is required to perform, and the performance thereof by the City shall not constitute a waiver of SSC's obligation to respect thereto.

§16.5 Non-Waiver. No failure by the City or SSC to exercise any option hereunder or to enforce its rights or seek its remedies upon any default, shall affect or constitute a waiver of such party's rights to exercise that option, enforce that right or seek that remedy with respect to that default or any prior or subsequent default.

§16.6 No Third-Party Benefit. This Lease is intended for the benefit of the City and SSC and their respective successors and assigns, and nothing contained in this Lease shall be construed as creating any rights or benefits in or to any third party.

§16.7 Estoppel Certificate. Each party to this Lease shall from time to time during the term of this Lease, immediately upon request of the other party, execute and deliver to the other party a statement certifying that this Lease is in full force and effect, the date through which the rent and other charges hereunder have been paid, and any other factual matter reasonably requested by the other party.

§16.8 Severability. The intention of the parties to this Lease is to comply fully with all laws governing leases, and this Lease shall be construed consistently with all such laws to the extent possible. If and to the extent that any court of competent jurisdiction is unable to so construe part or all of any provision of this Lease, and holds that part or all of that provision to be invalid, such invalidity shall not affect the balance of that provision or the remaining provisions of this Lease, which shall remain in full force and effect.

§16.9 Governing Law. This Lease has been negotiated and executed in the State of Ohio, the Property is in the State of Ohio and each party to this Lease has its principal office in the State of Ohio. It is the intention of all parties to this Lease that all questions concerning the intention, validity or meaning of this Lease or relating to the rights and obligations of the parties with respect to performance hereunder shall be construed and resolved according to the laws of the State of Ohio.

§16.10 Complete Agreement; Modification. This Lease (with its exhibits) contains the entire agreement between the parties and supersedes any prior discussions representations warranties or agreements between them respecting the subject matter hereof. This Lease may not be modified, altered or amended except by an agreement in writing duly executed by the parties hereto.

§16.11 Counterparts. This Lease may be executed in several counterparts, and each executed counterpart shall be considered as an original of this Lease.

§16.12 Genders and Numbers. When the context permits, each pronoun used in this Lease includes pronouns of the same person in other genders or numbers and each noun used in this Lease includes the same noun in different numbers.

§16.13 Captions. The captions at the beginnings of the several sections of this Lease are not part of the context of this Lease, but are merely labels to assist in locating those sections, and shall be ignored in construing this Lease.

§16.14 Successors in Interest. Except as otherwise provided in this Lease, all provisions of this Lease shall be binding upon, inure to the benefit of and be enforceable by and against the respective successors and assigns of each party to this Lease.

§16.15 No Partnership. Nothing herein shall be construed or interpreted to create a partnership, joint venture or other business association between the City and SSC.

§16.16 Exhibits. All exhibits referred to above are hereby incorporated by reference herein.

WHEREFORE, the parties hereto have executed this Lease as of the date first written above.

THE CITY OF SANDUSKY, OHIO

By: _____
City Manager

SANDUSKY SAILING CLUB, INC.

By: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF ERIE)

On this _____ day of _____, 2007, before me a Notary Public in and for said County and State, personally appeared _____, City Manager of the City of Sandusky, Ohio, who acknowledged the execution of the foregoing instrument as the authorized officer of the City on behalf of the City, and that the same is his voluntary act and deed as the officer on behalf of the City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Sandusky, Ohio on the day and year aforesaid.

[SEAL]

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF _____)

On this _____ day of _____, 2007, before me a Notary Public in and for said County and State, personally appeared _____, being the _____ of Sandusky Sailing Club, Inc. who acknowledged the execution of the foregoing instrument as the duly authorized representative thereof, and that the same is [his/her] voluntary act and deed as said representative and the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at _____, Ohio on the day and year aforesaid.

[SEAL]

Notary Public