

NOTICE
SPECIAL MEETING OF COUNCIL

Clerk's Office, Brook Park, Ohio
December 27, 2016

TO: COUNCIL MEMBERS TROYER, MENCINI, POWERS, SCOTT, BURGIO,
SALVATORE, COUNCIL PRESIDENT ASTORINO, MAYOR COYNE, LAW DIRECTOR
HORVATH, FINANCE DIRECTOR CINGLE

YOU ARE HEREBY NOTIFIED THAT A SPECIAL MEETING OF COUNCIL
HAS BEEN CALLED FOR THE PURPOSE OF:
XXX COUNCIL MEETING _____ CAUCUS MEETING
_____ EXECUTIVE SESSION _____ OTHER (Specify)

Such special meeting will accordingly be held on TUESDAY, the 3RD day of
JANUARY, 2017, at 6:00 P.M. at the place of holding regular meetings.
(*Refer to Rules of Council, No. 4, if applicable.)

SUBJECT:

ROLL CALL OF MEMBERS

PLEDGE OF ALLEGIANCE

VERBAL APPROVAL:

1. FACT FINDING REPORT OF THE CITY OF BROOK PARK AND THE
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 1141.

**REMARKS FROM THE AUDIENCE ON THE ORDINANCES AND/OR
RESOLUTIONS THAT PERTAIN TO THE AGENDA ONLY:**

THIRD READING OF RESOLUTIONS AND ORDINANCES:

SEE ATTACHED SHEET

ADJOURNMENT

Mayor

12/27/16
Date

2:36pm
Time

Michelle Blezich
Clerk of Council

12/27/16
Date

2:37pm
Time

O. THIRD READING OF RESOLUTIONS AND ORDINANCES:

1. ORDINANCE NO. 10060-2016, AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS IN A MAXIMUM PRINCIPAL AMOUNT OF (\$5,200.000) FOR THE PURPOSE OF PAYING THE COSTS OF INSTALLATIONS, MODIFICATIONS AND REMODELING OF CITY BUILDINGS TO CONSERVE ENERGY AS FURTHER DESCRIBED HEREIN AND TO PAY THE COST OF ISSUANCE FOR SAID BOND, AND DECLARING AN EMERGENCY. Introduced by Mayor Coyne and Councilman Mencini.



City of Brook Park

Thomas J. Coyne Mayor

To: Mayor Thomas J. Coyne Jr.
From: David Byrnes, Director of Public Safety
Subj: Fact Finding Report - IAFF Local 1141
Date: December 27, 2016

D. Byrnes



On December 23, 2016 Fact Finder Daniel Zeiser issued his fact finding report on the issue of the City of Brook Park and Local 1141. A copy of which is attached to this memo.

It is my recommendation that you favorable consider this report and urge Council to accept the findings. It is important to the City that this contract be settled as all other contracts in the City are settled until December 31, 2018.

The Fact Finder considered 14 items, 10 put forth by the Union and 4 from the City. The change to the current agreement as a result of the award are as follows:

1. Extra Training Pay for college classes and/or attaining a degree in fire related subjects of either 1% or 2% (1% for certification, 2% for attaining a degree in fire related topics)
2. Professional Pay of \$750 annual to members acquiring certification in 3 of the following items: ACLS, ITLS, Fire Safety Inspector, BLS, PALS, Haz-Mat Awareness, CPR
3. Healthcare monthly co-pay amount (equal to all other City employees)
4. Retiree healthcare deleted from the contract (equal to all other City Employees)

In addition to the Fact Finding award the City and the Union have agreed to a series of items designed to bring the IAFF contract equivalent to the general terms of all other City contracts. Those items are as follows:

- a. Contract length - expiring December 31, 2018;
- b. 2% wage increases for 2017 & 2018;
- c. Increase of compensatory time bank to 240 hours;
- d. Modification of Vacation language regarding the Bank of vacations;
- e. Increasing clothing allowance by \$100 per year;
- f. Union Leave subject to Safety Director's approval;
- g. Modifying the time limits in the grievance procedure;
- h. Utilizing AAA for the selection of arbitrators;
- i. Utilization of an Assessment Center for promotions;

J. Coyne
12/27/16

If you have any questions please contact me.

RECEIVED
DEC 27 2016
10:50 pm
BROOK PARK CITY COUNCIL

UNDER THE AUSPICES OF
The STATE OF OHIO EMPLOYMENT RELATIONS BOARD (SERB)

IN THE MATTER OF:)	
THE CITY OF,)	ARBITRATOR DANIEL ZEISER
BROOK PARK, OHIO)	
Employer,)	<u>SYNOPSIS OF FACT-FINDING</u>
)	<u>DECISION</u>
-and-)	
)	
INTERNATIONAL ASSOCIATION)	Case No.: 2016-MED-08-0761
FIRE FIGHTERS)	
LOCAL NO. 1141)	
Union)	

I. Executive Summary

- A. The Fact-finder's award in essence recommends that the parties take the deal in front of them at the close of mediation, with the exception that the Union receives a *modified* version of their Training Pay proposal and the City receives removal of the retiree medical language.
- B. There are some technical errors in the Fact-finder's award:
- 1 The Fact-finder *did not rule* on the Union proposal that each Firefighter be gifted 8 hours of compensatory time each year, though he acknowledged in the decision that it was not tentatively agreed-to and that the proposal was an issue to be resolved at fact-finding.
 - 2 The Fact-finder's decision treated reducing the threshold for the Sick Leave Bonus from four to three months as tentatively-agreed to—which was not the City's position.
 - 3 The Fact-finder adopted the Union's Training Pay proposal with modifications— cutting down the benefit and requiring that degrees triggering the incentive be related to firefighting. Ostensibly, this may cut down on the benefit's applicability. But the Fact-finder did not include any language requiring that the degrees be firefighting-related in the decision's recommended contract language.

C. Treated as tentative agreements beyond the scope of the fact-finding were:

1. The durational term of the agreement (i.e. effective through December 31, 2018);
2. The annual base rate increases (2% for 2017 and 2018, consistent with the other units);
3. The lifting of the compensatory time cap to 240 hours;
4. The three hour minimum emergency call back;
5. The aforementioned Sick Time Bonus trigger (i.e. quarterly rather than every four month period.);
6. The Union's vacation proposals in Section 1 (6 float selections/days, rank and service time priority, cash out of sixth week of vacation) and Section 4 (twelve week cap on vacation accumulation, FMLA language) – with no reference to the City's request to change relevant language to "tours";
7. Increases (\$100) in clothing allowances for suppression and fire prevention;
8. Approval of Association time by the Safety Director;
9. Changes to the grievance and arbitration process to lengthen certain appeals periods and include AAA;
10. Utilization of the Assessment Center to evaluate supervisory ability for promotions; and
11. The removal of re-opener language.

II. At-A-Glance Scorecard

Below is a line-item summary of the Fact-finder's recommendations. Full summaries of relevant proposals and short analyses of the Fact-finder's decision on each issue are provided in Section III.

A. *Contested Union Proposals*

<u>Issue</u>	<u>Prevailing Party</u>
1. Overtime, Article X, Section 1 (Call in Pay)	City
2. Overtime, Article X, Section 2 (Added Comp Time)	No ruling
3. Leaves, Article XI, Section 11 (Sick Leave Bonus)	Treated as TA
4. Holidays, Article XIII, Section 6 (Mental Health Days)	City
5. Holidays, Article XIII, Section 7 (Personal Days)	City
6. Compensation, Article XIV (New classes)	City
7. Compensation, Article XIV, Section 5 (Training Pay)	Union (w/mod)

- | | |
|---|-------|
| 8. Compensation, Article XIV (Professional Pay) | Union |
| 9. Compensation, Article XIV (Shift Differential) | City |
| 10. Article XXIV (Vehicle Staffing) | City |

B. Contested City Proposals

<u>Issue</u>	<u>Prevailing Party</u>
1. Holidays, Article XIII, Section 1 (Personal Holidays)	Union
2. Insurance, Article XV (Hospitalization)	Union
3. Insurance, Article XV (Retirees)	City
4. Minimum Manning, Article XXIII	Union
5. Me Too, Article XXV	Union

III. Point-by-Point Analysis on Fact-finder Recommendations

a. CONTESTED UNION PROPOSALS

1. Overtime, Article X, Section 1 (Call in Pay)

CITY POSITION

UNION POSITION

NO CHANGE

CALL BACK PAY PAID AT A
40 HOUR RATE

Fact-finder Recommendation: No Change.

Analysis: The City proposed no change to the current CBA's language providing daily overtime based on a typical forty-eight (48) hour work week, noting that this language was in line with daily overtime provisions for the City's Police unions and that the differing benefit reflected the bargaining units' differing schedules. The Fact-finder agreed noting that, "given the differences between shifts, workweeks, and the overtime earned by Firefighters and Police, exact parity can be rarely achieved." (FF Decision at 9).

2. Overtime, Article X, Section 2 (Compensatory Time)

CITY POSITION

UNION POSITION

NO CHANGE

AWARD EIGHT (8) HOURS OF
COMP TIME ANNUALLY

Section 2.

...

All employees shall receive eight (8) hours of compensatory time during the first pay period of each year, which will be added to their compensatory bank.

Fact-finder Recommendation: No Recommendation

Analysis: The City briefed its opposition to this Union proposal and the Fact-finder likewise listed it as one of the "issues remaining at the hearing." (FF Decision at 4). But the decision does not include a recommendation on this point.

3. Leaves, Article XI, Section 11 (Sick Leave Bonus)

CITY POSITION

UNION POSITION

NO CHANGE

SICK PAY BONUS PAID
AFTER 3 MONTHS

Section 11. Sick Leave Bonus. Any employee who does not utilize any paid sick leave for a period of ~~four (4)~~ three (3) consecutive months shall be entitled to twelve (12) hours of compensation. At the employee's option, this compensation is to be twelve (12) hours of straight time placed into the employee's compensatory time bank or paid in cash in the first pay period following each ~~four~~ three month period. The cash payment shall be in a separate check and distinct from any other regular compensation. The consecutive months periods shall be 1) January, February, March, ~~and April.~~ 2) April, May, and June, July, and August. 3) July, August, and September, October, November, and December, and 4) October, November, and December.

Fact-finder Recommendation: Treated as a Tentative Agreement.

Analysis: The City briefed its opposition to this Union proposal and the Fact-finder listed it as a matter already resolved at mediation: "Changing payout of the sick time bonus from every 3 months to quarterly, consistent with other bargaining units." (FF Decision at 4).

4. Holidays, Article XIII, New Section 6 (Mental Stress Days)

CITY POSITION

UNION POSITION

NO NEW BENEFIT

3 MENTAL STRESS DAYS ANNUALLY

Fact-finder Recommendation: No Change

Analysis: The City briefed rejection of this Union proposal as the mental stress day benefit was a longstanding Police benefit that reflected the differing work of law enforcement officials. The Fact-finder ruled for the City, citing Safety Director Byrnes' testimony as to the negotiation history of this provision in the Police contract. (FF Decision at 10).

5. Holidays, Article XIII, New Section 7 (Personal Days)

CITY POSITION

UNION POSITION

NO NEW BENEFIT

1 PERSONAL DAY ANNUALLY

Fact-finder Recommendation: No Change

Analysis: The City briefed rejection of this Union proposal as the Firefighters already had the most paid time off of all bargaining units. The Fact-finder ruled for the City along the same lines as his prior recommendations as to call in pay and mental health days (i.e. that parity had already been largely achieved.) (FF Decision at 11).

6. Compensation, Article XIV, New Sections (Lieutenants)

CITY POSITION

UNION POSITION

NO NEW POSITIONS

CREATION OF SENIOR AND JUNIOR
LIEUTENANT POSITIONS

Fact-finder Recommendation: No Change

Analysis: The City briefed rejection of this Union proposal as merely an attempt to broaden compensation bands with no operational upside. The Fact-finder ruled for the City, citing primarily that this was a decision for the Civil Service Commission. (FF Decision at 14).

7. Compensation, Article XIV, New Language (COLA)

CITY POSITION

UNION POSITION

NO NEW BENEFIT

INTRODUCTION OF COLA SYSTEM

Fact-finder Recommendation: No Change

Analysis: The City briefed rejection of this Union proposal as the language in the Police CBA was non-operative – and the Fact-finder largely adopted this argument in recommending against the COLA. (FF Decision at 15).

8. Compensation, Article XIV, New Section 7 (Extra Training Pay)

CITY POSITION

UNION POSITION

NO NEW BENEFIT

CREATION OF COLLEGE
ATTENDANCE BONUS

NEW Section 7. Extra Training Pay.

(a) All full-time employees who have completed the firefighter Level II and/or forty-four (44) college credit hours with a grade of "C" or better in each course shall, receive one (1%) percent of his/her salary in addition to their annual salary as an incentive for completing such courses.

(b) All full-time employees who have received an Associate, Bachelor, or Master's degree shall receive two (2%) percent of his/her salary in addition to their annual salary as an incentive for completing such courses.

(c) The payment referred to in paragraphs (A) and (B) of this Section are to be made at the time the required degree is received and also during the first pay period of July of each subsequent year, such payment shall be made separate and distinct from any other regular compensation to be received. If an employee receives a one (1%) percent payment in July of any year and later in the year qualifies for a two (2%) percent payment for receipt of a degree under paragraph (B), the employer shall pay the individual an additional one (1%) percent upon receipt of such degree.

(d) The maximum payment per year for any employee under this Section will be two (2%) percent of his or her annual salary.

(e) All full-time employees who desire to attend classes for extra training pay under this Section shall attend classes on their own time and/or compensatory time previously

earned. Such employees shall not be awarded overtime for classes attended on their own time. If an employee wishes to attend classes when scheduled for duty, using compensatory time, it shall first be determined by the Fire Chief, with concurrence of the Safety Director, that sufficient manpower is available, but if the employee has not accumulated compensatory time and still desires to attend classes during the scheduled working hours, the employee must agree to reimburse the Employer for the time missed while attending classes.

The agreement to reimburse the City must be in the form of a notarized affidavit signed by the employee. The reimbursement must take place within ten (10) months from the date the employee first missed work to attend class, or prior to termination of employment with the City of Brook Park, whichever occurs earlier.

(f) No payment will be made under this Section until satisfactory evidence that the courses have been completed or the degree has been earned is submitted to the Audit Department through the Fire Chief of, who shall determine the validity of such evidence presented by the employee.

(g) Any employee shall be given the opportunity to discontinue his paramedic card based on seniority of paramedic certification. The paramedic with the most time served as a paramedic shall be given the first opportunity to be able to discontinue his paramedic card, provided that this procedure will not result in an excessive amount of overtime. However, this process shall have no bearing on the status of EMT cards, which will be maintained in accordance with Departmental policy.

Fact-finder Recommendation: Adopted Union's Proposal with Modifications

Analysis: The City briefed rejection of this Union proposal as firefighters are already provided paramedic pay and this incentive provides no operational benefit. The Fact-finder split the benefit in half (from 4% to 2% for degrees and from 2% to 1% for Firefighter II/ college credit) and also required that "any degree [triggering incentives] must be related to firefighting. For example, the City should not pay a firefighter for obtaining a degree in Art History." (FF Decision at 18). It should be noted that the Fact-finder did not appear to spell out this firefighting-relevant requirement in his suggested contract language.

9. Compensation, Article XIV, New Section 8 (Professional Pay)

CITY POSITION

UNION POSITION

NO NEW BENEFIT

CREATION OF \$750 ANNUAL BONUS FOR
SELECTED CERTIFICATIONS

NEW Section 8. Professional Pay

To encourage continuing professional training and proficiency, all employees who undertake training and are granted accreditation or certification in three (3) of the following fields:

ACLS	BLS	CPR
ITLS	PALS	
Fire Safety Inspector	HAZ-MAT Awareness	

shall be paid an annual professional wage supplement in the amount of \$750. Employees shall maintain accreditation in three (3) of the above fields, respectively, under professional guidelines and requirements established by the State of Ohio or the Fire Chief for the City of Brook Park. The payment for the Professional Pay will be in the first pay period of July and will be in a separate check and distinct from any other compensation.

Fact-finder Recommendation: Adopted Union's Proposal

Analysis: The City briefed rejection of this Union proposal as this incentive provided no operational benefit. The Fact-finder disagreed and disregarded the City's claims that this could trigger the Police "me-too." (FF Decision at 21).

10. Compensation, Article XIV, New Section 9 (Shift Differential)

CITY POSITION

UNION POSITION

NO NEW BENEFIT

\$624 PER YEAR FOR FIRE SUPPRESSION;
\$185 PER YEAR FOR FIRE PREVENTION
BUREAU

Fact-finder Recommendation: No Add.

Analysis: The City briefed rejection of this Union proposal as ignoring that shift differential reflects the shift schedule of police. The Fact-finder agreed, noting that "the Firefighters do not work the same kind of shifts... and the differential for the Fire Prevention Bureau makes even less sense." (FF Decision at 22).

11. Vehicle Staffing, New Article XXIV

CITY POSITION

UNION POSITION

NO NEW STAFFING REQUIREMENTS NEW STAFFING REQUIREMENTS

Fact-finder Recommendation: No Add.

Analysis: The City briefed rejection of this proposal as eroding management rights and as tone-deaf in the context of current municipal trends and the realities of contemporary firefighting. The Fact-finder just found that this proposal was not supported by evidentiary support of its feasibility. (FF Decision at 25).

b. CONTESTED CITY PROPOSALS

1. Holidays, Article XIII, Section 1 (Personal Holidays)

CITY POSITION

UNION POSITION

120 HOURS OF HOLIDAY LEAVE NO CHANGE

Fact-finder Recommendation: Maintain current benefit.

Analysis: The City briefed adoption of this proposal on the basis of securing parity between Police and Fire. The Fact-finder ruled that paid leave benefits were "relatively equal" currently, citing that, in addition to 80 hours of Holiday leave, Police has 24 hours of Personal Time and 3 Mental Health Days. (FF Decision at 26).

2. Insurance, Article XV, Section 6

CITY POSITION

UNION POSITION

DELETE RETIREE UNKNOWN
PROVISION; MAINTAIN EXISTING
COST STRUCTURE VIS A VIS OTHER
UNITS

Section 6. Retirees. All employees who retired prior to the effective date of this Agreement (January 1, 2008), shall continue to receive a contribution towards their retiree health insurance premiums not to exceed four hundred (\$400.00) dollars per month. Employees who are eligible to retire prior to July 31, 2008 with twenty five (25) years of service and forty eight (48) years of age, who elected to continue working shall be eligible for the above premium contribution

~~after they retire until the age of sixty-five (65) when they become eligible for Medicare, which at that time, this premium contribution shall cease.~~

Fact-finder Recommendation: Remove Retiree Benefit; IAFF to enjoy same benefits structure as other units.

Analysis: The City briefed adoption of its position as the IAFF failed to take the deal given to other bargaining units with regards to removal of the retiree language in return for flat health care contributions. The Fact-finder ruled in favor of the City on the Retiree language: "It seems the time has come to remove this language and deal with this issue elsewhere." At the same time, the Fact-finder gave the Firefighter's health care parity on all fours with other City employees, calling it a "fair trade-off." (FF Decision at 32).

3. Minimum Manning, Article XXIII

CITY POSITION

UNION POSITION

DELETE SECTION 1

NO CHANGE

~~Section 1. As long as the City continues to operate the current number of fire stations, the Employer shall maintain a schedule of not less than seven (7) fire fighters to be on duty and to be assigned fire fighter/paramedic duties.~~

Fact-finder Recommendation: Maintain current benefit.

Analysis: The City briefed adoption of this proposal on the basis of that the City needed a free hand to efficiently run the department. The Fact-finder acknowledged the need to run services efficiently, but found that the City had not supported its position with sufficient evidence. Taken in whole, the Fact-finder's decision appears more sympathetic to the Firefighter's proposal when it comes to staffing – but he both rejected the IAFF's Vehicle Staffing Requirements and the City's proposed abolition of Minimum Manning Requirements. (FF Decision at 28).

4. Me Too Provision, Article XXV

CITY POSITION

UNION POSITION

DELETE PROVISION

NO CHANGE

~~"Effective for the duration of this Agreement any wage or benefit that is given or awarded to any other safety force shall be offered to the Union."~~

Fact-finder Recommendation: Maintain Language

Analysis: The City briefed adoption of this proposal on the basis that the Me Too provision has been abused by the IAFF. The Fact-finder recognized that some abuse seems to have taken place, “advising” the IAFF that “every increase or difference in wages and benefits received by the Police does not necessarily mean that they are entitled to the same.” (FF Decision at 30). At the same time, the Fact-finder noted that all the other bargaining units have kept their Me-Too language – and rejected the City’s proposal.

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of:	:	2016-MED-08-0761
	:	
Brook Park Firefighters, IAFF	:	
Local 1141	:	FACT FINDING REPORT
	:	FINDINGS AND RECOMMENDATIONS
and	:	
	:	
The City of Brook Park,	:	December 23, 2016

APPEARANCES

For the Union:

Thomas M. Hanculak, Attorney
Matthew Wright, President
Mark Higgins, Vice President
Thomas Kus, Secretary/Treasurer
Brian McClain, Negotiating Committee
Scott Boulton, Negotiating Committee

For the Employer:

Marc J. Bloch, Attorney
George J. Asimou, Attorney
David P. Byrnes, Director of Public Safety
Jennifer Sinatra, Human Resources Commissioner

Daniel G. Zeiser
Fact Finder
P.O. Box 43280
Cleveland, Ohio 44143-0280
440.449.9311

Fax: 440.449.9311

Email: danzeiser@aol.com

I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on November 14, 2016, pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties mutually agreed to extend the fact-finding period as provided under Ohio Administrative Code Rule 4117-9-05(G). The parties are the Brook Park Firefighters Association, Local 1141 International Association of Firefighters, AFL-CIO (Union, Firefighters, or Local 1141) and the City of Brook Park (Brook Park, Employer or City). The City is a suburb of Cleveland and is located in western Cuyahoga County adjacent to Cleveland Hopkins airport. It has a population of 19,212 according to the 2010 U.S. Census and an area of 8.8 square miles. It operates its own Fire Department. The Union represents the full time employees of the Department with the rank of Lieutenant and below. There are 28 members in the bargaining unit. The parties have had a collective bargaining relationship for many years.

II. THE HEARING

The hearing in this matter took place on November 29 and December 8, 2016 in Council Chambers of the City, 6161 Engle Road, Brook Park, Ohio. The Fact Finder engaged in mediation on November 29th, which was not successful. The hearing was held on December 8th. Each party provided a pre-hearing statement.

The parties jointly introduced the following exhibit into evidence:

An Agreement between The City of Brook Park and The Brook Park Firefighters Association, Local 1141 International Association of Firefighters, AFL-CIO, Effective: January 1, 2014, Expires: December 31, 2016.

Additionally, the parties introduced the following exhibits at the hearing.

Union Exhibits

1. Folder re Article XIV with attachments.
2. Folder re Leaves with attachments.
3. Folder re Vehicle Staffing with attachments.
4. Folder re minimum manning with attachments.
5. Folder re extra training day.
6. Folder re Compensation and Overtime with attachments.
7. Studies, References, and Charter re minimum manning.
8. Union comparables collective bargaining agreements.

City Exhibits

1. An Agreement between The City of Brook Park and The Brook Park Firefighters Association, Local 1141 International Association of Firefighters, AFL-CIO, Effective: January 1, 2014, Expires: December 31, 2016.
2. Fact Finding Report of Thomas R. Skulina, SERB Case No. 2015-10-1185, City of Brook Park and Brook Park Firefighters, re reopened in last year of contract.
3. Agreement between The City of Brook Park and The Fraternal Order of Police, Lodge No. 15 (Patrol Officers), Effective: January 1, 2016, Expires: December 31, 2018.
4. Agreement between The City of Brook Park and The Brook Park Policemen Ohio Patrolmen's Benevolent Association (Sergeants and Lieutenants), Effective: January 1, 2016 through December 31, 2018.
5. Agreement between The City of Brook Park and Teamsters Union Local No. 436, Effective: January 1, 2016, Expires: December 31, 2018.
6. Agreement between The City of Brook Park and The Municipal Foremen and Laborers Union Local No. 1099, Effective: January 1, 2016, Expires: December 31, 2018.
7. Collective Bargaining Agreement between The Fraternal Order of Police, Ohio Labor Council, Inc. and The City of Brook Park (Safety Dispatchers/ Clerks, Effective: January 1, 2016, Expires: December 31, 2018.
8. Interest Arbitration Award of Colman R. Lalka, AAA Case No. 01-15-0002-7320, SERB Case No. 2015-MED-09-1229.
9. Charts comparing Firefighter and Police.

Prior to the hearing, the parties engaged in collective bargaining, but were unable to reach agreement on all issues. Additionally, during the mediation session, the parties agreed to the following items: (1) the successor agreement would be effective through December 31, 2018 in keeping with the other collective bargaining agreements; (2) wage increases of 2% for 2017 and 2018 consistent with the other units; (3) increase

the compensatory time bank to 240 hours; (4) a 3 hour minimum emergency call back; (5) changing payout of the sick time bonus from every 3 months to quarterly, consistent with the other bargaining units; (6) the Union's proposal regarding Vacation Sections 1 and 4; (7) increase the clothing allowance by \$100 for both suppression and fire prevention, move Section 7 to Article XIV, and change subsequent section numbers; (8) Association time subject to the Safety Director's approval; (9) change the grievance and arbitration procedure by reducing Step 3 to 5 days, increasing Step 4 to 10 days, and changing Step 5 from the permanent panel to using the American Arbitration Association; (10) adopt the Employer's proposal to utilize the Assessment Center to evaluate supervisory ability for promotions under Section 7 of Article XVII; and (11) remove all reopener language. The tentative agreements reached by the parties during bargaining and mediation are hereby incorporated into this Report. Issues remaining at the hearing were:

Union Proposals

1. Article X, Overtime, Call in Pay.
2. Article X, Overtime, Compensatory Time.
3. Article XIII, Holidays, Mental Stress Days.
4. Article XIII, Holidays, Personal Days.
5. Article XIV, Compensation, add Junior and Senior Lieutenant.
6. Article XIV, Compensation, COLA.
7. Article XIV, Compensation, Extra Training Pay.
8. Article XIV, Compensation, Professional Pay.
9. Article XIV, Compensation, Shift Differential.
10. New Article XXIV, Vehicle Staffing.

City Proposals

1. Article XIII, Personal Holidays.
2. Article XV, delete Section 6, Retirees.
3. Article XIII, Minimum Manning.
4. Article XXV, Me Too Provision.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Introduction

It is no secret that recent years have been difficult for many municipalities. The City has a balanced tax base of businesses and housing. While its finances have stabilized, they are heavily dependent on its two (2) largest employers, NASA Glen Research Center and Ford Motor Company's Cleveland Engine Plant. Historically, Ford Motor Company had been the City's largest employer, but it has significantly reduced its headcount to approximately 1500 currently. Many years ago, the City swapped land with the City of Cleveland so it could expand Cleveland Hopkins Airport. As a result, the City gained NASA Glen Research Center as an employer of over 3000. Given the vicissitudes of the automobile industry and the federal budget, though, the City has budgeted conservatively and endeavored to maintain equitable treatment across its entire workforce.

In 2014, Thomas Coyne was elected to serve as Mayor of Brook Park. At the time, the City was spending into its reserves. Consequently, it met with all six (6) of its Unions and agreed to wage freezes for two (2) years with a reopener for wages, holidays, and vacation in 2016. In exchange, all agreed to have health care benefits and employee premium contributions remain the same. In 2016, all the Unions except the Firefighters decided against the reopener and negotiated three (3) year agreements through the end of 2018. Each bargaining unit agreed to 2% wage increases for each of the three (3) years. Health care benefits were also aligned for 2017 and 2018. The City has the same health care benefits for its non-bargaining unit employees, also. Additionally, the City agreed there would again be no increase in employee health care

contributions for 2016 in exchange for the Unions agreeing to remove retiree healthcare language from their respective collective bargaining agreements. Health care benefits in 2017 are subject to a limited reopener.

The Firefighters rejected this proposal and reopen the contract for 2016. Through fact finding, the Firefighters received a 2% increase for 2016, and vacations were changed so that five (5) weeks were earned after 15 rather than 18 years, and a sixth week of vacation was earned after 20 years of service. During the negotiations prior to fact finding, the City informed the Firefighters that there would be an increase in employee health care contributions based on 2015 usage rates. The Firefighters grieved and the parties are waiting upon the arbitration decision.

The City is now transitioning from self-insured status for health care benefits to a third-party insurance framework beginning in 2017. The benefits offered will be substantially comparable to the current plan. However, the applicable premiums to be paid by the Firefighters for healthcare in 2017 is in dispute. The City's position is that, without removing the retiree language found in Section 6 of Article XV, the Firefighters should not receive the same premium rate enjoyed by the other bargaining units, since that was the bargain struck with the other Unions.

As to this fact finding, the City's position is that each of the Firefighters' positions are calculated to erode management prerogatives and drive compensation higher. None of them are consistent with the City's attempts to equitably reward its employees. In keeping with its pattern bargaining approach, the City has proposed several items that the Firefighters have rejected.

According to the Firefighters, the issue as to the retiree language is new and should not be addressed by the Fact Finder. It was not included in the City's November 21st mediation statement. Additionally, the issues as to health care benefits and the "Me Too" provision involved 2016 only. There also seems to be some dispute regarding the tentative agreements reached by the parties. However, rather than provide an overall view of negotiations, the Firefighters made a substantial presentation regarding each of its issues.

Union Proposals

Issue: Article X, Overtime, Section 1, Call in Pay

Union Position: Change call in pay so that it is paid at one and one-half (1 1/2) times the employee's regular rate of pay for each hour worked based on a 40 hour workweek.

Employer Position: No change.

Findings: The Firefighters primarily look to the Police Department as a comparable and for parity. Because the Firefighters are paid overtime based on 48 hours, their overtime rates fall below those paid for Patrolman, Sergeants, and Lieutenants by a range of \$7.32 per hour for 10 year Firefighters and Patrolmen to \$17.21 per hour for 20 year Firefighter Lieutenants and Police Lieutenants. According to the Firefighters, this is a significant difference and they seek to change the rate to a 40 hour rate, which will increase the overtime rate.

The City opposes the change. The current language is in line with the daily overtime provisions for the Police Unions. One must take into account the different workweeks between Police Officers and Firefighters. Additionally, the Firefighters'

position provides for an added premium to daily overtime. While they may argue that the daily overtime rate for Police is 40 hours, this kind of "me too" argument was rejected in the 2016 fact finding. The Firefighters now attempt to secure an overtime premium through this fact finding. However, this would break the established pattern by increasing potential compensation.

The Fact Finder understands the comparison between Police and Fire. Typically, they are the only safety forces within a municipality. They tend to look at each other to make sure one group is not getting too much of an advantage in terms of pay or benefits over the other. Strict comparisons between the two (2), however, are sometimes difficult. Firefighters traditionally work a 24 hour shift followed by two (2) off, while Police tend to work a more traditional workweek. Because of their work schedule, Firefighters receive Kelly days that Police do not and tend to earn greater overtime annually. Often, senior Firefighters earn greater annual incomes than other employees even though their hourly rates might be less. It is always difficult to achieve strict parity between the two (2). Given the differences between shifts, workweeks, and the overtime earned by Firefighters and Police, exact parity can rarely be achieved. Other than that the Police receive overtime at a different rate, the Firefighters did not provide sufficient evidence to justify changing the hourly rate.

Recommendation: No change in the hourly rate for overtime.

Issue: Article XIII, Holidays, Mental Stress Days

Union Position: Add Section 6, Mental Health/Stress Day.

Employer Position: No change.

Findings: Local 1141 seeks parity with other City Unions regarding leaves granted. According to it, the FOP and OPBA have a greater percentage of time off compared to hours worked than Local 1141. The language proposed is taken directly from the FOP and OPBA contracts, which allow for three (3) mental health or stress days per year. The City opposes the creation of these days for Firefighters. The mental stress day is a benefit that reflects the differing work of law enforcement officers and reflect that the Police do not have minimum manning clauses. The City created this benefit for the Police in tandem with the Police Unions agreement to change to 12 hour shifts. The Firefighters already have sufficient time off.

As with the overtime hourly rate, this is another area where the Firefighters seek parity. Again, though, exact parity can be difficult to attain. Because of the Firefighters' traditional work schedule, they work a 24 hour shift followed by two (2) days off. This also results in Kelly Days, which are used to adjust their work schedule to minimize overtime. Police do not follow such a schedule and typically work a traditional eight (8) hour day forty (40) hour week or twelve (12) hour shifts and do not get as much time off as Firefighters. Additionally, the Firefighters ignore that this benefit was given in exchange for moving from an eight (8) hour shift to a 12 hour one. Safety Director David Byrnes testified that the City negotiated a change in the Police schedule from three (3) eight (8) hour shifts a day to two (2) twelve (12) hour shifts. This required several changes to the wages and benefits of the Police, including giving both the FOP and OPBA three (3) mental stress health days. The Fact Finder is not persuaded that the mental health or stress days are warranted for the Firefighters.

Recommendation: Do not add the Union's proposed language for mental health/stress day.

Issue: Article XIII, New Section, Personal Days

Union Position: Add the following new language to Article XIII: "All full time employees shall be entitled to twenty-four (24) personal hours to be taken according to Holiday time usage rules in Article XIII.

Employer Position: Do not add the language.

Findings: The Union is requesting to add language similar to that found in the FOP and OPBA contracts regarding personal hours. This is another area where it desires parity with other bargaining units regarding leaves. As noted above, the Union claims that the FOP and OPBA units have a greater percentage of time off compared to hours worked than the Firefighters. The City opposes creating a personal day for Firefighters as they already have sufficient leave. Indeed, the City asserts that the Union has the most generous paid leave benefits among City employees and extending a personal day to the Police merely narrowed the gap between them and Fire leave benefits. Adding a personal day for Firefighters will increase the gap.

The Fact Finder does not wish to repeat himself and simply refers to the points made regarding parity in his discussions of call in pay and the mental health/stress day, applicable here based on the different work and work schedules of Police and Fire. Simply put, other than to achieve what it considers parity, the Union has presented insufficient evidence to warrant adding a personal day.

Recommendation: Do not add the new section regarding personal days.

Issue: Article XIV, Compensation, New Sections, Junior and Senior Lieutenant

Union Position: Create the ranks of Junior and Senior lieutenant. Junior Lieutenant will receive the current 14% differential above Firefighter/Paramedic or Firefighter/Non-Paramedic, whichever is applicable. Senior Lieutenant will receive an additional 3% differential above Junior Lieutenant Firefighter/Paramedic or Firefighter/Non-Paramedic, whichever is applicable. The Junior Lieutenant becomes a Senior Lieutenant as soon as he or she becomes one (1) of the three (3) most senior Lieutenants, based solely on the promotional rank of Lieutenant, not Department seniority.

Employer Position: Do not create the ranks.

Findings: Local 1141 proposes to formalize a long-standing practice. Its rationale is that, in Brook Park, each of the three (3) Senior Lieutenants is in charge of a shift of nine (9). In some cities, the Officer-in-Charge of each shift is called a captain. Other cities have yet other names for the Officer-in-Charge position. No matter the title, all have the same management, fire ground, and supervisory responsibilities. Currently, the City does not pay Senior Lieutenants the going rate for a fire Officer-in-Charge position. The City might argue that is because the positions involved are not captains., but, in 2015, Fire Chief Maund and Assistant Chief Johnson authored a memo requesting the Captain rank be created within the Fire Department on the basis that authority should be commensurate with responsibility. Maund and Johnson consider the Senior Lieutenant to have the responsibility of an Officer-in-Charge and that the responsibilities mirror those of the surrounding communities' rank of Captain. They proposed renaming the three (3) Senior Lieutenant positions to a newly created rank of

Captain. Local 1141 claims that the title of Senior Lieutenant has existed for many decades and the Firefighters simply ask this title be recognized with a small differential in pay. Looking at other communities, the Officer-in-Charge position makes substantially more money for doing the same job, while internally the Police Lieutenant position pays substantially more money as well. This proposal attempts to narrow those gaps. It would not cost the City substantially since it would affect the pay of one (1) Firefighter per day.

The Employer counters that the proposal creates a new, incremental job classification that broadens compensation bands with no operational upside. It argues that creating Junior and Senior Lieutenants where only the rank of Lieutenant currently exists is essentially a request for an additional wage increase when the Union has already agreed to 2% wage increases. Furthermore, this proposal represents a significant intrusion upon the Employer's right to manage its workforce and determine shifts and operates as a backdoor attempt to limit its rate to schedule employees. Finally, the City has its own Civil Service Commission and the Union's proposal amends certifications. Any changes in rank would have to go through either of these avenues and the Fact Finder does not have the authority to recommend the rank changes.

The Union introduced evidence of 2016 pay for Officer-in-Charge positions in Strongsville, Middleburg Heights, Fairview Park, Parma Heights, North Olmsted, and Berea. These pays range from \$310 more than Brook Park in Berea to \$15,000 more in Strongsville. It is debatable whether Strongsville is an adequate comparable, given its size, population, and tax base. Additionally, it did not include such surrounding communities as Olmsted Falls and Brooklyn, which could be considered comparable.

Further, there was no evidence as to the size of the various shifts for these communities and other details that would provide additional support for this proposal.

Moreover, this proposal would intrude on the Employer's right to manage its workforce. While the Fact Finder recognizes that many contract proposals intrude on management's right to manage employees, proposal such as these intrude on that right more so than recommending additional time off, increased pay, or similar items. The Fact Finder is also mindful that the Chief and Assistant Chief proposed renaming the Senior Lieutenant rank Captain, but this was rejected by the Employer. The Union included the memo from the Assistant Chief, but not any response from the Employer with its reasons for rejecting the suggestion, so the Fact Finder lacks any understanding of the Employer's reasoning and how it might impact the Employer. Perhaps most important, there are the issues whether the Civil Service Commission would have to authorize the new ranks and whether the Fact Finder has the authority to create them. The Fact Finder concludes that more evidence is needed to answer the questions whether he has the authority to do so before creating them.

Recommendation: Do not create the ranks of Junior and Senior Lieutenant.

Issue: Article XIV, New Section, COLA

Union Position: Add new language to Section 2 "All wage scales above shall have a \$200 cost of living bonus rolled annually into the base rate."

Employer Position: No cost of living allowance.

Findings: Local 1141 seeks parity in this area. It argues that the FOP and OPBA contracts allow for a \$200 cost of living bonus rolled into the base pay and it should

receive it as well. The City opposes the COLA. While the Union argues that it is current contract language in the FOP and OPBA contracts, the City contends that it is actually old language that dovetailed with a past wage increase and is not treated by the City and the Police as operative. Additionally, if the Fact Finder recommends the COLA, it would have to be extended to the Police Unions under their respective "me too" provisions. On this record, there is no evidence that the COLA is currently effective, contradicting Local 1141's argument for parity.

Recommendation: Do not adopt the cost of living language.

Issue: Article XIV, New Section, Extra Training Pay

Union Position: Add new Section 7 as follows:

Section 7. Extra Training Pay

(A) All full-time employees who have completed the firefighter Level II and/or forty-four (44) college credit hours with a grade of "C" or better in each course shall receive two percent (2%) of their salary in addition to their annual salary as an incentive for completing such courses.

(B) All full-time employees who have received an associate, bachelor's, or master's degree shall receive four percent (4%) of their salary in addition to their annual salary as an incentive for completing such courses.

(C) The payment referred to in paragraphs (A) and (B) of this Section are to be made at the time the required degree is received and also during the first pay period of July of each subsequent year. Such payment shall be made separate and distinct from any other regular compensation to be received. If an employee receives a two percent (2%) payment in July of any year and later in the same year qualifies for a four percent (4%) payment for receipt of a degree under paragraph (B), the employer shall pay the individual an additional two percent (2%) upon receipt of such degree.

(D) The maximum payment per year for any employee under this Section will be four percent (4%) of his or her annual salary.

(E) All full-time employees who desire to attend classes for extra training pay under this Section shall attend classes on their own time and/or compensatory time

previously earned. Such employees shall not be awarded overtime for classes attended on their own time. If an employee wishes to attend classes when scheduled for duty using compensatory time, it shall first be determined by the Fire Chief, with concurrence of the Safety Director, that sufficient manpower is available but, if the employee has not accumulated compensatory time and still desires to attend classes during scheduled working hours, the employee must agree to reimburse the City for the time missed while attending classes.

The agreement to reimburse the City must be in the form of a notarized affidavit signed by the employee. The reimbursement must take place within ten (10) months of the date the employee first missed work to attend class or prior to termination of employment with the City of Brook Park, whichever occurs earlier.

(F) No payment shall be made under this Section until satisfactory evidence that courses have been completed or the degree has been earned is submitted to the Audit Department through the Fire Chief, who shall determine the validity of such evidence presented by the employee.

(G) Any employee shall be given the opportunity to discontinue his paramedic card based on seniority of paramedic certification. The paramedic with the most time served as a paramedic shall be given the first opportunity to be able to discontinue his paramedic card, provided that this procedure will not result in an excessive amount of overtime. However, this process shall have no bearing on the status of EMT cards, which will be maintained in accordance with Departmental policy.

Employer Position: Do not add new Section 7.

Findings: The Union submits that almost identical language is found in the FOP and OPBA contracts. Again, it seeks parity with the Police. Additionally, a City ordinance provides similar payments to the Chief and Assistant Chief of the Fire Department. Nineteen (19) members of the Police Department received the 4% education pay in 2016, with an additional five (5) receiving 2%. The Union calculated the cost to the Police Department to be almost \$60,000, while the cost to the Fire Department would be almost \$49,000. It also submitted evidence of other Fire Departments in western Cuyahoga County who receive educational pay. For example, Rocky River Firefighters receive 3.5%, with a flat \$1000 for employees hired after 2013. Middleburg Heights Firefighters receive \$350 for a certificate in fire technology, \$600 for an associate

degree, and \$850 for a bachelor's degree yearly. Parma Heights Firefighters receive yearly payments of \$200 for an associate degree or higher.

The City acknowledges that this incentive for completing job related coursework is extended to the Police Unions, and asserts that the Firefighters have similar language. This language applies to employees with 27 years of seniority or more only and the provision has been sunset in prior negotiations. Additionally, Firefighters are also compensated for paramedic training so there is no operational reason for this additional benefit. The City further submits that this benefit was extended to the Police Unions 20 years ago to offset the paramedic pay to the Fire Department.

After reviewing the language in the various contracts, the Fact Finder concludes this is an area where parity can be reached. The Police are compensated for obtaining and associate degree or higher, while the Firefighters are not. Unlike the proposals above, there does not appear to be anything unique to police work or differences in workweeks or shifts that this benefit cannot be extended to the Firefighters. More importantly, better educated Firefighters benefit not only themselves, but create a more professional Fire Department, which will benefit the City and its residents. There is no dispute that the FOP and OPBA contracts have almost identical language as the Firefighters propose, but the City is correct that Firefighters are already compensated for obtaining a paramedic certification. Additionally, the Fact Finder notes that the language proposed by the Firefighters does not include the language found in the FOP and OPBA contracts that the degree be related to police work. Therefore, the Fact Finder recommends the language with two (2) changes. The first is to require any degree be related to firefighting. For example, the City should not pay a Firefighter for

obtaining a degree in art history. The second change is to decrease the percentages to reflect that Firefighters already receive pay for obtaining paramedic certifications. Finally, since the Fact Finder does not recommend adding new Sections 3 and 4 as to Junior and Senior Lieutenants, this language will simply replace the current Section 5.

Recommendation: Delete the current Section 5 and replace it with the following language:

Section 5. Extra Training Pay

(A) All full-time employees who have completed the firefighter Level II and/or forty-four (44) college credit hours with a grade of "C" or better in each course shall receive one percent (1%) of their salary in addition to their annual salary as an incentive for completing such courses.

(B) All full-time employees who have received an associate, bachelor's, or master's degree shall receive two percent (2%) of their salary in addition to their annual salary as an incentive for completing such courses.

(C) The payment referred to in paragraphs (A) and (B) of this Section are to be made at the time the required degree is received and also during the first pay period of July of each subsequent year. Such payment shall be made separate and distinct from any other regular compensation to be received. If an employee receives a one percent (1%) payment in July of any year and later in the same year qualifies for a two percent (2%) payment for receipt of a degree under paragraph (B), the employer shall pay the individual an additional one percent (1%) upon receipt of such degree.

(D) The maximum payment per year for any employee under this Section will be two percent (2%) of his or her annual salary.

(E) All full-time employees who desire to attend classes for extra training pay under this Section shall attend classes on their own time and/or compensatory time previously earned. Such employees shall not be awarded overtime for classes attended on their own time. If an employee wishes to attend classes when scheduled for duty using compensatory time, it shall first be determined by the Fire Chief, with concurrence of the Safety Director, that sufficient manpower is available but, if the employee has not accumulated compensatory time and still desires to attend classes during scheduled working hours, the employee must agree to reimburse the City for the time missed while attending classes.

The agreement to reimburse the City must be in the form of a notarized affidavit signed by the employee. The reimbursement must take place within ten (10) months of

the date the employee first missed work to attend class or prior to termination of employment with the City of Brook Park, whichever occurs earlier.

(F) No payment shall be made under this Section until satisfactory evidence that courses have been completed or the degree has been earned is submitted to the Audit Department through the Fire Chief, who shall determine the validity of such evidence presented by the employee.

(G) Any employee shall be given the opportunity to discontinue his paramedic card based on seniority of paramedic certification. The paramedic with the most time served as a paramedic shall be given the first opportunity to be able to discontinue his paramedic card, provided that this procedure will not result in an excessive amount of overtime. However, this process shall have no bearing on the status of EMT cards, which will be maintained in accordance with Departmental policy.

Issue: Article XIV, New Section, Professional Pay

Union Position: Add a new section as follows:

Professional Pay

To encourage continuing professional training and proficiency, all employees who undertake training and are granted accreditation or certification in three (3) of the following fields:

ACLS	BLS	CPR
ITLS	PALS	
Fire Safety Inspector	HAZ-MAT Awareness	

shall be paid an annual professional wage supplement in the amount of \$750. Employees shall maintain accreditation in three (3) of the above fields respectively under professional guidelines and requirements established by the State of Ohio or the Fire Chief for the City of Brook Park. The payment for the Professional Pay will be paid in the first pay period in July and will be in a separate check and distinct from any other compensation.

Employer Position: Do not add the proposed language.

Findings: The Union has taken the proposed language from the FOP and OPBA contracts, which provide an annual professional wage supplement in the amount of \$750 for accreditation or certification in three (3) of the specified fields, that is, firearms

proficiency or AED training, LEADS certification, blood alcohol analysis, and radar and/or laser certification. The Union contends that these certifications are required to be Police Officers and the City is simply paying the Police Union members for certifications or training that are already required. The Union seeks the same treatment and proposes the language for accreditation or certification in fields necessary to be a Firefighter. Further, Ohio has mandated additional training for Firefighters, most of which is done in-house so they do not receive compensation for it, while the Police take the training away from the City and are compensated.

The City opposes creating a professional pay bonus, though it concedes such a bonus is extended to the Police Unions. This benefit was extended to the Police Unions six (6) years ago to reward certain officers who attended additional classes beyond the normal requirements of being a Patrolman, and giving it to the Firefighters will likely lead to a "me too" claim by the Police.

This is another area where the Fact Finder concludes parity can be reached. The Police are compensated for training or certification in areas required by or related to police work, and the Firefighters propose payment for accreditation or certification necessary or related to firefighting. Unlike other proposals, there does not appear to be anything unique to the Police Department that this benefit cannot be extended to the Firefighters. Safety Director David Byrnes testified that, when he was hired, the Police were underpaid compared to Firefighters and he has worked to increase their pay. This is commendable, but the Firefighters have pointed to a number of areas where the Police are paid a benefit that the Firefighters do not receive or receive more of a particular benefit. As the Fact Finder has noted, some of these do not make sense

because of differences between the Police and Fire Departments and so has not recommended them. It seems appropriate, though, to recommend that the Firefighters receive professional pay similar to the Police. As noted above regarding Extra Training Pay, better trained Firefighters make for a better Fire Department and benefit the City and its residents. And since much of the training is done in-house, it does not add greatly to the cost to the City.

Recommendation: Add a new section for Professional Pay, to be effective for 2017 and 2018, as follows:

Professional Pay

To encourage continuing professional training and proficiency, all employees who undertake training and are granted accreditation or certification in three (3) of the following fields:

ACLS	BLS	CPR
ITLS	PALS	
Fire Safety Inspector	HAZ-MAT Awareness	

shall be paid an annual professional wage supplement in the amount of \$750. Employees shall maintain accreditation in three (3) of the above fields, respectively, under professional guidelines and requirements established by the State of Ohio or the Fire Chief for the City of Brook Park. The payment for the Professional Pay will be paid in the first pay period in July and will be in a separate check and distinct from any other compensation.

Issue: Article XIV, New Section, Shift Differential

Union Position: Add a new section as follows:

Shift Differential

Employees assigned to the 24 hour platoon shift shall receive an annual payment of \$624 for shift differential. All members assigned to the Fire Prevention Bureau shall receive an annual payment for shift differential of \$185. All payments shall be divided equally into the employees' biweekly pay.

Employer Position: Do not add the new language.

Findings: The Union bases this proposal on the shift differentials paid to Police. Again, it seeks parity. The City opposes the shift differential. Byrnes testified that the shift differential for the Police is based on prior contract negotiations when the Police Department went from three (3) eight (8) hour shifts to two (2) twelve (12) hour shifts. This involved Police Officers giving up permanent shift assignments and blending the second and third shift differentials to cover the new hours. Additionally, Sergeants lost approximately \$7000 in overtime because their shifts went from 10 to 12 hours.

The Fact Finder determines this is an area where parity cannot be attained. The shift differential given to the Police is based on their hours and work weeks, which are different than the Firefighters. The particular shift differential the Firefighters seek here is based on changing from a three (3) shift day to two (2) shifts. The Firefighters do not work the same kind of shifts, working instead for 24 hours and then being off for two (2) days. Their schedule simply does not warrant the shift differential, which compensates those folks who regularly work a shift other than the typical eight (8) hour day, especially those that extend beyond the typical workday. While Firefighters do work a shift that extends beyond the typical workday, they are compensated in other ways by receiving two (2) days off after every work day, Kelly days, and so forth. The proposed shift differential for the Fire Prevention Bureau makes even less sense. As the Fact Finder understands it, the Fire Prevention Bureau works a typical workweek. Shift differentials have traditionally been paid to compensate those who work evenings or nights and the Fire Prevention Bureau works days.

Recommendation: The Fact Finder does not recommend the shift differentials.

Issue: New Article XXIV, Vehicle Staffing

Union Position: Add a new Article XXIV as follows:

ARTICLE XXIV
VEHICLE STAFFING

Section 1. The following responding Fire Department apparatus shall be staffed by members of Local 1141 as follows: Engines/Ladder Truck shall have a minimum of three (3) members and Ambulances shall have a minimum of three (3) members. There shall be at least two (2) paramedics on each piece of apparatus.

Employer Position: Reject the new article.

Findings: Local 1141 seeks the staffing minimums because staffing cuts and reductions in minimum daily staffing levels have led to a situation where Firefighters are being forced to do more with less. This has resulted in inadequate staffing for fire apparatus. As a result, the Firefighters are spread thin and are satisfied if they can get anyone to respond to the scene regardless of the crew's ability to handle the situation effectively and safely. Local 1141 believes that cuts to the Fire Department in the past several years, along with the lack of proper policy decisions to adequately staff Fire Department vehicles, have necessitated this contract language. Current vehicle staffing levels do not provide Firefighters with the level of protection and safety they believe is adequate or the appropriate level of care they believe City residents expect. While this staffing requirement will not correct all the deficits created by manpower reductions, it will at least ensure that arriving crews can work in a more independent and efficient manner and increase the ability to handle the emergency facing them.

Local 1141 points to National Fire Protection Association standards that call for 17 personnel on a typical, low hazard structure fire, 4 personnel to arrive on scene within

five (5) minutes at least 90% of the time, and two (2) basic and two (2) advanced life support providers for all advanced life support incidents. It contends that mutual aid agreements with surrounding communities require engine and ladder companies to be staffed with at least three (3) Firefighters, while frequent simultaneous calls split manpower to unacceptable levels. The proposed language will improve Firefighter safety by allowing two (2) in and two (2) out, less physical overexertion on fire scenes, and reduced risk of injury on fire and EMS scenes, while providing increased patient care on EMS calls.

The City responds that any mandate as to the number of Firefighters assigned erodes its management rights. The proposed language will create further unnecessary encumbrance on the City's right to staff and direct its operations. This is a clear abridgment of its rights under Ohio law and stands in direct opposition to the City's requested elimination of minimum manning.

Findings: Local 1141 makes some excellent points why there should be a minimum vehicle staffing. However, the Fact Finder believes that he is not in the best position to recommend this language and doing so would intrude too far on the City's right to manage its workforce and budget. First, the Fact Finder has no expertise in firefighting, fire safety, manpower needs, or budgeting. While the NFPA standards are laudable, in the Fact Finder's experience, many are not followed. The standard most consistently followed is having four (4) Firefighters respond to a fire, to allow for two (2) in and two (2) out, which the Fact Finder understands is required by Ohio law. He is not aware of any jurisdiction that follows the 17 personnel for a typical, low hazard structure fire standard. Additionally, there are too many nuances, factors, and possible scenarios to

consider before setting forth a hard and fast rule as to the number of staffing per vehicle. Simply put, the Fact Finder is not the best person to make this decision. Second, placing these requirements on the City could force it to hire additional Firefighters and add greatly to its expenses, which could result in cuts elsewhere. The Fact Finder is certainly cognizant that Firefighters respond to dangerous situations and more manpower can alleviate some of this danger, but is hesitant to tell the City how to operate its Fire Department without a better understanding of all the facts. Third, Local 1141 made no presentation as to the potential costs to the City, whether the City has the money to spend, and from where the money would come. Typically, the Fact Finder is presented with the Comprehensive Annual Financial Report filed with the State of Ohio and other financial information to determine whether the City can afford such proposals. Local 114 did present the City's Statement of Revenues, Expenditures, and Changes in Fund Balances for the Year Ended December 31, 2015, which showed a healthy year end balance. However, there was no information as to which funds are available to spend on this proposal, which might be encumbered, and what this proposal might cost the City. Without this information, it is difficult to recommend this language and the Fact Finder believes it would be unreasonable to add to the contract.

Recommendation: Do not add the vehicle staffing article.

City Proposals

Issue: Article XIII, Personal Holidays

Employer Position: A one (1) day reduction in holiday pay from 144 hours to 120 hours.

Union Position: As noted in the Union Proposals, it seeks an additional 24 personal hours.

Findings: According to the City, its proposed reduction would put the Firefighters contract more in line with the holiday leave given to the City's other Unions. The Firefighters enjoy far greater paid time off benefits than the other bargaining units in the City, and the Union's proposal for more personal time simply maintains that greater paid time off. The Union's position can be found above in its proposal for increased personal hours.

The FOP and OPBA units receive the same number of holidays as the Firefighters. In terms of hours for these holidays, Firefighters receive 144 hours of holiday leave, while the Police units receive 80. However, the Police units receive an additional 24 hours of personal time, as well as the three (3) mental health/stress days. All in all, the amount of paid time off is relatively equal. On this record, the City has not established the need to reduce the holiday pay.

Issue: Article XXIII, Minimum Manning

Employer Position: Delete the Minimum Manning article.

Union Position: Increase the minimum manning to nine (9) full-time Firefighters.

Findings: The City proposes to eliminate an additional unnecessary encumbrance on its right to staff and direct its operations. It submits that no other Union has a minimum manning provision in its contract. The City believes the Union wishes to contract for job security that is beyond the City's control and goes against prevailing trends in firefighting services. According to the NFPA, there are 50% fewer fires as there were 30

years ago, but approximately 50% more firefighters paid to fight them. This decline in fire incidents as well as the potential redundancies existing among smaller municipalities that maintain separate fire services have led to pressure from state and county officials to regionalize fire services. Allowing the City to rationalize staffing, if necessary, is essential to the long term preservation of the City's having a Fire Department under its exclusive control.

Local 1141 made a lengthy presentation why minimum manning should be increased. Brook Park's boundaries make it lengthy from west to east and shorter from north to south, with Cleveland Hopkins Airport almost cutting off one third of the City. NASA Glen Research Center is on the other side of the airport and the Fire Department has to respond around the airport to provide services to it and a small residential section of the City. Statistics show that, in 1983, 1624 calls were responded to with manpower of 50 in the Department, while in 2015 the Department responded to 3018 calls with manpower of 30. In the last 20 years, Brook Park has commissioned three (3) studies about staffing. A 2000 study commissioned by Mayor Coyne recommended staffing be increased to 15 per shift, while a Baldwin-Wallace University regional study recommended Brook Park staff ten (10) Firefighters per day, and a 2010 study performed by former Fire Chief Mark A. Ramach commissioned by former Mayor Elliott cautioned that any reduction from the then current nine (9) man minimum and three (3) fire stations would adversely affect the safety of the citizens, businesses and their employees, and City Firefighters.

The Fact Finder is faced with diametrically opposed positions. There is no question eliminating the minimum manning provision would give the City more flexibility

in staffing and would allow it to better control costs. On the other hand, three (3) separate studies recommended otherwise, two (2) recommending increases with the third recommending no cuts to the then nine (9) staffing minimum. Ramach's study specifically noted that firefighting has become specialized, technical, and encompassing and the job is now highly skilled and manpower intensive. This could be the answer to the City's point that fewer fires are fought by more Firefighters. It must be noted that the minimum has since been reduced to seven (7), below each recommendation, so the City has already reduced its costs. Neither party presented evidence as to the current costs and those saved or increased. And while the City mentioned regionalization, it presented no evidence that the City is pursuing such a model. The Baldwin-Wallace study examined regionalized services among Berea, Brooklyn, Brook Park, Middleburg Heights, Olmsted Falls, Parma, and Parma Heights, but its recommendations apparently were not followed.

On this record, the Fact Finder can neither recommend an increase in or eliminating manning. Increasing manning would increase the City's costs at a time when it appears to be getting its house back in order after spending down its reserves, while eliminating it could put the safety and well being of City residents and employees at risk. It might be different if the City had a regional fire services option that would offset any cuts in manning, but it did not offer another option. Perhaps regionalization is the answer, but that answer does not currently exist.

Recommendation: No change in the current Minimum Manning article.

Issue: Article XXV, Me Too

Employer Position: Delete the article.

Union Position: Maintain current contract language.

Findings: The City wants to eliminate this article as it is no longer necessary because, by legislative intent and action, it has implemented a pattern with regards to terms and conditions of employment for its employees. It believes the “Me Too” provision has served its purpose and no longer serves the interests of workplace fairness. It argues that the Union has repeatedly ignored that “Me Too” provisions are intended to serve as a floor and ceiling on certain contractual benefits, focusing on the former and disregarding the latter. This provision has divided the City's workforce and sown disharmony in the relationship between it and its Firefighters. Local 1141 responds that the current language is necessary so that it can maintain its wages, benefits, and conditions of employment.

The City seeks to eliminate the “Me Too” clause, but it has continued the same clause in the FOP unit. In the Fact Finder's experience, Fire and Police units can be envious of each other and each watches what the other gets in terms of pay and benefits. As one can see by reading this Report, this is certainly the case here. The Firefighters have noted a number of provisions in the Police unit contracts that they believe give the Police more than what they receive and have sought to attain those. It is somewhat understandable here because, according to Byrnes's testimony, the Police were underpaid when he was hired and he has tried to increase their pay. As a result, the Firefighters feel left out. Additionally, during the mediation and hearing sessions, the City noted more than once that the Police units also watch to see what the

Firefighters receive. Indeed, part of the City's argument regarding the COLA and Professional Pay was that the Police would want whatever the Firefighters received.

The Fact Finder concludes that, so long as the FOP unit has a "Me Too" clause, it would be inappropriate to remove it from the Firefighters contract. Otherwise, whatever the Firefighters were able to negotiate, the FOP could obtain, but the Firefighters could not get whatever the FOP was able to negotiate. As the two (2) major safety units in the City, there should be some mechanism to prevent either unit receiving more than the other. The Fact Finder advises the Firefighters that every increase or difference in wages and benefits received by the Police does not necessarily mean they are entitled to the same. The Fact Finder has noted throughout this Report that there are instances where strict parity cannot be achieved due to differences in the units, their schedules and workweeks, and what was given up to obtain those wages and benefits in negotiations. Having noted this, however, the "Me Too" provides some protection for each unit.

Recommendation: Maintain the current contract language.

Issue: Health Care and Retirement Insurance Language

Employer Position: Delete Section 6 of Article XIV, Insurance, regarding Retirees.

Union Position: Maintain current contract language.

Findings: In 2014, the City approached each of its Unions and agreed to wage freezes for two (2) years with a reopener for wages, holidays, and vacation in 2016. In exchange, all agreed to have health care benefits and employee premium contributions remain the same. In 2016, all the Unions except the Firefighters decided against the

reopener and negotiated three (3) year agreements through the end of 2018. Each bargaining unit agreed to 2% wage increases for each of the three (3) years. Health care benefits were also aligned for 2017 and 2018. The City has the same health care benefits for its non-bargaining unit employees, also. Additionally, the City agreed there would again be no increase in employee health care contributions for 2016 in exchange for the Unions agreeing to remove retiree healthcare language from their respective collective bargaining agreements. Health care benefits in 2017 are subject to a limited reopener.

The City contends that the collective bargaining agreement is not the appropriate place for the retiree language. During the hearing, it explained its plan to deal with this issue by ordinance. It also believes Local 1141 should not be rewarded by having healthcare benefit equalized for 2017 to the same cost structure as the other bargaining units. If the Fact Finder awards the same health care benefit, the City believes it will encourage other units to fight the pattern established. Additionally, there are two (2) arbitrations currently going on between the parties. The first involves health care costs for 2016 and the parties are simply awaiting a decision. The second involves the "Me Too" provision. Consequently, there is possibility of conflict among the arbitrations and this fact finding.

Local 1141 disagrees somewhat with the City's portrayal of the 2016 negotiations and believes the additional health care costs its members incurred were improper. That is the subject of the first arbitration on which the parties are awaiting decision. Local 1141 also disputes the City's contention that the retiree language should not be in the contract. What is not in dispute is that all the other bargaining units have agreed upon

the same health care language and to remove similar language regarding retirees' insurance. To the extent possible, the Fact Finder has attempted to follow the established pattern. Furthermore, the City has indicated its intent to deal with this issue by ordinance and to include all retirees, not just those eligible to retire prior to 2008. While the Fact Finder certainly understands the Firefighters' dedication to its retirees, it seems the time has come to remove this language and deal with this issue elsewhere. The Fact Finder is of the mind that it is a fair trade-off to give up the retiree language so that Firefighters can receive the same health care cost structure as other employees. After all, the increased cost of health care to the Firefighters for 2016 was the elephant in the room during this fact finding. While the Fact Finder does not believe he can deal with what happened in 2016, since this is the subject of the arbitration, it can be remedied going forward.

Recommendation: Delete Section 6 of Article XV. In exchange, the Firefighters are to receive health care benefits based on the same cost structure as the other bargaining units for 2017 and 2018. The Fact Finder intends not to interfere with the arbitration decision for health care costs for 2016. That should be decided by the arbitration for which the parties are awaiting decision.

As noted above, all tentative agreements reached during bargaining and the mediation session held on November 29, 2016 are hereby incorporated into this Report.

Dated: December 23, 2016



Daniel G. Zeiser, Fact Finder

P/C _____
CA 12/13/16
1st R 12/13/16 Sp. Council
2nd R 2/20/16 Sp. Cou ame
3rd R 1/3/2017 Sp. Cou
B/C _____

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 10060-2016

INTRODUCED BY: MAYOR COYNE

AN ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS IN A MAXIMUM PRINCIPAL AMOUNT OF \$5,200,000, FOR THE PURPOSE OF PAYING THE COSTS OF INSTALLATIONS, MODIFICATIONS AND REMODELING OF CITY BUILDINGS TO CONSERVE ENERGY AS FURTHER DESCRIBED HEREIN, AND TO PAY THE COST OF ISSUANCE FOR SAID BONDS; AND DECLARING AN EMERGENCY.

WHEREAS, this Council has analyzed an energy conservation study from The Brewer-Garrett Company, and requested additional information of The Brewer-Garrett Company at a public meeting held November 12, 2016; and

WHEREAS, this Council finds and determines that the City should issue the Bonds described in Section 2 for the purpose of paying costs of installations, modifications and remodeling of city buildings to conserve energy; and

WHEREAS, the Director of Finance has certified to this Council that the estimated life or period of usefulness of the Improvements defined in Section 1(b) is at least five (5) years and has further certified the maximum maturity of the Energy Conservation Improvement Bonds is 20 years.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Brook Park, Cuyahoga County, Ohio:

SECTION 1: Findings and Determinations. This Council finds and determines the following matters (capitalized terms that are not otherwise defined are defined in Section 14):

- (a) This Council hereby approves the evaluation materials of the RFQ evaluation committee and the energy conservation report from The Brewer-Garrett Company (the "Report"), in the forms on file with the City, and determines to incur indebtedness to carry out the program of energy conservation outlined therein, all of which constitute Energy Conservation Measures; and
- (b) It is necessary for the City to issue the Series 2017 Energy Conservation Improvement Bonds for the purpose of (1) paying the costs of Energy Conservation Measures (the "Improvements," as further defined in Section 14 hereof) and (2) paying Financing Costs (as defined in Section 8 hereof) of the Series 2017 Energy Conservation Improvement Bonds.
- (c) This Council hereby finds that the amount of money spent on Energy Conservation Measures is not likely to exceed the amount of money the City would save in energy, operating, maintenance and avoided capital costs over the average system life of the Energy Conservation Measures as specified in the Report.
- (d) This Council hereby accepts the recommendation of the RFQ evaluation committee and hereby awards the energy conservation contract to The Brewer-Garrett Company and approves the form of the Performance Contract between the City and The Brewer-Garrett Company currently on file with the City with such changes therein as are not inconsistent with this Ordinance and not materially adverse to the City and which are permitted by the Charter and shall be approved by the officers executing such document.
- (e) The Director of Finance has certified to this Council the maximum maturity of the Series 2017 Energy Conservation Improvement Bonds to be 20 years, which is lower than the average system life of the Energy Conservation Measures as specified in the Report.
- (f) All acts and conditions necessary to be performed by the City or to have been met for the issuance of the Series 2017 Energy Conservation Improvement Bonds in order to make them legal, valid, and binding general obligations of the City, have been performed and met, or will have been performed and met at the time of delivery of the Series 2017 Energy Conservation Improvement Bonds, as required by law.

- (g) No statutory or constitutional limitation of indebtedness or taxation will be exceeded by the issuance of the Series 2017 Energy Conservation Improvement Bonds. Pursuant to Section 717.02 of the Ohio Revised Code, the principal amount of the Series 2017 Energy Conservation Improvement Bonds shall not be included in the calculation of the net indebtedness of the City.
- (h) All formal actions of this Council relating to the enactment of this Ordinance were taken in an open meeting of this Council, and all deliberations of this Council and of any of its committees that resulted in those formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22, Ohio Revised Code.

SECTION 2: Terms of the Series 2017 Energy Conservation Improvement Bonds. The Series 2017 Energy Conservation Improvement Bonds will have the following terms:

- (a) **Amount.** The Series 2017 Energy Conservation Improvement Bonds shall be issued in the Original Principal Amount as determined by the Director of Finance in the Certificate of Award, but in no event shall such Original Principal Amount exceed \$5,200,000. The principal amounts of the Series 2017 Energy Conservation Improvement Bonds to be issued as Serial Series 2017 Energy Conservation Improvement Bonds or as Term Series 2017 Energy Conservation Improvement Bonds will be determined by the Director of Finance in the Certificate of Award.
- (b) **Date.** The Series 2017 Energy Conservation Improvement Bonds shall be dated the Closing Date, or such other date, not more than 31 days before the Closing Date, as determined by the Director of Finance in the Certificate of Award.
- (c) **Maturity.** The Series 2017 Energy Conservation Improvement Bonds will mature or be payable by Mandatory Sinking Fund Redemption in the amounts and on the Principal Payment Dates as determined by the Director of Finance in the Certificate of Award; provided that the first Principal Payment Date shall be not later than December 1, 2018.

(d) **Redemption Before Stated Maturity.** The Series 2017 Energy Conservation Improvement Bonds will be subject to redemption before their stated maturity as described in this Section 2(d), unless otherwise determined by the Director of Finance in the Certificate of Award.

(1) **Mandatory Sinking Fund Redemption.** If any of the Series 2017 Energy Conservation Improvement Bonds are issued as Term Series 2017 Energy Conservation Improvement Bonds, the Term Series 2017 Energy Conservation Improvement Bonds will be subject to Mandatory Sinking Fund Redemption, in part, on the Mandatory Redemption Dates, at a redemption price of 100% of the principal amount being redeemed, plus interest accrued to the redemption date. The principal amounts to be paid by Mandatory Sinking Fund Redemption will be those in the principal payment schedule as determined by the Director of Finance in the Certificate of Award.

The City will have the option to deliver Term Series 2017 Energy Conservation Improvement Bonds in any principal amount to the Registrar for cancellation. The City will be entitled to a credit against its obligation to pay Debt Service by Mandatory Sinking Fund Redemption on any future Mandatory Redemption Date for Term Series 2017 Energy Conservation Improvement Bonds that (A) are delivered by the City to the Registrar, (B) have previously been redeemed other than by Mandatory Sinking Fund Redemption, or (C) have been purchased and canceled by the Registrar as provided in the Registrar Agreement.

(2) **Optional Redemption.** If determined by the Director of Finance in the Certificate of Award to be in the best interest of and financially advantageous to the City, the Series 2017 Energy Conservation Improvement Bonds shall be subject to prior redemption on any date, by and at the sole option of the City, as provided in the Certificate of Award, either in whole or in part, in integral multiples of \$5,000, at the redemption prices specified in the Certificate of Award (expressed as percentages of the principal amount redeemed), plus accrued interest to the

redemption date; provided that such redemption prices may not exceed 110%.

The City's option to redeem the Series 2017 Energy Conservation Improvement Bonds shall be exercised by a notice from the Director of Finance to the Registrar as provided in the Registrar Agreement, shall specify the redemption date and the principal amount of the Series 2017 Energy Conservation Improvement Bonds to be redeemed, and be given at least 45 days before the redemption date or such shorter period as acceptable to the Registrar.

(3) **Terms of Redemption.** The following are the procedures for partial redemption, for notice of redemption, and for payment of redeemed Series 2017 Energy Conservation Improvement Bonds.

(A) **Partial Redemption.** If Series 2017 Energy Conservation Improvement Bonds are to be redeemed in part by optional redemption, the maturities of Series 2017 Energy Conservation Improvement Bonds to be redeemed and the amounts of each maturity to be redeemed shall be selected by the City. If fewer than all Series 2017 Energy Conservation Improvement Bonds of a maturity are to be redeemed, the Registrar shall select the Series 2017 Energy Conservation Improvement Bonds of a maturity to be redeemed by lot in any manner it determines. The Registrar shall treat each portion of Series 2017 Energy Conservation Improvement Bonds of a maturity in the lowest Authorized Denomination as a separate bond for purposes of that selection. If the Series 2017 Energy Conservation Improvement Bonds to be redeemed are book-entry Series 2017 Energy Conservation Improvement Bonds, the Registrar shall direct the Depository to select portions of Series 2017 Energy Conservation Improvement Bonds or beneficial ownership interests of a maturity to be redeemed. If a portion of a Bond is redeemed, the Holder shall surrender that Bond for exchange of the unredeemed portion.

(B) **Notice of Redemption.** The Registrar shall give notice of redemption of Series 2017 Energy Conservation Improvement Bonds to the Holders at least 30 days before the redemption date, by first-class mail. If the Registrar sends the notice, the failure of a Holder to receive the notice will not affect the validity of the redemption. The notice shall state all of the following:

- (i) the redemption date,
- (ii) the redemption price,
- (iii) the principal amount of Series 2017 Energy Conservation Improvement Bonds to be redeemed,
- (iv) if fewer than all the outstanding Series 2017 Energy Conservation Improvement Bonds are to be redeemed, the identifying information of the Series 2017 Energy Conservation Improvement Bonds to be redeemed,
- (v) the places where the amounts due on redemption are payable, and
- (vi) that the redemption price of each Bond redeemed will be due and payable on the redemption date, and interest on that Bond will cease to accrue on and after the redemption date.

(C) **Payment of Redeemed Series 2017 Energy Conservation Improvement Bonds.** The City shall pay the redemption price of the Series 2017 Energy Conservation Improvement Bonds called for redemption to the Registrar on or before the redemption date. The Registrar shall deposit that redemption price, at the direction of the City, in an account held by the Registrar or in a separate escrow fund established by the City with an escrow agent. The Series 2017 Energy Conservation Improvement Bonds called for redemption will become due and payable on the redemption date at the redemption price, if the notice

provided for in (B) above has been given. The Registrar shall pay the redemption price on the redemption date to the Holders upon presentation and surrender of those Series 2017 Energy Conservation Improvement Bonds at the places specified in the notice. On and after the redemption date, the Series 2017 Energy Conservation Improvement Bonds called for redemption that are due and payable will no longer bear interest and will no longer be outstanding under the Bond Proceedings, if the money for the redemption price for those Series 2017 Energy Conservation Improvement Bonds is held by the Registrar—or an escrow agent holding an escrow fund—on the redemption date and is available for that payment. If the money for the redemption price is not available on the redemption date, the Series 2017 Energy Conservation Improvement Bonds called for redemption will continue to bear interest until paid at the same rate as if they had not been called for redemption.

- (e) **Interest Rates.** The Series 2017 Energy Conservation Improvement Bonds will bear interest at the rate or rates determined in the Certificate of Award, which rate or rates shall be in the best interest of the City. The true interest cost on the Series 2017 Energy Conservation Improvement Bonds, calculated as the rate, compounded semi-annually, necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Series 2017 Energy Conservation Improvement Bonds, may not exceed 5% per annum. Interest will be calculated on a 360-day year of twelve 30-day months.

The Series 2017 Energy Conservation Improvement Bonds will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date. Interest on the Series 2017 Energy Conservation Improvement Bonds will be payable on the Interest Payment Dates until the principal amount has been paid or provided for. The Director of Finance shall designate the first Interest Payment Date in the

Certificate of Award, which shall be either June 1 or December 1 following the date of the Series 2017 Energy Conservation Improvement Bonds, as determined by the Director of Finance.

- (f) **Form, Numbering, and Denominations.** The Series 2017 Energy Conservation Improvement Bonds shall be issued in fully registered form. They shall be issued in Authorized Denominations and in such numbers as requested by the Original Purchaser and approved by the Director of Finance. They shall be numbered as determined by the Director of Finance in a manner to distinguish each Series 2017 Energy Conservation Improvement Bond from any other Series 2017 Energy Conservation Improvement Bond. They shall express on their faces the purpose for which they are issued and that they are issued in accordance with this Ordinance. The Series 2017 Energy Conservation Improvement Bonds will be designated "City of Brook Park, Ohio Energy Conservation Improvement General Obligation Bonds, Series 2017," unless otherwise designated in the Certificate of Award.

SECTION 3: Payment. The Debt Service on the Series 2017 Energy Conservation Improvement Bonds will be payable in lawful money of the United States of America without deduction for the services of the Registrar as paying agent. Principal and any premium on the Series 2017 Energy Conservation Improvement Bonds will be payable when due upon presentation and surrender of the Series 2017 Energy Conservation Improvement Bonds at the office of the Registrar. Interest on the Series 2017 Energy Conservation Improvement Bonds will be paid on each Interest Payment Date by check or draft mailed on the Interest Payment Date to the Holder as shown on the Register at the close of business on the 15th day of the month preceding the Interest Payment Date. Notwithstanding the foregoing, so long as the Series 2017 Energy Conservation Improvement Bonds are issued in book-entry form in a book-entry system, Debt Service on the Series 2017 Energy Conservation Improvement Bonds will be payable as provided in any agreement entered into by the City in connection with the book-entry system. Payment of Debt Service on any Bond will be made only to or upon the order of the Holder. All such payments will be valid and effectual to satisfy and discharge the City's liability upon that Series 2017 Energy Conservation Improvement Bond to the extent of the amount or amounts so paid.

SECTION 4: Signing and Authentication of Series 2017 Energy

Conservation Improvement Bonds.

- (a) **Signing.** The Series 2017 Energy Conservation Improvement Bonds will be signed on behalf of the City by the Mayor and the Director of Finance. In the absence of the Mayor, the Series 2017 Energy Conservation Improvement Bonds shall be signed by the President of Council and, in the absence of the Director of Finance, the Series 2017 Energy Conservation Improvement Bonds shall be signed by the Assistant Director of Finance. Both signatures on the Series 2017 Energy Conservation Improvement Bonds may be facsimiles.
- (b) **Authentication.** No Series 2017 Energy Conservation Improvement Bond will be valid or obligatory for any purpose or will be entitled to any security or benefit under the Bond Proceedings unless and until the certificate of authentication printed on the bond certificate is signed by the Registrar as authenticating agent. Authentication by the Registrar will be conclusive evidence that the Series 2017 Energy Conservation Improvement Bond so authenticated has been duly issued, signed, and delivered under, and is entitled to the security and benefit of, the Bond Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Registrar or by any other person acting as an agent of the Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Series 2017 Energy Conservation Improvement Bonds.

SECTION 5: Registration; Transfer and Exchange; Book-Entry System.

- (a) **Registration.** So long as any of the Series 2017 Energy Conservation Improvement Bonds remain outstanding, the Director of Finance shall cause the Registrar to maintain the Register. The person in whose name a Bond is registered on the Register will be regarded as the absolute Holder of that Bond for all purposes of the Bond Proceedings. Payment of the Debt Service on any Bond will be made only to or upon the order of that person. Neither the City nor the Registrar will be affected by any notice to the contrary, but the registration may be changed as

provided in this Section and in any Registrar Agreement.

- (b) **Transfer and Exchange.** Any Series 2017 Energy Conservation Improvement Bond may be transferred or exchanged for Series 2017 Energy Conservation Improvement Bonds of any Authorized Denomination upon presentation and surrender at the office of the Registrar, together with a request for exchange signed by the Holder or by a person legally empowered to do so in a form satisfactory to the Registrar. A Series 2017 Energy Conservation Improvement Bond may be transferred only on the Register upon presentation and surrender of the Series 2017 Energy Conservation Improvement Bond at the office of the Registrar together with an assignment signed by the Holder or by a person legally empowered to do so in a form satisfactory to the Registrar. Upon exchange or transfer the Registrar will complete, authenticate, and deliver a new Series 2017 Energy Conservation Improvement Bond or Series 2017 Energy Conservation Improvement Bonds of any Authorized Denomination requested by the Holder equal to the unmatured principal amount of the Series 2017 Energy Conservation Improvement Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Registrar will undertake the exchange or transfer of Series 2017 Energy Conservation Improvement Bonds only after the new Series 2017 Energy Conservation Improvement Bonds are signed by the authorized officers of the City. In all cases of Series 2017 Energy Conservation Improvement Bonds exchanged or transferred, the City will sign and the Registrar will authenticate and deliver Series 2017 Energy Conservation Improvement Bonds in accordance with the provisions of the Bond Proceedings. The exchange or transfer will be without charge to the Holder, except that the City and the Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Series 2017 Energy Conservation

Improvement Bonds issued and authenticated upon any exchange or transfer will be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond Proceedings as the Series 2017 Energy Conservation Improvement Bonds surrendered upon that exchange or transfer. Neither the City nor the Registrar will be required to make any exchange or transfer of (1) Series 2017 Energy Conservation Improvement Bonds then subject to call for redemption between the 15th day preceding the mailing of notice of Series 2017 Energy Conservation Improvement Bonds to be redeemed and the date of that mailing, or (2) any Bond selected for redemption, in whole or in part.

- (c) **Book-Entry System.** Unless otherwise determined in the Certificate of Award, the Series 2017 Energy Conservation Improvement Bonds shall be originally issued in book-entry form to a Depository, initially The Depository Trust Company, for use in a book-entry system upon the terms provided in the Registrar Agreement. Under the book-entry system, the Series 2017 Energy Conservation Improvement Bonds will be registered in the name of a Depository or its nominee, the bond certificates in fully-registered form will be deposited with and retained in the custody of the Depository or its agent, and the ownership of interests in the Series 2017 Energy Conservation Improvement Bonds may be transferred only through a book entry on the records of the Depository.

Subject to the provisions of this Ordinance relating to the City's Continuing Disclosure Agreement, the City and the Registrar shall recognize and treat the Depository as the Holder of the Series 2017 Energy Conservation Improvement Bonds for all purposes, including payment of Debt Service, redemption and other notices, and enforcement of remedies.

If any Depository determines not to continue to act as a Depository for the Series 2017 Energy Conservation Improvement Bonds for use in a book-entry system or if the City determines to discontinue the book-entry system, the Director of Finance may attempt to establish a securities depository/book-entry relationship with another qualified Depository. If the Director of Finance does not do so, the Director of Finance shall direct the Registrar to make

provision for notification of the book-entry interest owners by the Depository and to make any other arrangements necessary for the withdrawal of the Series 2017 Energy Conservation Improvement Bonds from the book-entry system.

If the Series 2017 Energy Conservation Improvement Bonds are originally sold in a private placement and not in book-entry form, the City, if requested by a Holder of the Series 2017 Energy Conservation Improvement Bonds, will complete the necessary procedures to qualify the Series 2017 Energy Conservation Improvement Bonds as book-entry bonds.

SECTION 6: Sale of the Series 2017 Energy Conservation Improvement Bonds.

- (a) **Private Sale.** This Council authorizes and directs the Director of Finance to sell the Series 2017 Energy Conservation Improvement Bonds in a private sale at a purchase price determined by the Director of Finance in the Certificate of Award. That purchase price shall not be less than 97% of the aggregate Original Principal Amount of the Series 2017 Energy Conservation Improvement Bonds, plus any accrued interest on the Series 2017 Energy Conservation Improvement Bonds from their date to the Closing Date. The Director of Finance may either sell the Series 2017 Energy Conservation Improvement Bonds to an investment banker, acting as underwriter, or to a financial institution or other entity or person, in a private placement. The Director of Finance may enter into a Purchase Agreement with the Original Purchaser in that private sale. The Series 2017 Energy Conservation Improvement Bonds shall be sold with and upon such other terms as are required or authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law, the provisions of this Ordinance, and any Purchase Agreement.
- (b) **Certificate of Award.** The Director of Finance shall state in the Certificate of Award the original principal amount of the Series 2017 Energy Conservation Improvement Bonds; the principal amounts to be issued as Serial Series 2017 Energy Conservation Improvement Bonds and Term Series 2017 Energy Conservation Improvement Bonds; the interest rates on the Series 2017 Energy Conservation Improvement Bonds;

the purchase price for the Series 2017 Energy Conservation Improvement Bonds; the first Interest Payment Date; the maturity date(s), principal payment schedule, redemption provisions, and the designation of the Series 2017 Energy Conservation Improvement Bonds; and any other terms authorized by this Ordinance.

- (c) **Delivery.** The Director of Finance shall sign and deliver the Certificate of Award and shall cause the Series 2017 Energy Conservation Improvement Bonds to be prepared, signed, and delivered, together with a true transcript of proceedings of the issuance of the Series 2017 Energy Conservation Improvement Bonds, to the Original Purchaser upon payment of the purchase price.

SECTION 7: Disclosure.

Primary Offering Disclosure—Official Statement. If determined necessary by the Director of Finance, this Council authorizes and directs the Mayor and the Director of Finance, or either of them (1) to prepare or cause to be prepared, and to make or authorize modifications, completions, or changes of or supplements to, a disclosure document in the form of an official statement, (2) to determine, and certify or otherwise represent, when the official statement is to be "deemed final" (except for permitted omissions) or is a final official statement for purposes of the SEC Rule, (3) to use and distribute, or authorize the use and distribution of, that official statement and any supplements in connection with the original issuance of the Series 2017 Energy Conservation Improvement Bonds, and (4) to complete and sign the final official statement together with certificates, statements, or other documents in connection with the finality, accuracy, and completeness of that official statement.

- (a) **Secondary Market Disclosure—Continuing Disclosure Agreement.** If the City prepares and distributes an official statement in accordance with Section 7(a), for the benefit of the Holders of the Series 2017 Energy Conservation Improvement Bonds and the beneficial owners of book-entry interests in the Series 2017 Energy Conservation Improvement Bonds, the City agrees, as the only obligated person with respect

to the Series 2017 Energy Conservation Improvement Bonds under the SEC Rule, to provide financial information and operating data, financial statements, and notices, in the manner required for purposes of paragraph (b)(5)(i) of the SEC Rule.

(1) **Information Filing.** The City further agrees, in particular, to provide:

(A) to the MSRB through its EMMA System, in an electronic format as prescribed by the MSRB and containing such identifying information as prescribed by the MSRB, (1) Annual Information for each City fiscal year, not later than the June 30 following the end of the fiscal year, and (2) when and if available, audited City financial statements for each of those fiscal years; and

(B) to the MSRB through its EMMA System, in an electronic format as prescribed by the MSRB and containing such identifying information as prescribed by the MSRB, in a timely manner, notice of (1) any Specified Event (to be provided within ten (10) business days), (2) the City's failure to provide the Annual Information within the time specified above, and (3) any change in the accounting principles applied in the preparation of its annual financial statements, any change in its fiscal year, its failure to appropriate funds to meet costs to be incurred to perform the Continuing Disclosure Agreement, and the termination of the Continuing Disclosure Agreement.

(2) **Continuing Disclosure Agreement.** To further describe and specify certain terms of the Continuing Disclosure Agreement, this Council authorizes and directs the Director of Finance to (A) complete, sign, and deliver the Continuing Disclosure Agreement, in the name and on behalf of the City, and (B) to specify in reasonable detail the Annual Information to be provided (which may be provided by specific reference to other documents previously filed and available in accordance with the SEC Rule), whether the City has obtained any credit enhancement for the

Series 2017 Energy Conservation Improvement Bonds, and the City's expectations as to whether audited financial statements will be prepared, the accounting principles to be applied in their preparation, and whether they will be available together with, or separately from, the Annual Information.

- (3) **Disclosure Procedures.** This Council further authorizes and directs the Director of Finance to establish procedures to ensure compliance by the City with the Continuing Disclosure Agreement, including timely provision of information and notices as described above. Before making any filing in accordance with paragraph (b)(2) above or providing notice of the occurrence of any other events, the Director of Finance may consult with and obtain legal advice from bond counsel or other qualified independent special counsel selected by the City. The Director of Finance, acting in the name and on behalf of the City, may rely upon that legal advice in determining whether a filing should be made.
- (4) **Amendments.** The City reserves the right to amend the Continuing Disclosure Agreement, and to obtain the waiver of noncompliance with any provision of the Continuing Disclosure Agreement, as may be necessary or appropriate to achieve its compliance with any applicable federal securities law or rule, to cure any ambiguity, inconsistency, or formal defect or omission, and to address any change in circumstances arising from a change in legal requirements, change in law, or change in the identity, nature, or status of the City, or type of business conducted by the City. Any amendment or waiver will not be effective unless the Continuing Disclosure Agreement (as amended or taking into account that waiver) would have complied with the requirements of the SEC Rule at the time of the primary offering of the Series 2017 Energy Conservation Improvement Bonds, after taking into account any applicable amendments to or official interpretations of the SEC Rule, as well as any change in circumstances, and until the City has received either (A) a written opinion of bond

counsel or other qualified independent special counsel selected by the City that the amendment or waiver would not materially impair the interests of Holders or beneficial owners of book-entry interests in the Series 2017 Energy Conservation Improvement Bonds, or (B) the written consent to the amendment or waiver by the Holders of at least a majority of the principal amount of the Series 2017 Energy Conservation Improvement Bonds then outstanding. Annual Information containing any revised operating data or financial information shall explain, in narrative form, the reasons for any amendment or waiver and the impact of the change on the type of operating data or financial information being provided.

- (5) **Enforcement.** The Continuing Disclosure Agreement will be solely for the benefit of the Holders of, and beneficial owners of book-entry interests in, the Series 2017 Energy Conservation Improvement Bonds. The exclusive remedy for any breach of the Continuing Disclosure Agreement by the City will be limited, to the extent permitted by law, to a right of Holders and beneficial owners to institute and maintain legal proceedings to obtain the specific performance by the City of its obligations under the Continuing Disclosure Agreement. Any individual Holder or beneficial owner may institute and maintain those proceedings to require the City to provide a filing if the filing is due and has not been made. Any proceedings to require the City to perform any other obligation under the Continuing Disclosure Agreement (including any proceedings that contest the sufficiency of any filing) may be instituted and maintained only by a trustee appointed by the Holders and beneficial owners of not less than 25% in principal amount of the Series 2017 Energy Conservation Improvement Bonds then outstanding.
- (6) **Reserved.**
- (7) **Term.** The Continuing Disclosure Agreement will remain in effect only for the period that the Series 2017 Energy Conservation Improvement Bonds are outstanding in accordance with their terms

and the City is an obligated person with respect to the Series 2017 Energy Conservation Improvement Bonds within the meaning of the SEC Rule. The obligation of the City to provide the Annual Information, audited financial statements, and notices of the events described above will terminate if and when the City is no longer an obligated person with respect to the Series 2017 Energy Conservation Improvement Bonds.

SECTION 8: Financing Costs. The City retains the professional services and authorizes the payment of the financing costs for the Series 2017 Energy Conservation Improvement Bonds (the "Financing Costs"), as provided in this Section 8.

- (a) **Bond Counsel.** The City retains the legal services of Tucker Ellis LLP, as bond counsel for the Series 2017 Energy Conservation Improvement Bonds. The legal services will be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Series 2017 Energy Conservation Improvement Bonds and rendering legal opinions upon the delivery of the Series 2017 Energy Conservation Improvement Bonds. Bond Counsel will render those services to the City in an attorney-client relationship. Bond Counsel will be paid just and reasonable compensation for those legal services, and will be reimbursed for actual out-of-pocket expenses it incurs in rendering those legal services, in accordance with Section 8(f) below.
- (b) **Original Purchaser.** This Council authorizes and directs the Director of Finance to select the Original Purchaser, either as an underwriter or as a purchaser in a private placement. If the Original Purchaser is an underwriter, it will be Stern Brothers & Co., or such other institution as may be set forth in the Certificate of Award. The Original Purchaser shall be paid for services in accordance with any Purchase Agreement or, if there is no Purchase Agreement, in accordance with its proposal.
- (c) **Registrar.** This Council authorizes and directs the Director of Finance to appoint a Registrar for the Series 2017 Energy Conservation Improvement Bonds. The Registrar shall be a financial institution able to

complete transfer and exchange functions for the Series 2017 Energy Conservation Improvement Bonds in accordance with standards and conditions applicable to registered securities. The City retains the services of The Huntington National Bank as the Registrar for the Series 2017 Energy Conservation Improvement Bonds, or such other Registrar as may be identified in the Certificate of Award. The Registrar will perform the services as bond registrar, authenticating agent, paying agent, and transfer agent for the Series 2017 Energy Conservation Improvement Bonds as provided in this Ordinance. The Registrar will be paid for its services in accordance with the Registrar Agreement.

- (d) **Ratings and Insurance.** If, in the judgment of the Director of Finance, the filing of an application for (1) a rating on the Series 2017 Energy Conservation Improvement Bonds by one or more nationally recognized statistical rating organizations, or (2) a policy of insurance, from one or more bond insurance providers, to better assure the payment of Debt Service on the Series 2017 Energy Conservation Improvement Bonds, is in the best interest of and financially advantageous to the City, this Council authorizes and directs the Director of Finance to prepare and submit those applications and to provide to those rating agencies or insurance providers the information required for the purpose. This Council further authorizes the fees for those ratings and the premiums for the insurance to be included in Financing Costs authorized under Section 8(f) below.
- (e) **Limits on Authority of Service Providers.** In rendering the services described above, as independent contractors, those service providers shall not exercise any administrative discretion on behalf of the City in the formulation of public policy; expenditure of public funds; enforcement of laws, rules and regulations of the State, the City, or any other political subdivision; or the execution of public trusts.
- (f) **Payment of Financing Costs.** This Council authorizes and approves the expenditure of the amounts necessary to pay those Financing Costs specifically authorized above and all other necessary Financing Costs in connection with the issuance and sale of the Series 2017 Energy Conservation Improvement Bonds. Those

Financing Costs may be paid by the Original Purchaser in accordance with any Purchase Agreement. To the extent they are not paid by the Original Purchaser, this Council authorizes and directs the Director of Finance to provide for the payment of those Financing Costs from the proceeds of the Series 2017 Energy Conservation Improvement Bonds to the extent available and, otherwise, from any other funds lawfully available and appropriated for the purpose.

SECTION 9: Use of Proceeds. The proceeds from the sale of the Series 2017 Energy Conservation Improvement Bonds shall be deposited and used as provided in this Section 9.

- (a) Any accrued interest or premium received on the sale of the Series 2017 Energy Conservation Improvement Bonds shall be deposited in the Bond Retirement Fund of the City and used for the payment of interest on the Series 2017 Energy Conservation Improvement Bonds on the first Interest Payment Date.
- (b) An amount necessary to pay any Financing Costs of the Series 2017 Energy Conservation Improvement Bonds, to the extent not paid by the Original Purchaser in accordance with the Purchase Agreement and to the extent that the Director of Finance determines to pay those Financing Costs from the proceeds of the Series 2017 Energy Conservation Improvement Bonds, shall be deposited in a separate fund and used for the payment of those Financing Costs.
- (c) The remainder of the proceeds shall be paid into the proper fund or funds of the City and used to pay costs of the Improvements.

SECTION 10: Security and Source of Payment. The Series 2017 Energy Conservation Improvement Bonds will be general obligations of the City.

- (a) This Council pledges to the payment of Debt Service on the Series 2017 Energy Conservation Improvement Bonds the full faith and credit of the City including, without limitation:
 - (1) The general taxing power of the City, including the power to levy taxes within the ten-mill limitation, as defined in Section 5705.02, Revised Code.

- (2) The proceeds to be received from the sale of any bonds issued to refund the Series 2017 Energy Conservation Improvement Bonds.
 - (3) Any money remaining from the sale of the Series 2017 Energy Conservation Improvement Bonds after the payment of the Financing Costs of the Series 2017 Energy Conservation Improvement Bonds and not used to pay costs of the Improvements.
- (b) During the years while the Series 2017 Energy Conservation Improvement Bonds are outstanding, there will be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually, in an amount sufficient to pay Debt Service on the Series 2017 Energy Conservation Improvement Bonds when due. The tax will not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax will be and is ordered to be computed, certified, levied, and extended upon the tax list and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are computed, certified, levied, extended, and collected. The tax will be placed before and in preference to all other items and for its full amount. The money derived from that tax levy shall be placed in the Bond Retirement Fund of the City and is irrevocably pledged for the payment of the Debt Service on the Series 2017 Energy Conservation Improvement Bonds, when and as that Debt Service falls due.
- (c) The tax provided in (b) above will be reduced in each year the Series 2017 Energy Conservation Improvement Bonds are outstanding by the sum of the following items, if available to pay Debt Service on the Series 2017 Energy Conservation Improvement Bonds and appropriated for that purpose:
- (1) Any surplus in the Bond Retirement Fund.
 - (2) Any other money lawfully available to the City for Debt Service.

SECTION 11: Federal Tax Matters. The City covenants that it will take those actions required to maintain the Federal Tax Status of the Series 2017 Energy Conservation Improvement Bonds

and that it will not take or permit to be taken any actions that would adversely affect that Federal Tax Status. Without limiting these covenants, the City specifically covenants as follows:

- (a) **Private Activity Bonds.** The City will apply the proceeds received from the sale of the Series 2017 Energy Conservation Improvement Bonds to the uses described in Section 9. The City will not permit the use of the Energy Conservation Measures by any person, will not secure or derive the money for payment of Debt Service on the Series 2017 Energy Conservation Improvement Bonds by any property or payments, and will not loan the proceeds of the Series 2017 Energy Conservation Improvement Bonds to any person, all in a manner as to cause the Series 2017 Energy Conservation Improvement Bonds to be "private activity bonds" within the meaning of Code Section 141(a).

- (b) **Arbitrage.** The City will restrict the use of proceeds of the Series 2017 Energy Conservation Improvement Bonds in the manner and to the extent as may be necessary, after taking into account reasonable expectations on the Closing Date of the Series 2017 Energy Conservation Improvement Bonds, so that the Series 2017 Energy Conservation Improvement Bonds will not constitute "arbitrage bonds" within the meaning of Code Section 148. The Director of Finance or any other official having responsibility for issuing the Series 2017 Energy Conservation Improvement Bonds, is authorized and directed, alone or in conjunction with any other official, employee, or consultant of the City, to sign and deliver a certificate of the City, for inclusion in the transcript of proceedings for the Series 2017 Energy Conservation Improvement Bonds. That certificate shall set forth the reasonable expectations of the City on the Closing Date, regarding the amount and use of the proceeds of the Series 2017 Energy Conservation Improvement Bonds in accordance with Code Section 148. If required, the City will limit the yield on any "investment property" (as defined in Code Section 148(b)(2)) acquired with the proceeds of the Series 2017 Energy Conservation Improvement Bonds.

- (c) **Arbitrage Rebate.** Unless the gross proceeds of the Series 2017 Energy Conservation Improvement Bonds are expended in accordance with one of the spending period

exceptions set forth in Treas. Reg. §1.148-7, the City will pay the amounts required by Code Section 148(f)(2) to the United States at the times required by Code Section 148(f)(3). The City will maintain the books and records and make calculations and reports as are required to comply with the Code's arbitrage rebate requirements.

- (d) **Federal Guarantee.** The City will not permit the use of the Energy Conservation Measures, or make loans of the proceeds of the Series 2017 Energy Conservation Improvement Bonds, or invest the proceeds of the Series 2017 Energy Conservation Improvement Bonds in a manner as to cause the Series 2017 Energy Conservation Improvement Bonds to be "federally guaranteed" within the meaning of Code Section 149(b).
- (e) **Information Reporting.** This Council authorizes and directs the Director of Finance or any other official of the City having responsibility for issuing the Series 2017 Energy Conservation Improvement Bonds to sign and file Form 8038-G for the Series 2017 Energy Conservation Improvement Bonds with the Internal Revenue Service.
- (f) **Bank-Qualified Obligations.** The Director of Finance is hereby authorized to, if appropriate, designate the Series 2017 Energy Conservation Improvement Bonds as "qualified tax-exempt obligations" under Code Section 265(b)(3) in the Certificate of Award.

SECTION 12: Signing and Delivery of Series 2017 Energy Conservation Improvement Bonds and Documents. This Council authorizes and directs the Mayor and the Director of Finance, or the persons designated to sign in their absence, to sign and deliver the Series 2017 Energy Conservation Improvement Bonds in accordance with Section 4 of this Ordinance. This Council authorizes and directs the Mayor and the Director of Finance, or either of them, to sign and approve a preliminary official statement, a final official statement, and supplements and amendments to both in accordance with Section 7 of this Ordinance.

- (a) This Council authorizes and directs the Director of Finance to sign and deliver, on behalf of the City:
 - (1) The Certificate of Award.

- (2) Any Purchase Agreement.
- (3) Any Registrar Agreement.
- (4) The Continuing Disclosure Agreement.
- (5) Any agreements or letters of representation in connection with a book-entry system for the Series 2017 Energy Conservation Improvement Bonds.
- (6) If determined in best interest of the City by the Director of Finance as set forth in the Certificate of Award, applications for and agreements in connection with obtaining a policy of municipal bond insurance for the Series 2017 Energy Conservation Improvement Bonds.
- (7) If determined in best interest of the City by the Director of Finance as set forth in the Certificate of Award, applications for and agreements in connection with obtaining one or more ratings for the Series 2017 Energy Conservation Improvement Bonds.

In the absence of the Director of Finance, this Council authorizes and directs the Assistance Director of Finance to sign and deliver any of those documents and certificates.

- (b) This Council authorizes and directs the Director of Finance, or in such officer's absence the Assistant Director of Finance, to sign and deliver, on behalf of the City, in such officer's capacity as fiscal officer of the City:

- (1) Any certificates in accordance with Section 5705.41, Revised Code, required for any of the agreements in connection with the Series 2017 Energy Conservation Improvement Bonds.

- (c) This Council authorizes and directs the Mayor, the Law Director, the Director of Finance, the President of Council, the Council Clerk, and any other City officials:

- (1) to sign and deliver any agreements, certificates, instruments, and other documents that the

official considers necessary or appropriate in connection with the issuance and sale of the Series 2017 Energy Conservation Improvement Bonds, and that are not inconsistent with this Ordinance; and

- (2) to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

SECTION 13: Certification to County Auditor. This Council directs the Director of Finance or the Clerk of this Council to forward a certified copy of this Ordinance and a copy of the Certificate of Award to the Auditor of Brook Park County.

SECTION 14: Definitions. Words and terms are used in this Ordinance with the following meanings:

"Annual Information" means the annual financial information and operating data of the type to be specified in the Continuing Disclosure Agreement in accordance with the SEC Rule.

"Authorized Denominations" means the denomination of \$5,000 or any whole multiple of \$5,000.

"Bond Proceedings" means, collectively, this Ordinance, the Certificate of Award, any Purchase Agreement, the Continuing Disclosure Agreement, any Registrar Agreement, and the other proceedings of the City, including the Series 2017 Energy Conservation Improvement Bonds, that provides collectively for, among other things, the rights of Holders and beneficial owners of the Series 2017 Energy Conservation Improvement Bonds.

"Certificate of Award" means the certificate authorized by Section 6 of this Ordinance, setting forth the terms and other provisions of the Series 2017 Energy Conservation Improvement Bonds required or authorized by this Ordinance.

"Closing Date" means the date of delivery of and payment for the Series 2017 Energy Conservation Improvement Bonds.

"Code" means the Internal Revenue Code of 1986, as amended. References to the Code and sections of the Code include applicable regulations (whether temporary or final) under the Code, and any amendments of, or successor provisions to, those sections or regulations.

"Continuing Disclosure Agreement" means the continuing disclosure agreement made by the City for the benefit of Holders and beneficial owners of the Series 2017 Energy Conservation Improvement Bonds in accordance with the SEC Rule. It consists of the covenants in Section 7(b) of this Ordinance and the Continuing Disclosure Agreement.

"Continuing Disclosure Agreement" means the certificate authorized by Section 7(b).

"Debt Service" means all amounts due as principal, interest, and any premium on an issue of securities.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining a book-entry system to record ownership of book-entry interests in securities or the principal of and interest on securities, and to effect transfers of securities in book-entry form.

"EMMA System" means the MSRB's Electronic Municipal Market Access system.

"Energy Conservation Measures" has the meaning set forth in Ohio Revised Code Section 717.02

"Federal Tax Status" means the status of the interest on the Series 2017 Energy Conservation Improvement Bonds as excludable from gross income for federal income tax purposes and not treated as an item of tax preference for purposes of the alternative minimum tax.

"Financing Costs" means any financing costs authorized to be paid by Section 133.01(K), Revised Code.

"Holder" means, as to any Series 2017 Energy Conservation Improvement Bond, the person in whose name the Series 2017 Energy Conservation Improvement Bond is registered on the Register.

"Interest Payment Dates" means June 1 and December 1 of each year, beginning on the first Interest Payment Date designated by the Director of Finance in the Certificate of Award.

"Mandatory Redemption Dates" means December 1 in each of the years designated in the Certificate of Award as Mandatory Redemption Dates.

"Mandatory Sinking Fund Redemption" means redemption in accordance with the mandatory redemption requirements, if any, for the Series 2017 Energy Conservation Improvement Bonds as determined in the Certificate of Award and as described in Section 2(d).

"MSRB" means the Municipal Securities Rulemaking Board.

"Original Principal Amount" means the face amount of the Series 2017 Energy Conservation Improvement Bonds.

"Original Purchaser" means the entity selected by the Director of Finance under Section 8(b) as the purchaser of the Series 2017 Energy Conservation Improvement Bonds.

"Principal Payment Dates" means December 1 of the years set forth in the Certificate of Award.

"Purchase Agreement" means any Bond Purchase Agreement between the City and the Original Purchaser, entered into in accordance with Section 6 of this Ordinance.

"Register" means all books and records necessary for the registration, exchange, and transfer of the Series 2017 Energy Conservation Improvement Bonds.

"Registrar" means the entity or person selected by the Director of Finance in accordance with Section 8(c) to serve as registrar for the Series 2017 Energy Conservation Improvement Bonds.

"Registrar Agreement" means any bond registrar agreement between the City and the Registrar.

"SEC Rule" means SEC Rule 15c2-12.

"Serial Series 2017 Energy Conservation Improvement Bonds" means Series 2017 Energy Conservation Improvement Bonds designated as Serial Series 2017 Energy Conservation Improvement Bonds in the Certificate of Award and maturing on the dates set forth in the Certificate of Award, and not subject to Mandatory Sinking Fund Redemption.

"Series 2017 Energy Conservation Improvement Bonds" means the City of Brook Park, Ohio Energy Conservation Improvement General Obligation Bonds, Series 2017, as authorized by this Ordinance.

"Specified Events" means any of the events specified in SEC Rule Section (b)(5)(C), as in effect and applicable to the Series 2017 Energy Conservation Improvement Bonds at the time of the primary offering of the Series 2017 Energy Conservation Improvement Bonds.

"Term Series 2017 Energy Conservation Improvement Bonds" means the Series 2017 Energy Conservation Improvement Bonds designated as Term Series 2017 Energy Conservation Improvement Bonds in the Certificate of Award and maturing on the dates set forth in the Certificate of Award, and subject to Mandatory Sinking Fund Redemption.

SECTION 15: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 16: This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City, and for the further reason that the Series 2017 Energy Conservation Improvement Bonds shall be sold promptly in order to provide for energy efficiency and financial savings within the City; therefore provided this Resolution receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS
DIRECTOR OF LAW

