

BE IT REMEMBERED THAT THE CITY COUNCIL OF THE CITY OF CLEVELAND, TENNESSEE MET IN A REGULAR SESSION THIS MONDAY, MARCH 13, 2023 AT 3:00 P.M. AT THEIR REGULAR MEETING PLACE IN THE CLEVELAND MUNICIPAL BUILDING.

Present and presiding was Mayor Kevin Brooks. Also present were Vice Mayor Avery Johnson, Councilmen Bill Estes, David May, Tom Cassada, Dale Hughes, Ken Webb and Councilwoman Marsha McKenzie. Others in attendance were City Manager Joe Fivas; Shawn McKay, Assistant City Manager/CFO; Christy Brandon, Assistant City Clerk; Sue Zius, Administrative Coordinator; City Attorney John Kimball; Police Chief Mark Gibson; Fire Chief Bobby Gaylor; Jonathan Jobe, Development and Engineering Director; Patti Pettit, Parks and Recreation Director; Kris Miller, IT Director; Cathy Andrews, CDBG Coordinator; Charlie Boothe; Warbrit Lowery; Doug Berry with the Chamber of Commerce and Tim Siniard with the *Cleveland Daily Banner*. Following the Pledge of Allegiance to the American Flag and prayer by Vice Mayor Johnson, the following business was then entered into:

WAIVE READING OF MINUTES

Vice Mayor Johnson moved that the City Council of the City of Cleveland waive the reading of the minutes of the Regular Session of the City Council held on February 27, 2023 and approve them as written. The motion was seconded by Councilman May; and upon roll call, the motion unanimously passed.

SPECIAL PRESENTATIONS AND PUBLIC COMMENTS

There were no special presentations and public comments.

HEARING PETITIONS AND COMMUNICATIONS

Mayor Brooks stated today's meeting is being held as a public hearing to hear public comments concerning a request by Ben Casteel for consideration of an ordinance to rezone 6.65 acres for property located at Old Tasso Road from IL Light Industrial to R2 Low Density Single and Multi-Family Residential and includes Tax Map 050 Parcel 001.01. Robert Varnell stated this property was originally zoned industrial. The front portion is level with Tasso, but the back portion increases in height, therefore it is not suitable for industrial development. The owners, who live at the top of the hill would like to develop near Tasso Road. Staff supports the zoning change to R2, and the Planning Commission approved the item 9-0. Mayor Brooks asked if anyone would like to speak in favor of the request. No one spoke. Mayor Brooks asked if anyone would like to speak in opposition to the request. No one spoke. Mayor Brooks declared the public hearing to be closed.

CONSENT AGENDA

Councilman Hughes moved to approve the following items from the Consent Agenda. The motion was seconded by Councilman Estes; and upon roll call, unanimously passed.

- **Final Passage - Ordinance 2023-06** – heretofore passed on first reading February 27, 2023 and found in Minute Book 31, Page 90; Amending the Municipal Code Title 8, Chapter 2, Section 8-209 to increase the number of Class 2 Beer Permits from sixteen to twenty.
- **Final Passage - Ordinance 2023-07** – heretofore passed on first reading February 27, 2023 and found in Minute Book 31, Page 90; Amending the Municipal Code Title 13, Chapter 1 by adding Sections 13-108 and 13-109 to add the regulations of regulating storage of appliances and indoor furniture on exterior premises.
- **Resolution 2023-17** – Authorizing the City to join the State of Tennessee and other local governments in amending the Tennessee State-Subdivision Opioid Abatement Agreement and approving the related settlement agreements for the “Second Wave” payment distributions (model resolution provided by the State).

RESOLUTION 2023-17

A RESOLUTION AUTHORIZING THE CITY OF CLEVELAND TO JOIN THE STATE OF TENNESSEE AND OTHER LOCAL GOVERNMENTS IN AMENDING THE TENNESSEE STATE-SUBDIVISION OPIOID ABATEMENT AGREEMENT AND APPROVING THE RELATED SETTLEMENT AGREEMENTS

WHEREAS, the opioid epidemic continues to impact communities in the United States, the State of Tennessee, and the City of Cleveland, Tennessee.

WHEREAS, the City of Cleveland has suffered harm and will continue to suffer harm as a result of the opioid epidemic; and

WHEREAS, the State of Tennessee and some Tennessee local governments have filed lawsuits against opioid manufacturers, distributors, and retailers, including many federal lawsuits by Tennessee counties and cities that are pending in the litigation captioned In re: National Prescription Opiate Litigation, MDL No. 2804 (N.D. Ohio) (the MDL case is referred to as the “Opioid Litigation”); and

WHEREAS, the City of Cleveland has previously joined settlements with three pharmaceutical distributors and a manufacturer; and

WHEREAS, certain pharmaceutical manufacturers and retail pharmacy chains have proposed settlements that the City of Cleveland finds acceptable and in the best interest of the community; and

WHEREAS, the Tennessee legislature enacted Public Chapter No. 491 during the 2021 Regular Session of the 112th Tennessee General Assembly and was signed into law by Governor Bill Lee on May 24, 2021, which addresses the allocation of funds from certain opioid litigation settlements; and

WHEREAS, there is currently proposed legislation that would apply the statutory provisions passed in 2021 to the new manufacturer and retail pharmacy chain settlements; and

WHEREAS, the State of Tennessee, non-litigating counties, and representatives of various local governments involved in the Opioid Litigation have adopted a unified plan for the allocation and use of certain prospective settlement and bankruptcy funds from opioid related litigation (“Settlement Funds”); and

WHEREAS, the Tennessee State-Subdivision Opioid Abatement Agreement (the “Tennessee Plan”), attached hereto as “Exhibit A,” sets forth the framework of a unified plan for the proposed allocation and use of the Settlement Funds; and

WHEREAS, amendments to the Tennessee Plan, attached hereto as “Exhibit B,” would extend its terms to the proposed settlements, streamline accounting for certain settlement funds, and address the allocation of certain funds from a manufacturer in bankruptcy; and

WHEREAS, participation in the settlements by a large majority of Tennessee cities and counties will materially increase the amount of settlement funds that Tennessee will receive from pending proposed opioid settlements; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLEVELAND, TENNESSEE,

Section 1. That the City of Cleveland finds that the amendments to the Tennessee Plan are in the best interest of the City of Cleveland and its citizens because they would ensure an effective

structure for the commitment of Settlement Funds to abate and seek to resolve the opioid epidemic.

Section 2. That the City of Cleveland hereby expresses its support for a unified plan for the allocation and use of Settlement Funds as generally described in the Tennessee Plan.

Section 3. That the Mayor of the City of Cleveland is hereby expressly authorized to execute the amendments to the Tennessee Plan in substantially the form attached as Exhibit “B” and is hereby authorized to execute any formal agreements necessary to implement a unified plan for the allocation and use of Settlement Funds that is substantially consistent with the Tennessee Plan and this Resolution.

Section 4. That the Mayor of the City of Cleveland is hereby expressly authorized to execute any formal agreement and related documents evidencing the City of Cleveland’s agreement to the settlement of claims [and litigation] specifically related to Teva Pharmaceutical Industries, Ltd., Allergan Finance, LLC, CVS Health Corporation, Walgreen Co., Walmart, Inc., and any other settlement of opioid-related claims that Tennessee has joined.

Section 5. This Resolution is effective upon adoption, the welfare of the City of Cleveland, Tennessee requiring it.

ADOPTED this 13th day of March, 2023.

APPROVED AS TO FORM:

/s/John F. Kimball
City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

- **Resolution 2023-18** – Authorizing the Mayor to sign an agreement with Southeast Tennessee Development District in connection with ARP funding to the Bradley Community Services Agency to expand the homeless shelter.

RESOLUTION 2023-18

WHEREAS, City staff are recommending that the City enter into an agreement with the Southeast Tennessee Development District (hereafter “SETD”) whereby SETD will provide grant administration services to the City in connection with ARP funding to Bradley Community Services Agency to expand the homeless shelter; and

WHEREAS, the service to be provided to the City and County are described in the attached agreement; and

WHEREAS, under the terms of the agreement, the City total fee is an amount not to exceed \$3,000; and

WHEREAS, based on the recommendation of City staff, the City Council desires to approve of the attached agreement with Southeast Tennessee Development District for these services, and to authorize the Mayor to execute this agreement on behalf of the City of Cleveland.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cleveland, Tennessee, in regular session assembled, that the City Council does hereby approve of the attached agreement with Southeast Tennessee Development District.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to execute the attached agreement with Southeast Tennessee Development District on behalf of the City.

This 13th day of March, 2023

APPROVED AS TO FORM:

/s/John F. Kimball
City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

- **Resolution 2023-19** – Approving a PILOT schedule and delegating authority to enter into a pilot agreement with Formulated Solutions Cleveland, LLC.

RESOLUTION 2023-19

**A RESOLUTION APPROVING A
PAYMENT-IN-LIEU-OF TAXES (PILOT) SCHEDULE AND DELEGATING
AUTHORITY TO ENTER INTO A PILOT AGREEMENT**

WHEREAS, the Industrial Development Board of the County of Bradley and the City of Cleveland, Tennessee (the "Board") has recommended a Payment-In-Lieu-Of-Taxes ("PILOT") schedule for Formulated Solutions Cleveland, LLC (the "Company") which has a planned purchase of existing operations within the City of Cleveland, Bradley County, Tennessee, the acquisition and installation of certain machinery, equipment and other personal property for use as manufacturing, distribution, and related facilities in the City of Cleveland and Bradley County, Tennessee with a total capital investment of (but not limited to) \$31,172,000.00 (the "Project") in personal property/equipment and

WHEREAS, the Project is anticipated to result in the creation of 524 full-time positions with an average annual starting wage of \$43,722 for positions in the plant.

WHEREAS, the Company has requested the personal property acquired in connection with the Project (collectively, the "Property") qualify for an arrangement (the "PILOT Arrangement") whereby the Property shall be exempt from all ad valorem property taxes otherwise due thereon (collectively, "property taxes"), and in lieu of the property taxes, the Company shall be required to make annual payments in lieu of taxes equal to sixty-two and one-half percent (62.5%) of the personal property taxes otherwise due on the property during the ten-year period commencing on January 1, 2023 and ending on December 31, 2032:

WHEREAS, the Board has determined that, notwithstanding the PILOT Arrangement, the Project will result in the payment of in lieu of tax payments to the City of Cleveland, Tennessee in an estimated amount of \$1,276,005.18 over the same ten-year period;

WHEREAS, the City of Cleveland, Tennessee (the "City") has determined that the proposed PILOT Arrangement is fair, reasonable, and necessary for the continued economic development of Cleveland and Bradley County and that the payments in lieu of taxes derived from the PILOT Arrangement would be in furtherance of the Board's purposes and

NOW THEREFORE, BE IT RESOLVED by the City Council of Cleveland, Tennessee as follows:

Section 1. The City hereby agrees to the PILOT Arrangement and hereby delegates the power and authority to the Board to negotiate a PILOT agreement with the Company to reflect the parties' respective rights and obligations in accordance with the PILOT Arrangement.

Section 2. The City hereby authorizes the Mayor to execute any and all documents necessary for the successful completion of the Project, including but not limited to, all documents related to the PILOT Arrangement.

Section 3. This Resolution shall become effective upon its adoption.

Adopted this 13TH day of March, 2023.

APPROVED AS TO FORM:

/s/John F. Kimball

City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

- **Resolution 2023-20** – Authorizing City Staff to submit a grant application to FEMA for the Fire Prevention and Safety Grant.

RESOLUTION 2023-20

AUTHORIZING THE CITY OF CLEVELAND TO APPLY FOR A FIRE PREVENTION AND SAFETY GRANT THROUGH THE FEDERAL EMERGENCY MANAGEMENT AGENCY

WHEREAS, the City of Cleveland desires to apply for a Fire Prevention and Safety Grant in the amount of \$52,985 through the Federal Emergency Management Agency, to be used to purchase hazard simulators to improve community risk reduction; and

WHEREAS, the City Council desires to apply for this grant, and to authorize the Mayor to sign all documents and to take all actions on behalf of the City that may be necessary or appropriate in connection with the grant application and the grant if approved.

NOW, THEREFORE, BE IT RESOLVED that the City of Cleveland is authorized to apply for this grant, and the Mayor is hereby authorized to sign all documents on behalf of the City that may be necessary or appropriate for the completion of the grant application.

BE IT FURTHER RESOLVED that if the City is awarded the grant, that the Mayor is further authorized to sign all documents or take any other action on behalf of the City that may be necessary or appropriate for the City to accept the grant.

BE IT FURTHER RESOLVED that the City of Cleveland agrees to provide the 5% required match for said grant.

Adopted this 13th day of March, 2023.

APPROVED AS TO FORM:

/s/John F. Kimball

City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

UNFINISHED BUSINESS

There was no unfinished business.

REPORTS OF COUNCIL MEMBERS

Councilwoman McKenzie thanked Tommy Myers and the Public Works Department for responding immediately to dumping off Smith Drive, Arnold Street and Phillips Street.

Councilman Estes inquired if the pullup bar was repaired and what about the expansion. Ms. Pettitt stated it was repaired and Mr. Fivas and I will discuss the expansion.

Councilman Cassada stated the fence at the LeConte Development at Mouse Creek/Robinhood Drive is still down. Two additional businesses have opened in the development and the fence is the same, laying over on the ground. He then asked for a status update on the bond. Mr. Fivas responded the request was submitted to pull the bond, but the developer is fighting it with the bank. The large piece in the back has been sold and they've been told before any approvals they have to get the buffer in. Councilman Cassada stated the new building had installed a buffer, but it is not adequate. Mr. Fivas stated that is the buffer, the trees. Mr. Jobe stated that is what is required in the ordinance. Mr. Fivas stated we made a request to the Engineer Ben Berry to put back the fence, but they took it down. Mr. Jobe stated the trees are what is required in the buffer. The only time a fence is required is if they shorten the buffer, which they chose not to do. The trees will grow in, they are just small. Mr. Fivas stated staff has not heard any complaints from anyone on Robinhood. Mayor Brooks stated he sent a complaint to Mr. Fivas from a family on Robinhood Drive. Mr. Fivas replied he has never seen it. Mayor Brooks stated he will resend it.

NEW BUSINESS AND ORDINANCES

The following Zoning Ordinance was then presented in full:

- **Zoning Ordinance 2023-08** – Rezoning 6.65 acres for property located at Old Tasso Road from IL Light Industrial to R2 Low Density Single and Multi-Family Residential and includes Tax Map 050 Parcel 001.01 (Planning Commission: Approved 9-0).

ZONING ORDINANCE 2023-08

BE IT ORDAINED by the City Council of the City of Cleveland, in regular session assembled that the portion of property described herein be, and the same is hereby, re-zoned IL Light Industrial Zoning District to R-2 Low Density Single and Multi-Family Residential Zoning District.

Approximately 6.65 acres, more or less, located at Old Tasso Rd. NE as shown on the attached map.

For reference, same property is being shown on Tax Map 050 Parcel 001.01, in the Assessor's Office for Bradley County, Tennessee

BE IT FURTHER ORDAINED that all Ordinances in conflict herewith are repealed to the extent of said conflict.

BE IT FURTHER ORDAINED that this Ordinance shall take effect from and after its passage on final reading, the public welfare requiring it.

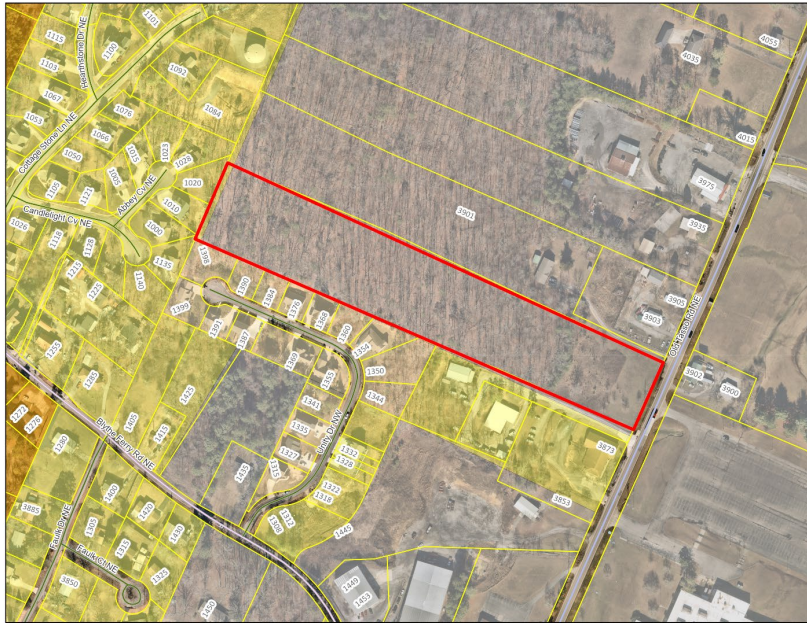
APPROVED AS TO FORM:

/s/John F. Kimball
City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

Exhibit A



Councilman May moved that Zoning Ordinance 2023-08 be approved on first reading. The motion was seconded by Vice Mayor Johnson; and upon roll call, unanimously passed.

The following Resolution was then presented in full:

- **Resolution 2023-21** – Approving the amended rates and modification of service with Waste Connections of Tennessee, Inc. for solid waste collection services.

RESOLUTION 2023-21

A RESOLUTION OF THE CITY OF CLEVELAND, TENNESSEE, TO AMEND THE RATES AND MODIFICATION OF SERVICE WITH WASTE CONNECTIONS OF TENNESSEE, INC. FOR SOLID WASTE COLLECTION SERVICES

WHEREAS, the City of Cleveland previously approved a contract with Waste Connections of Tennessee, Inc., for solid waste collection services for the City of Cleveland; and

WHEREAS, the terms of the contract are from January 1, 2019 to December 31, 2023 and shall automatically be extended to December 31, 2028, unless notice is given by the City or Waste Connections to terminate the contract; and

WHEREAS, the contract has a provision that Waste Connections can petition the City at any time for additional rate or price adjustments on the basis of unusual changes in its cost of operations; and

WHEREAS, Waste Connections has petitioned the City, which is attached hereto and incorporated herein by reference, for a rate increase and to change to an automated service which would include 95-gallon carts; and

WHEREAS, based upon the recommendations of the City Manager and the Public Works Director, the City Council has determined that it is in the best interest of the City of Cleveland to accept the modifications to the solid waste collection services for residential and commercial services to Waste Connections of Tennessee, Inc.; and

WHEREAS, the City Council of the City of Cleveland, Tennessee, desires to modify the solid waste collection services with Waste Connections of Tennessee, Inc. for residential and commercial services, with said modification to commence on July 1, 2023.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cleveland, Tennessee, in regular session assembled, that:

1. The City of Cleveland, acting through its City Council, hereby accepts the following rate adjustments:

Household Rate of \$6.68 to \$9.48
 Commercial Rate of \$1.81 to \$2.20
 Commercial Cardboard \$1.57 to \$1.73
 Transfer Station Rate for City Use to \$32.00

2. The City Council hereby approved the modification of the Solid Waste pick-up to an automated service, to include new 95-gallon carts.
3. These rate adjustments and modifications to the pick-up service will be effective as of July 1, 2023 or when the automated service is fully rolled out in Cleveland.
4. The terms of the contract shall automatically be extended to December 31, 2028.

Adopted this 13th day of March, 2023.

APPROVED AS TO FORM:

/s/John F. Kimball

City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

Vice Mayor Johnson moved that Resolution 2023-21 be accepted as presented. The motion was seconded by Councilman Hughes. Councilman Cassada stated if we went out to bid this would be \$12 more and citizens are getting a new trashcan. He thanked Waste Connections for their efforts in keeping the costs down. Councilman Webb stated it would be a good time when we start to notify the public about this through publications, to also to remind the citizens about the rules for debris pickup, once a week, not commercial but residential only and only city debris. Doug McGill stated they would be happy to include it in their packets to the residents. Upon roll call, the motion unanimously passed.

Mayor Brooks stated an item was added to the agenda for 775 Raider Drive. Mr. Fivas stated we have the keys and we are receiving calls about utilization and asked how to proceed. Councilman Cassada stated the school system should receive the keys and the City should keep a copy. Also, inquire if the City Schools would allow us to use the drive thru for taxes, etc. Councilman May stated he understood it would belong to the school system. Mayor Brooks stated the final motion was they would rent or lease it from us for \$18,000 and we would maintain the deed. Councilman Estes stated we own the property for the use and benefit of the Schools. Mr. Kimball stated the deed was not prepared that way. Councilman Estes stated his motion was they pay us back; they get it all. He added in the \$18,000 for the annual taxes. It wasn't part of a lease or anything. His intent was it is the School Boards. Councilman May stated yes, that is what he understood when he voted. Councilwoman McKenzie asked if we give it to the schools are we talking about the building or all the property around the building. Councilman Hughes stated he understood the city would have the building and the schools would move in, retro fit it for their use and rent to anyone else. Mr. Kimball stated the property is no longer taxable and he believes that was Councilman Estes' reason for adding the \$18,000. He understands they have reimbursed the city for the cost of the property. Councilman Hughes stated there are 7 acres there and we may have use to put up a building in the future. So, a portion of the property would be the city's not the schools. Mayor Brooks stated he understands the agreement with the schools is it is their

building, we are bequeathing it to them for their use, as voted by the Council. The School Board is open to the discussions we have had, prior to the vote, and one of them is use of the drive thru for taxes, for the County tags, for Cleveland Utility payments and possibly EMA would have some square footage in the building to be decided by the School Board. These would all produce a revenue stream by the different entities to the School Board. His request to the City Manager was how quickly we could remove the fence around the building for use of the parking area for events at Greenway Park and at the School. Councilman Hughes asked that the City look at the land/parking lot for future use by the City. Mr. Fivas stated currently the deed is in the city's name due to the question of the \$18,000. The city owns the building and the land. We can change the deed for the use and benefit of the School Board. Councilman May stated his vote was to give the title to the School Board. They would own it; it would be their building. Councilman Hughes stated we could possibly use a corner of the parking lot. This is an office space. We have the latitude to say how it is going to be used. Councilman Estes stated no, that is not what we laid out; we said you pay for it we are giving it to you. Mayor Brooks stated the original question was what to do with the keys. We own the building until the deed is changed. Councilman Hughes stated he would like the city to look at possible uses of the land. Councilman Estes stated his motion was for the entire property for the use and benefit of the Schools. Mr. Kimball stated the plat, lot 1, which is the building and parking lot is 4.53 acres. The other 3.7 acres already belongs to the City, that's the Greenway Park. Councilman Hughes stated okay, he is clear. Councilman Estes asked once the deed is corrected why does the city need a set of keys. Mr. Kimball stated someone needs to make sure the budling is insured. Mr. Fivas stated it is currently on our insurance. Councilwoman McKenzie stated with this vote the schools would completely own the building. Councilman Estes stated the city owns it for the use and benefit of the Board of Education, just like all the school properties. Mr. Fivas stated if the city has a need to use the parking lot for an event at Greenway Park, the School Board would make that decision. Councilman Cassada stated he feels they would be open to that. Mayor Brooks stated his conversations with Dr. Dyer have been removal of the fence so people can park freely for events at Greenway Park or at the High School. Mr. Fivas stated to be clear, we are changing the deed for the use and benefit of the Board of Education, they would be responsible for insurance, we give them the keys and at that point we cease to have any input into what goes on there. Councilman Hughes then moved to prepare a deed correction for 775 Raider Drive to state The City of Cleveland for the Use and Benefit of the City of Cleveland Board of Education. The motion was seconded by Councilman Webb; and upon roll call, unanimously passed.

ANNOUNCEMENTS

Mayor Brooks announced the following:

- The next City Council meeting will be held on Monday, March 27, 2023.

ADJOURNMENT

There being no future business the meeting was adjourned at 3:44 p.m.

Mayor

City Clerk