

BE IT REMEMBERED THAT THE CITY COUNCIL OF THE CITY OF CLEVELAND, TENNESSEE MET IN A REGULAR SESSION THIS MONDAY, APRIL 10, 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; Sue Zius, Administrative Coordinator; Christy Brandon, Assistant City Clerk; City Attorney John Kimball; Police Chief Mark Gibson; Fire Chief Bobby Gaylor; Jonathan Jobe, Development and Engineering Director; Patti Pettit, Parks and Recreation Director; Dustin Roberts, IT Network Administrator; Cathy Andrews, CDBG Coordinator; Mark Fidler, Regional Jetport Director; Sharon Marr with Mainstreet Cleveland; Doug Berry with the Chamber of Commerce; Warbrit Lowery; Hal Taylor; Eddie Cartwright; Connie Gatlin with Art is Here; John Schrenkel; Kimberly Lynn; Debra and Ted Gleason; Walt Vineyard, Tim Henderson and Marshall Stinnett with Cleveland Utilities 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 March 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

Debra Gleason addressed the City Council concerning the formation of the Cleveland Utilities Authority. She stated there are citizens that are against approval and feel the citizens should be able to vote on the matter. The people have not been given the time or opportunity, due to lack of advertising by the City Council, to express their concerns. In her opinion, she doesn't agree, it is wrong, and it will come back to bite us. Cleveland needs to remain a conservative, family-oriented community without government control. She asked them to vote no for the sake of the community.

HEARING PETITIONS AND COMMUNICATIONS

Mayor Brooks stated today's meeting is being held as a public hearing to hear public comments concerning a request to rezone 1.40 acres, more or less, for property located at Blackburn Road from CH Highway Commercial to R2 Low Density Single and Multi-Family Residential and includes Tax Map 065D Group F Parcel 002.01. Robert Varnell stated this property was rezoned to CH, but the developer has changed the development plan and requests it be zoned back to R2. 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.

Mayor Brooks stated today's meeting is being held as a public hearing to hear public comments concerning a request to rezone 0.41 acres, more or less, for property located at Ohio Avenue from R-1 Single Family Residential to R-3 High Density Single and Multi-Family Residential and includes Tax Map 049C Group B Parcel 021.00. Robert Varnell stated this property adjoins a current R-3 zoned property, which they are looking to develop a possible quadplex or something similar at the location due to the powerlines. Staff supports the zoning change, 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.

Mayor Brooks announced everyone has received a copy of the State Form CT-0253 – Report on Debt Obligation - Relating to the General Obligation Bonds, Series 2020 (No action necessary/informational only).

Mayor Brooks then announced he would be reappointing to the Planning Commission: Tricia Pennington, Maryl Elliott and Blake Allison all for additional 3-year terms to expire January, 2026.

CONSENT AGENDA

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

- **Surplus Property** – Declaring several weapons as surplus and to be used as a trade-in on future purchase of weapons for the Cleveland Police Department [list of serial numbers on file in the City Clerk’s Office].

UNFINISHED BUSINESS

There was no unfinished business.

REPORTS OF COUNCIL MEMBERS

Councilman Hughes thanked Walt Vineyard with the help concerning a timeline and enhancement of streetlights on Brad Street. Mr. Vineyard stated it was scheduled to be completed today. Councilman Hughes then thanked Marshall Stinnett for resolving a situation he helped him resolved.

Councilman Webb stated it is time to address the median along 25th Street. Several shrubs have died, there are several grass/weeds in the rocks and a significant amount of trash. He would like staff to move on that between now and the next meeting, if nothing else, he would like a report on how we are going to handle those shrubs.

Mayor Brooks asked for an update on paving or repaving the Tinsley Park parking lot and if it is possible for immediate help due to safety issues. Mr. Fivas stated a portion of the parking lot is to be used for additional pickleball courts and underneath the lot there is a large digester. The lot will have to be torn out and a new subbase installed. We expect on May 1 to have the revised plans and a decision will need to be made on the location of the additional courts. We know it needs to be done; we just want it done efficiently. There will be a new parking layout when the new courts are installed as well.

NEW BUSINESS AND ORDINANCES

The following Resolution was then presented in full:

- **Resolution 2023-26** – Authorizing a PILOT schedule with Duracell Manufacturing, LLC.

RESOLUTION 2023-26

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 Duracell Manufacturing, LLC (the "Company") which has a planned expansion of existing operations within the City of Cleveland, Bradley County, Tennessee, the construction of

real improvements thereon, and 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 approximately (but not limited to) \$25,000,000.00 (the "Project") with \$20,261,699 being an investment in personal property/equipment;;

WHEREAS, the Project is anticipated to result in the creation of 25 new full-time positions with an annual starting wage of \$ 45,000.00 for production positions.

WHEREAS, the Company has requested that 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 the following payment schedule on the Property constituting personal property during the six-year period commencing on January 1, 2023 and ending on December 31, 2028:

- Year 1 (2023) = 22.7273%
- Year 2 (2024) = 26.6667%
- Year 3 (2025) = 31.7460%
- Year 4 (2026) = 40.0000%
- Year 5 (2027) = 52.6316%
- Year 6 (2028) = 80.0000%

with such percentage in a given year being the percentage applied to the property taxes otherwise due on the portion of the Property constituting personal property as depreciated, the intent of which is to tax the personal property in an amount equal to the personal property taxes otherwise due if the personal property is appraised at 20% of the acquisition value and taxed at the full tax rate for the portion of the Property constituting personal property;

WHEREAS, the City of Cleveland is committed to provide the amount of \$125,000.00 in assistance for the cost of a pedestrian cross walk and traffic signal system at Mouse Creek Road to provide a safe location for pedestrian and vehicular crossings for the Company's employees as the Company expands operations onto their property on the east side of Mouse Creek Road;

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 \$132,675.74 over the same six-year period; and

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 the City of Cleveland, Tennessee and that the payments in lieu of taxes derived from the PILOT Arrangement would be in furtherance of the Board's purposes.

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 agrees to provide \$125,000.00 in assistance for the cost of a pedestrian cross walk and traffic signal system at Mouse Creek Road to provide a safe location for pedestrian and vehicular crossings for the Company's employees as the company expands operations onto their property on the east side of Mouse Creek Road.

Section 3. 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 4. This Resolution shall become effective upon its adoption.

Adopted this 10th day of April, 2023.

APPROVED AS TO FORM:

/s/John F. Kimball

City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

Councilman Cassada inquired about the crosswalk and traffic signal mentioned in the resolution. Mr. Berry stated TDOT was engaged to do a preliminary review, there will be no overhead pedestrian crosswalk. It will likely be an intersection with signalization. It will help Duracell move products from one side to the other. The signal still requires a study of pedestrian crossings. This resolution offers up to \$125,000 toward the signal system or an alternative crossing system, to be determined with future studies. Mr. Berry explained further of their plan to expand the packing plant, which would create additional jobs. Councilman Cassada added he has concerns about the impact of traffic and impact to the school system. Councilman May moved to approved Resolution 2023-26 as presented. The motion was seconded by Councilman Webb. Upon roll call, Councilmen May, Webb, Estes, Hughes, Vice Mayor Johnson, and Councilwoman McKenzie voted aye. Councilman Cassada voted no. The motion passed 6:1.

The following Resolution was then presented in full:

- **Resolution 2023-24** – Adopting the Downtown Revitalization Initiative (Revitalization Plan).

RESOLUTION 2023-24

A RESOLUTION BY THE COUNCIL OF THE CITY OF CLEVELAND, TENNESSEE TO ADOPT THE DOWNTOWN REVITALIZATION INITIATIVE (REVITALIZATION PLAN)

WHEREAS, the City Council of the City of Cleveland seeks to build on the hopes and dreams of the citizens of Cleveland; and

WHEREAS, extensive public and stakeholder input was conducted throughout community to inform the completion of the Revitalization Plan in July 2019; and

WHEREAS, the Revitalization Plan is informed by numerous previous plans over the past twenty years, namely: the Mainstreet Cleveland Downtown Master Plan (2004), the BCC 2035 Strategic Plan (2010), the Central City Area Plan (2013 Comprehensive Plan), and the Blythe-Oldfield Plan (2018) that was created by a local non-profit, City Fields, stating that “On the abandoned factory site, the masterplan depicts a regional park which reconnects the neighborhood to downtown and provides a destination for people outside the neighborhood;” and

WHEREAS, the Revitalization Plan serves as a guide to reinvigorate activity and development; with the vision to “revitalize and enhance downtown into a more livable, vibrant, memorable, and welcoming destination for all;” and

WHEREAS, progress has been made towards the goals and initiatives enumerated in the Plan over the course of the past three years with planning, design, and funding activities; and where modifications to the Plan’s goals and initiatives have been or may be necessary; and

WHEREAS, the Downtown Revitalization Initiative is attached hereto and incorporated herein; and

WHEREAS, the City Council seeks to escalate momentum toward the revitalization of downtown and toward the goals of the Plan;

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

SECTION 1: That the City Council of the City of Cleveland, Tennessee hereby approves the adoption of the Downtown Revitalization Initiative (Revitalization Plan). [on file in the City Clerk’s Office.]

SECTION 2: That modifications to the Plan shall be directed by the latest discussion and guidance by the Cleveland City Council and provide for any exceptions or modifications to the Plan.

SECTION 3: This Resolution shall take effect from and after its passage, the welfare of the City requiring it.

Adopted this 10th day of April, 2023.

APPROVED AS TO FORM:

/s/John F. Kimball
City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

Councilman Estes moved that Resolution 2023-24 be accepted as presented. The motion was seconded by Councilwoman McKenzie; and upon roll call, unanimously passed.

The following Resolution was then presented in full:

- **Resolution 2023-25** – Requesting the Cleveland Housing Authority to create a Redevelopment Plan for an area to be titled the former Whirlpool Industrial Area Redevelopment Plan.

RESOLUTION 2023-25

A RESOLUTION OF THE COUNCIL OF THE CITY OF CLEVELAND REQUESTING THE CLEVELAND HOUSING AUTHORITY TO CREATE A REDEVELOPMENT PLAN FOR AN AREA TO BE TITLED THE FORMER WHIRLPOOL INDUSTRIAL AREA REDEVELOPMENT PLAN

WHEREAS, pursuant to the provisions of TENN. CODE ANN. § 13-20-101 et seq., the Cleveland Housing Authority is authorized to study and make recommendations concerning the redevelopment of areas within the City of Cleveland; and

WHEREAS, the Council of the City of Cleveland desires that the Cleveland Housing Authority study and prepare a redevelopment plan for the former Whirlpool industrial area and conduct a public hearing to determine the necessity for the adoption of such a redevelopment plan; and

WHEREAS, the former Whirlpool industrial area is generally bounded by 4th Street Northeast to Wildwood Avenue to 9th Street Southeast, to Euclid Avenue Southeast, to Church Street Southeast, and to 1st Street Southeast.

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

SECTION 1: That the Cleveland Housing Authority be and hereby is authorized and directed to prepare a redevelopment plan for the former Whirlpool area within the City of Cleveland, with the assistance of the City’s staff and resources, as well as consultant services.

SECTION 2: That the Cleveland Housing Authority be and hereby is authorized and directed to conduct a public hearing to determine the necessity for the adoption of the redevelopment for the former Whirlpool area pursuant to TENN. CODE ANN. § 13-20-203(b)(4).

SECTION 3: This Resolution shall take effect from and after its passage, the welfare of the City requiring it.

Adopted this 10th day of April, 2023.

APPROVED AS TO FORM:

/s/John F. Kimball

City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

Councilman Estes moved that Resolution 2023-25 be accepted as presented. The motion was seconded by Councilwoman McKenzie; and upon roll call, unanimously passed.

The following Ordinance was then presented in full:

- **Zoning Ordinance 2023-09** – Rezoning 1.40 acres, more or less, for property located at Blackburn Road from CH Highway Commercial to R2 Low Density Single and Multi-Family Residential and includes Tax Map 065D Group F Parcel 002.01 (Planning Commission: Approved 9-0).

ZONING ORDINANCE 2023-09

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 CH Highway Commercial Zoning District to R-2 Low Density Single and Multi-Family Residential Zoning District.

Approximately 1.40 acres, more or less, located at Blackburn Rd. as shown on the attached map.

For reference, same property is being shown on Tax Map 065D Group F Parcel 002.01, 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:

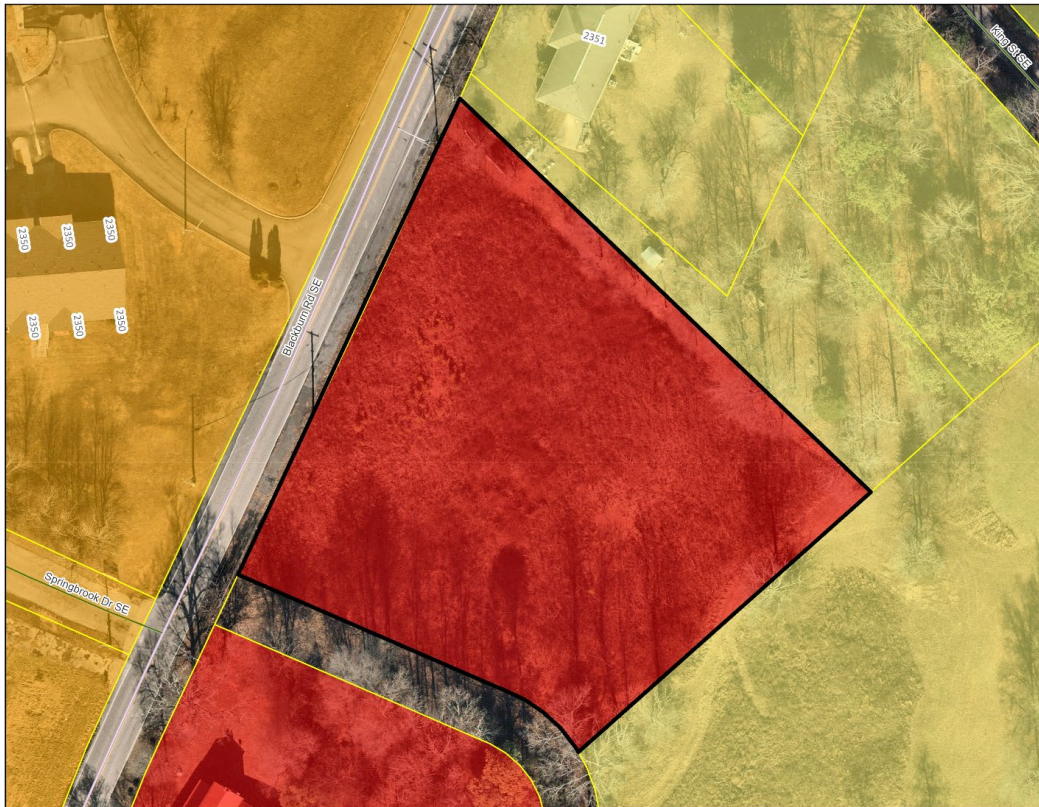
/s/John F. Kimball

City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

Exhibit A



Councilwoman McKenzie moved that Zoning Ordinance 2023-09 be approved on first reading. The motion was seconded by Councilman May; and upon roll call, unanimously passed.

The following Zoning Ordinance was then presented in full:

- **Zoning Ordinance 2023-10** – Rezoning 0.41 acres, more or less, for property located at Ohio Avenue from R-1 Single Family Residential to R-3 High Density Single and Multi-Family Residential and includes Tax Map 049C Group B Parcel 021.00 (Planning Commission: Approved 9-0).

ZONING ORDINANCE 2023-10

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 R-1 Single Family Residential Zoning District to R-3 High Density Single and Multi-Family Residential Zoning District.

Approximately .41 acres, more or less, located at Ohio Avenue as shown on the attached map.

For reference, same property is being shown on Tax Map 049C Group B Parcel 021.00, 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 Cassada moved that Zoning Ordinance 2023-10 be approved on first reading. The motion was seconded by Councilman Estes; and upon roll call, unanimously passed.

The following Resolution was then presented in full:

- **Resolution 2023-27** - A Resolution authorizing the provision of Broadband Services per Part 6: Cable Television, Internet, and Related Services (7-52-601 to 7-52-611). (Requested by Cleveland Utilities President Tim Henderson)

RESOLUTION 2023-27

A RESOLUTION AUTHORIZING THE PROVISION OF BROADBAND SERVICES PER TENNESSEE CODE ANNOTATED SECTION 7-52-601, ET SEQ

WHEREAS, Cleveland Utilities has developed a detailed business plan for the provision of broadband services, has submitted the business plan to the office of the Comptroller of the State of Tennessee, and has considered the analysis of the business plan that the Comptroller’s office provided; and

WHEREAS, pursuant to a notice of hearing published in the February 28, 2023; March 2, 2023; and March 4, 2023, editions of the Cleveland Daily Banner, the Board of Directors conducted a public hearing on Wednesday, March 8, 2023; and

WHEREAS, all interested parties were invited to attend the public hearing and were permitted to ask CU management questions about the project; and

WHEREAS, all interested parties at the public hearing were invited to present oral and written comments to CU concerning the proposed business plan and the provision of broadband services; and

WHEREAS, pursuant to a notice published in the March 16, 2023, edition of the Cleveland Daily Banner, the Board of Directors has convened its regular monthly meeting and has considered authorizing the provision of broadband services; and

WHEREAS, after consideration of the foregoing, including the comments of all interested parties submitted at the public hearing, the Board of Directors has determined that CU should provide broadband services under the authority of Tennessee Code Annotated Section 7-52-601, et seq., and otherwise applicable law; and

NOW, THEREFORE, BE IT RESOLVED THE CITY COUNCIL OF THE CITY OF CLEVELAND duly adopts a resolution by a two-thirds (2/3), or greater vote, and finds and determines that with respect to the services described in Tennessee Code Annotated Section 7-52-601, et seq., and subject to the approval of the City Council of the City of Cleveland, CU is hereby authorized, to provide broadband services to the fullest extent permitted by Tennessee Code Annotated Section 7-52-601, et seq., and other applicable law.

ADOPTED this 10th day of April, 2023.

APPROVED AS TO FORM:

/s/John F. Kimball

City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

Councilman Hughes moved that Resolution 2023-27 be accepted as presented. The motion was seconded by Councilman May. Councilman Cassada asked is there a rush on this thing or is there a deadline; can we give it more thought or kick a field goal? Is it an urgent thing? Mr. Henderson stated I don't know that I would define that urgent. I know we have been prepared and worked toward the end of moving forward. We are ready to move forward. There certainly are reasons for us to move forward, particularly with the ability to partner with third parties. Councilman Cassada then asked can broadband be done without an Authority. Mr. Henderson replied no sir, not as proposed. Councilman Cassada asked if it could be repropoed just as a part of the utility company, as other cities have done this, not having an Authority. Mr. Henderson replied yes that is correct, the answer would be yes, it can be done without an Authority, not under the current business plan we have before you all. Councilman Cassada asked would that business plan change that much? Mr. Henderson stated yes. Mayor Brooks stated this resolution is for the offering of broadband services. The formation of the Authority would be next and that is when these questions should be asked. Councilwoman McKenzie asked if voting on this resolution, when the broadband has to be tied to the Authority, would there be a conflict. Mr. Kimball replied they are separate resolutions as drafted. If you pass this one and not the next resolution, as Mr. Henderson just stated, they cannot do broadband. You're just authorizing them to do it. Councilman Cassada added he is not against broadband. It is an opportunity to move the city forward, but it should be done without an Authority. Upon roll call, Councilman Hughes, Councilman May, Vice Mayor Johnson, Councilwoman McKenzie, Councilman Estes, Councilman Cassada and Councilman Webb voted aye. The motion passed 7:0.

The following Resolution was then presented in full:

- **Resolution 2023-28** - A Resolution authorizing the creation of Energy Authority per Part 36: Municipal Energy Authority Act (7-36-101 to 7-36-132). (Requested by Cleveland Utilities President Tim Henderson)

RESOLUTION 2023-28

A RESOLUTION TO APPROVE THE FORMATION OF AN ENERGY AUTHORITY AND TO ALLOW THE ENERGY AUTHORITY TO ASSUME THE OPERATIONS OF CLEVELAND UTILITIES

WHEREAS, the Board of Directors of Cleveland Utilities ("CU") has determined that CU should provide broadband services under the Authority of Tennessee Code Annotated Section 7-52-601, et seq., and otherwise applicable law, subject only to the approval of the City Council of the City of Cleveland, Tennessee (the "City"); and

WHEREAS, in connection with the development of the broadband business plan for CU, the Board of Directors and the management team of CU have evaluated the potential benefits associated with the formation of an energy Authority pursuant to the provisions of the Municipal Energy Authority Act, Tennessee Code Annotated Section 7-36-101, et seq. (the “Authority Act”); and

WHEREAS, the Board of Directors has determined that the formation of an energy Authority by the City Council will provide the optimal business structure for CU’s existing electric, water, and wastewater operations and for CU’s broadband operations; and

WHEREAS, the management team of CU has presented a proposed form of the Certificate of Incorporation for Cleveland Utilities Authority, a copy of which is attached as Exhibit A; and

WHEREAS, the Board of Directors recommends the City Council to consider the formation of an Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLEVELAND duly adopts a resolution by a two-thirds (2/3), or greater vote, and finds and determines that it is wise, expedient, necessary, and advisable that an Authority be formed, it shall authorize the City Manager to proceed to form the Authority, and the City Council shall approve the form of the Certificate of Incorporation proposed to be used by the Authority; and

BE IT FURTHER RESOLVED, according to the powers of this Act, the Authority in most ways will have the power to Act as an independent local jurisdiction where the City will have to consider how to give the Authority control over the hundreds of millions of dollars in public assets to the independent Authority; and

BE IT FURTHER RESOLVED, that after the approval of this resolution the City Council will have no Authority to unilaterally to change the Articles of Incorporation, or ever reverse this decision, and this Authority will act in perpetuity; and

BE IT FURTHER RESOLVED, according to the powers of this Act the Authority Board will have complete control and supervision of any system of the Authority and to make all such rules governing the rendering of services; and

BE IT FURTHER RESOLVED, according to the powers of this Act the City Council would not have any approval powers or have any Authority over water rates, wastewater rates, broadband rates, electric rates, or the budget of Cleveland Utilities in perpetuity; and

BE IT FURTHER RESOLVED, according to the powers of this Act, upon transfer of an electric, water, and wastewater system from the City to an Authority and the assumption or satisfaction of all obligations of the Board, the all jurisdiction and all control of the City over such system must be transferred to the Authority, and supervisor board having oversight over such system shall cease to exist.

ADOPTED this 10th day of April, 2023.

APPROVED AS TO FORM:

/s/John F. Kimball
City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

**CERTIFICATE OF INCORPORATION
 OF THE
 CLEVELAND UTILITIES AUTHORITY**

1. **Name.** The name of the corporation is CLEVELAND UTILITIES AUTHORITY (the "Authority"). The legal name of the Authority may only be amended by an amendment to this Certificate of Incorporation. The Authority may adopt assumed corporate names from time to time by following the process outlined in Tennessee Code Annotated § 7-36-105(d).
2. **Approval of Formation.** Permission to organize the Authority has been granted by a resolution of the City Council of the City of Cleveland, Tennessee that was duly adopted on April 10th, 2023, a copy of which is attached as Appendix A hereto and which resolution remains in full force and effect.
3. **Principal Office.** The location of the principal office of the Authority shall be 2450 Guthrie Avenue NW, Cleveland, Tennessee 37311.
4. **Purpose.** The Authority shall be for the purpose of planning, acquiring, constructing, improving, furnishing, equipping, financing, owning, operating, and maintaining electric, water, or wastewater utility and telecommunications systems within or outside the corporate limits of the City of Cleveland, Tennessee (the "City of Cleveland"), and to exercise all powers granted to utility authorities by the Municipal Energy Authority Act as enacted by Public Chapter No. 995 of the 2016 Public Acts of the State of Tennessee (the "Act"), as amended, with respect to electric, water, wastewater, and telecommunications services.
5. **Board of Directors.**
 - (a) **Number of Directors.** The Board of Directors of the Authority shall have seven (7) members. At least three (3) Directors are directly appointed by the City Council from a combination of the Mayor and/or any of the seven (7) Council members.
 - (b) **Initial Directors, Classifications and Terms of Office.** The names, classifications and initial terms of the initial Board of Directors are:

Name	Director Classification	Term of Office
Aubrey Ector	At large Director	June 30, 2025
Joe Cate	At large Director	June 30, 2026
Eddie Cartwright	At large Director	June 30, 2024
Debbie Melton	At large Director	June 30, 2023
<u>David May, Jr.</u>	<u>Rep from Cleveland City Council</u>	<u>September 30, 2024</u>
<u>TBD</u>	<u>Rep from Cleveland City Council</u>	<u>June 30, 2024</u>
<u>TBD</u>	<u>Rep from Cleveland City Council</u>	<u>June 30, 2025</u>

Except as otherwise provided in the Act or this section, initial Directors shall serve until reappointment and confirmation or until their successor(s) are duly appointed by and confirmed by the City Council of the City of Cleveland.

- (c) **Subsequent Directors; Qualifications.** All subsequent appointments shall be for four-year terms commencing on [July 1] and ending on [June 30,] and such Directors shall continue to serve following expiration of their respective four-year terms until reappointment and confirmation or until their successors are duly appointed and confirmed. Each appointment shall be made by the City Council of the City of Cleveland and shall be subject to the confirmation of the City Council of the City of Cleveland. Each initial Director and each subsequent appointment shall also be subject to the

following additional requirements:

- (i) No person shall be eligible to be a member of the Board of Directors unless such person shall be a property holder and resident of the City of Cleveland and shall have resided for at least one (1) year prior to such person's appointment and shall be at least twenty-five (25) years of age.
 - (ii) No regular compensated officer or employee of the City of Cleveland shall be eligible for appointment until at least one (1) year after the expiration of the term of such public office, except that three (3) members of the Board of Directors shall be chosen as hereinafter provided from the City Council of the City of Cleveland.
 - (iii) The Directors serving as the representatives from the City Council of the City of Cleveland shall not serve as a Director beyond the Director's term of office on the City Council of the City of Cleveland.
- (d) **Vacancies.** Vacancies on the Board of Directors of the Authority due to death, resignation, ineligibility or removal shall be filled by the City Council of the City of Cleveland in the same manner as provided under subsection (c), immediately above, and shall be effective immediately for the remainder of the unexpired term upon the confirmation of the City Council of the City of Cleveland.
- (e) **Removal.** Any Director may be removed from office for cause upon a vote of two-thirds (2/3) of the members of the City Council of the City of Cleveland, but only after preferment of formal charges by resolution of a majority of the members of the City Council of the City of Cleveland.
6. **Duration.** The duration of the Authority shall be perpetual.
7. **Corporate Form.** The Authority shall be a public corporation, a political subdivision of the State, and a body politic and corporate.
8. **Powers; Regulatory Authority.**
- (a) Subject to the provisions of subsection (c), below, with respect to the water and wastewater requirements of the City of Cleveland, the Authority shall have all the privileges, powers and authority granted and provided for a utility authority by the Act with respect to electric, water, wastewater, and telecommunications services, as the Act presently exists or may be hereafter amended from time to time.
 - (b) Subject to the provisions of subsection (c), below, with respect to the water and wastewater requirements of the City of Cleveland, the Authority shall have the authority to establish policies, rules and regulations with respect to electric, water, and wastewater services in the same manner and to the same extent as the Board of Public Utilities of the City of Cleveland exercises such authority as of the date of this Certificate of Incorporation. The Authority shall be subject to such regulatory requirements and limitations under Title 18 of the City of Cleveland Code of Ordinances, as amended from time to time, in the same manner and to the same extent as would have applied to the Board of Public Utilities of the City of Cleveland. The Authority shall be subject to such regulatory requirements and limitations under all City of Cleveland Code of Ordinances. The Authority shall at no time extend wastewater services to new customers outside of City limits without an approving resolution by at least two-thirds (2/3) majority vote of the City Council of the City of Cleveland.

(c) The Authority shall be subject to such regulatory requirements and limitations under all City of Cleveland Code of Ordinances, as amended from time to time, in the same manner and to the same extent as would have applied to the Board of Public Utilities of the City of Cleveland, except as limited by Tennessee state law.

(d) Subject to the provisions of the above, The Authority shall meet annually with the City Council of Cleveland, TN as part of the annual budget retreat or equivalent public meeting to discuss and seek comments concerning upcoming capital, rate, and operational based decisions as part of The Authority’s annual budget process. All comments will be reviewed by The Authority and included as part of the final budget presentation to The Authority Board.

(e) Subject to the provisions of the above, At the discretion of the City Manager of City of Cleveland, City Council of the City of Cleveland, Utility Authority Board or Utility Authority Designee, a quarterly meeting will be held with the President/CEO of The Authority or his designee(s) to discuss and plan for all projects related to the City of Cleveland and The Authority.

- 9. **In Lieu of Tax Payments.** The Authority shall make in lieu of tax payments in accordance with the provisions of the Act, as set forth at Tennessee Code Annotated § 7-36-122.
- 10. **Restrictions on Disposition of Plant.** The Authority shall not have any power to dispose of all or substantially all of the electric, water, or wastewater plant of the Authority, except upon the concurrence and consent of the City Council of the City of Cleveland and, in the case of a disposition of all or substantially all of the electric plant of the Authority, upon approval of a majority of those voting in a referendum called by the City Council of the City of Cleveland in accordance with Tennessee Code Annotated § 7-52-132 and the provisions of the Act.
- 11. **Residual Interest of the City of Cleveland.** If the Authority ceases to exist, or in the event of the sale of all or substantially all of the assets of the electric system and/or the water and wastewater system of the Authority, all of its assets associated with the applicable utility system remaining after all of the obligations and liabilities of such system have been satisfied or discharged shall pass to, and become the property of, the City of Cleveland.
- 12. **Amendment.** This Certificate of Incorporation may only be amended as provided in Tennessee Code Annotated § 7-36-106 and a resolution of the City Council of the City of Cleveland that approves the amendment by at least a two-thirds (2/3) majority vote.

IN WITNESS WHEREOF, this Certificate of Incorporation has been subscribed and acknowledged by the Mayor of the City of Cleveland, Tennessee before an officer authorized by the State of Tennessee to take acknowledgments of deeds, on the day and month set forth below.

Joseph A. Fivas, City Manager
City of Cleveland, Tennessee

STATE OF TENNESSEE :
COUNTY OF BRADLEY :

Personally appeared before me, _____, a Notary Public, Kevin Brooks, with whom I am personally acquainted, who acknowledged that he is the duly elected Mayor of the City of Cleveland, Tennessee and that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this _____ day of _____, 2023.

Notary Public

My Commission Expires: _____

Councilman Webb moved that Resolution 2023-28 be accepted as presented. The motion was seconded by Councilman May. Councilman Estes asked for an amendment. He would like the language from the Interlocal Agreement 3A concerning the water and wastewater regulations added to the Certificate of Incorporation. He feels the more teeth we can add is better on the front end. Mr. Kimball asked for the language to be read so we know what we are amending. Councilman Estes requested a short recess.

Mayor Brooks announced the Council would recess for 10 minutes.

Mayor Brooks then called the meeting back into session at 4:00.

Councilman Estes stated the intent of the amendment is to strengthen the language and not to change the spirit of the intent of the incorporating documents. He then read the following language to add to the end section 8b in the Certificate of Incorporation:

No connection to city sewer shall be allowed for any property outside the city limits unless the owner(s) of the property submit a written request to the city for annexation and that request approved by City Council.

Councilman Webb asked how that would affect the industrial properties. Mr. Berry stated when you previously restricted access to the sewer system through annexation you had language in the ordinance that allowed it in the cases of economic development projects that were recommended by the Industrial Development Board. Councilman Webb asked if that language should be referenced here as well. Councilman Estes stated he was advised not to do that as it would look like the new Authority was still under our authority. We could add language concerning industrial property or we can make it for residential only. Councilman Webb stated he still has concerns. He then stated he would like to withdraw his motion and offer another motion. Councilman May withdrew his second.

Councilman Webb moved to approve the Authority with the expansion of the Utility Board to seven members, with two additional members coming from the City Council and/or Mayor. The motion was seconded by Councilwoman McKenzie.

Councilman Cassada stated he would like to offer a substitute motion to delay approval of the Authority for 30 days or until May 22 meeting. Mayor Brooks announced the substitute motion failed for lack of a second.

Mayor Brooks stated the motion on the floor is to approve the Authority (Resolution 2023-28) with the expansion of the Utility Board to seven members, with two additional members coming from the City Council and/or Mayor. Councilman Estes stated he still would like the language from the Interlocal Agreement Section 3a to be added to Section 8b of the Certificate of Incorporation. Councilman Webb asked Mr. Kimball if there would be any issues. Mr. Kimball stated it is language in the Interlocal Agreement and it is probably a better way to say what he was trying to do earlier. It refers to Title 18 and requires a 2/3 vote of the City Council. Mr. Kimball then clarified two changes that would happen to the Certificate of Incorporation 1) increasing the Board from five to seven, and 2) the addition of the language in paragraph 3a from the Interlocal Agreement to Section 8b. [The Authority shall be subject to such regulatory requirements and limitations under Title 18 of the City of Cleveland Code of Ordinances, as amended from time to time, in the same manner and to the same extent as would have applied to the Board of Public Utilities of the City of Cleveland. The Authority shall be subject to such regulatory requirements and limitations under all City of Cleveland Code of Ordinances. The

Authority shall at no time extend wastewater services to new customers outside of City limits without an approving resolution by at least two-thirds (2/3) majority vote of the City Council of the City of Cleveland.] Councilman Webb stated he would accept the amendment. Councilwoman McKenzie agreed with the amendment. Councilman Webb stated the two additional members come from either the City Council or the Mayor. Councilman Cassada asked for clarification of the motion. Mr. Kimball stated the resolution is for all, everything to be under the Authority. Councilman Cassada stated this Council is giving up everything to this Authority. When citizens call about electric rates, we have to say we gave it away and there is nothing we can do about it. He does not support this resolution. He is good with broadband, but we should not give our electric away.

Upon roll call, Councilman Webb, Councilwoman McKenzie, Councilman Estes, Councilman May and Councilman Hughes voted aye. Vice Mayor Johnson and Councilman Cassada voted no. The motion passed 5:2.

The following Resolution was then presented in full:

- **Resolution 2023-29** - A Resolution authorizing the approval of an Interlocal Agreement between the City of Cleveland and the new Authority. (Requested by Cleveland Utilities President Tim Henderson)

RESOLUTION 2023-29

A RESOLUTION AUTHORIZING THE CITY COUNCIL OF CITY OF CLEVELAND TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CLEVELAND UTILITIES AUTHORITY

WHEREAS, the City Council has approved the formation of the Cleveland Utilities Authority; and

WHEREAS, the two will need to work closely with each other to give services to the City of Cleveland; and

WHEREAS, the City is in full control of the Rights-of-Ways within the City of Cleveland.

NOW, THEREFORE, BE IT RESOLVED THE CITY COUNCIL OF THE CITY OF CLEVELAND duly adopts a resolution for an interlocal agreement with the Cleveland Utilities Authority.

ADOPTED this 10th day of April, 2023.

APPROVED AS TO FORM:

/s/John F. Kimball
City Attorney

Kevin Brooks, Mayor

Shawn McKay, City Clerk

Councilman May moved that Resolution 2023-29 be accepted as presented. The motion was seconded by Councilman Hughes; and upon roll call, Councilmen May, Hughes, Webb, Estes, Vice Mayor Johnson and Councilwoman McKenzie voted aye. Councilman Cassada voted no. The motion passed 6:1.

ANNOUNCEMENTS

Mayor Brooks announced the following:

- The next City Council meeting will be held on Monday, April 24, 2023.

ADJOURNMENT

There being no future business the meeting was adjourned at 4:18 p.m.

Mayor

City Clerk