

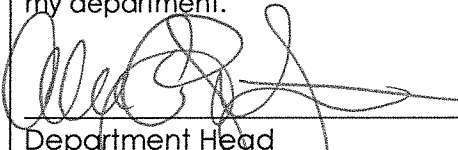


## Contract/Document Review Cover Sheet

<b>Contract with:</b> Torchlight Pass LLC	<b>Contract for:</b> CRA Agreement
<b>Department:</b> Economic Development	<b>Division:</b>
<b>Staff Contact:</b> Alexis Fitzsimmons	<input type="checkbox"/> <b>Urgent – Deadline:</b>

### DEPARTMENT HEAD APPROVAL

I recommend approval of this contract or document. It has received all necessary reviews by my department.

 11/14/16  
Department Head Date

*\*Signature is required for all contracts and documents being submitted for final review.*



### INITIAL REVIEW

(contract or document is not complete, review and mark-up is needed)

Date received by Law Dept

1<sup>st</sup> review \_\_\_\_\_

2<sup>nd</sup> review \_\_\_\_\_

Law Dept Action

Approved – Date \_\_\_\_\_

Revisions Needed – Date \_\_\_\_\_

### NOTES

Signature from Doug and Les needed to execute CRA Agreement passed by Council on October 4, 2016



### FINAL REVIEW

(contract or document is complete and in final form w/ all attachments)

#### 1. Authorization

City Ordinance – O R2016- 37

Motion Agenda – Date 9/20/2016

Consent Agenda – Date 10/04/2016

No Council Authorization Needed (briefly explain why):

#### 2. Expenditure of money by the City



Yes



No

Account # N/A

Amount \$ N/A



Fiscal Officer Certificate attached

#### 3. Law Dept Action

Date received 11/14/16

Approved – Date 11/30/16

Not Approved/Revisions Needed –

Date \_\_\_\_\_

**COMMUNITY REINVESTMENT AREA AGREEMENT  
BETWEEN CITY OF MIDDLETOWN AND TORCHLIGHT PASS LLC**

This agreement is made and entered into by and between the **CITY OF MIDDLETOWN, OHIO**, a municipal corporation, with its main offices located at One Donham Plaza, Middletown, Ohio (the "City of Middletown"), and **TORCHLIGHT PASS LLC**, an LLC with its main offices located at 1131 Central Ave., Middletown OH 45042 ("Torchlight Pass"), WITNESSETH:

WHEREAS, the City of Middletown has encouraged the development of real property and the acquisition of personal property located in the area designated as the Downtown Middletown Community Reinvestment Area (the "Area"); and

WHEREAS, Torchlight Pass LLC wishes to redevelop the commercial building located at 1131 Central Ave. and have it containing retail, dining, and media operations (the "Project") within the boundaries of the Downtown Middletown Community Reinvestment Area, provided that the appropriate development incentives are available to support the economic viability of said Project; and

WHEREAS, the City Council of Middletown, Ohio by Resolution No. R2010-19 adopted July 20, 2010 and Ordinance No. O2010-87 adopted December 21, 2010 designated the Area as a "Community Reinvestment Area" pursuant Chapter 3735 of the Ohio Revised Code; and

WHEREAS, effective July 15, 2011, the Director of Development of the State of Ohio determined that the Area designated in said Resolution No. R2010-19 adopted July 20, 2010 and Ordinance No. O2010-87 adopted December 21, 2010 contained the characteristics set forth in Section 3735.66 of the Ohio Revised Code and confirmed said Area as a Community Reinvestment Area under said Chapter 3735; and

WHEREAS, the City of Middletown, having the appropriate authority for the stated type of project, desires to provide Torchlight Pass with incentives available for the development of the Project in said Community Reinvestment Area under Chapter 3735 of the Ohio Revised Code; and

WHEREAS, Torchlight Pass submitted a proposed application (the "Application") to the City of Middletown and said Application is attached hereto as Exhibit "A"; and

WHEREAS, Torchlight Pass remitted the required state application fee of \$750.00 made payable to the Ohio Development Services Agency with the Application to be forwarded to said agency with a copy of the final agreement; and

WHEREAS, the City of Middletown has investigated the Application of Torchlight Pass and has recommended the same to the City Council of the City of Middletown on the basis that Torchlight Pass is qualified by financial responsibility and business experience to create and preserve employment opportunities in said Area and improve the economic climate of the City of Middletown; and

WHEREAS, the project site as proposed by Torchlight Pass is located in the Middletown City School District and the Butler Technology and Career Development Schools District and the Boards of Education of the Middletown City School District and the Butler Technology and Career Development Schools District have been notified in accordance with Sections 5709.83 and 3735.671 and have been given a copy of the Application; and

WHEREAS, pursuant to Section 3735.67(A) and in conformance with the format required under Section 3735.671(B) of the Ohio Revised Code, the parties hereto desire to set forth their agreement with respect to matters hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Torchlight Pass shall redevelop the project site for retail, dining, and media uses at the building located at 1131 Central Ave., Middletown, OH 45042. Said Project shall be developed on parcel number Q6511009000027 as the same is known and designated in the official records of the Butler County Auditor.

The Project will involve a total investment by Torchlight Pass of \$605,000.00, plus or minus 10%, at the 1131 Central Ave., Middletown, OH 45042 site for improvements to an existing building.

The Project will begin July 2016, and all acquisition, construction and installation will be completed by November 2016.

2. The redevelopment of the project site, containing multiple business tenants shall create within a time period not exceeding twenty-four (24) months after the commencement of the Project, the equivalent of eight (8) full-time temporary jobs in year one (construction) and nine (9) full-time permanent jobs, and thirty-two (32) new part-time permanent jobs in the year after completion of the Project. The job creation period begins January 1, 2017 and all jobs will be in place by December 31, 2019.

The project site currently has 0 full-time permanent employees, 0 part-time permanent employees, 0 full-time temporary employees, and 0 part-time permanent employees. In total, Torchlight Pass has 0 full-time permanent employees, 1 part-time permanent employees, 0 full-time temporary employees, and 0 part-time temporary employees in the State of Ohio.

This increase in the number of employees will result in approximately \$880,000.00 of additional annual payroll for Torchlight Pass or others. The following is an itemization by the type of new jobs created: \$815,000.00 permanent, and \$65,000 (temporary construction).

3. Torchlight Pass shall provide to the proper Tax Incentive Review Council any information reasonably required by the council to evaluate the property owner's compliance with the agreement, including returns filed pursuant to section 5711.02 of the Ohio Revised Code if requested by the council.

- a. Torchlight Pass shall adopt hiring practices to ensure at least twenty-five (25%) percent of the new/part-time permanent employees shall be residents of said Area.
  - b. Property Owner shall maintain a membership in the Chamber of Commerce serving Middletown, Monroe & Trenton.
4. The City of Middletown hereby grants Torchlight Pass tax exemption for real property improvements made to the Project site pursuant to Section 3735.67 of the Ohio Revised Code and shall be in the following amounts:

Percentage of Exemption	Exemption Term
100%	12 Years

Each identified project improvement will receive a twelve (12) year exemption period. The exemption commences the first year for which the Real Property exemption would first be taxable were that property not exempted from taxation. No exemption shall commence after January 1, 2017 nor extend beyond December 31, 2028.

Torchlight Pass must file the appropriate tax forms with the County Auditor to effect and maintain the exemptions covered in the agreement.

5. Torchlight Pass shall pay an annual fee equal to the greater of one percent of the dollar value of incentives offered under the agreement or five hundred dollars: provided, however, that if the value of the incentives exceeds two hundred fifty thousand dollars, the fee shall not exceed two thousand five hundred dollars.

The fee shall be made payable to the City of Middletown by certified check once per year for each year the agreement is effective. The fee is to be paid to the City Treasurer and made out to City of Middletown. This fee shall be deposited in a special fund created for such purpose and shall be used exclusively for the purpose of complying with section 3735.671(D) of the Ohio Revised Code and by the tax incentive review council created under section 3735.671(D) of the Ohio Revised Code exclusively for the purposes of performing the duties prescribed under that section.

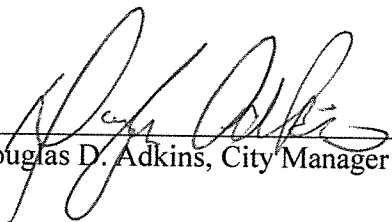
6. Torchlight Pass shall pay such real and tangible personal property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. If Torchlight Pass fails to pay such taxes or file such returns and reports, all incentives granted under this agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.
7. The City of Middletown shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

8. If for any reason the Community Reinvestment Area designation expires, the Director of the Ohio Development Services Agency revokes certification of the Area, or City of Middletown revokes its designation of the Area, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless Torchlight Pass materially fails to fulfill its obligations under this agreement and City of Middletown terminates or modifies the exemptions from taxation granted under this agreement.
9. If Torchlight Pass materially fails to fulfill its obligations under this agreement or if City of Middletown determines that the certification as to delinquent taxes required by this agreement is fraudulent, City of Middletown may terminate or modify the exemptions from taxation granted under this agreement and City of Middletown may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement.
10. Torchlight Pass hereby certifies that at the time this agreement is executed, Torchlight pass does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which Torchlight Pass LLC is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Ohio Revised Code, or, if such delinquent taxes are owed, Torchlight Pass LLC currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against Torchlight Pass LLC. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.
11. Torchlight Pass agrees that it does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.
12. Torchlight Pass LLC and City of Middletown acknowledge that this agreement must be approved by formal action of the legislative authority of City of Middletown as a condition for the agreement to take effect. This agreement takes effect upon such approval.
13. The City of Middletown has developed a policy to ensure recipients of Community Reinvestment Area tax benefits practice non-discriminating hiring in its operations. By executing this agreement, Torchlight Pass are each committing to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.

14. Exemptions from taxation granted under this agreement shall be revoked if it is determined that Torchlight Pass LLC, any successor property owner, or any related member (as those terms are defined in Section 3735.671 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under Division (E) of Section 3735.671 or Section 5709.62 or 5709.63 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections.
15. Torchlight Pass agrees that it has made no false statements to the State or local political subdivisions in the process of obtaining approval of the Community Reinvestment Area incentives. If any representative of Torchlight Pass has knowingly made a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives under this agreement, Torchlight Pass shall be required to immediately return all benefits received under this agreement pursuant to Section 9.66(C)(2) of the Ohio Revised Code and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to Section 9.66(C)(1) of the Ohio Revised Code. Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Section 2921.13(D)(1) of the Ohio Revised Code, which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.
16. This agreement is not transferable or assignable without the express, written approval of the City of Middletown.

IN WITNESS WHEREOF, the City of Middletown, Ohio, by Douglas D. Adkins, its City Manager, and pursuant to (~~Ordinance~~/Resolution) No. R2016-37 adopted October 4, 2016, has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2016, and Torchlight Pass LLC by Amy Vitori, its President, has caused this instrument to be executed on this \_\_\_\_ day of \_\_\_\_\_, 2016.

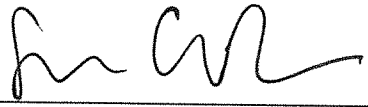
**CITY OF MIDDLETOWN**

By   
Douglas D. Adkins, City Manager

**TORCHLIGHT PASS LLC**

By \_\_\_\_\_  
Amy Vitori, President

Approved as to form:

  
Leslie S. Landert Susan Cohen  
Asst. Law Director

City of Middletown, Ohio  
APPLICATION for CRA Tax Incentives

1. Name of property owner, home or main office address, contact person, and telephone number (attach additional pages if multiple enterprise participants).

TORCHLIGHT PASS LLC  
Enterprise Name

1131 CENTRAL AVE.  
Address

MIDDLETOWN, OH 45044  
City, State, Zip

AMI VITORI  
Contact Person

310.367.8599  
Telephone Number

ami@torchlightpass.com  
Email Address

Project site:

TORCHLIGHT PASS  
Name

1131 CENTRAL AVE.  
Address

AMI VITORI  
Contact Person

310.367.8599  
Telephone Number

2. Nature of commercial/industrial activity (manufacturing, warehousing, wholesale or retail stores, or other) to be conducted at the site.

RETAIL, DINING AND MEDIA REAL ESTATE DEVELOPMENT

List primary 6 digit North American Industry Classification System (NAICS) # 531190

Business may list other relevant SIC numbers. 722511, 611699, 713940, 812112

If a consolidation, what are the components of the consolidation? (must itemize the location, assets, and employment positions to be transferred: N/A

Form of business of enterprise (corporation, partnership, proprietorship, or other).

LIMITED LIABILITY CORPORATION

3. Name of principal owner(s) or officers of the business.

AMI VITORI

4. State the enterprise's current employment level at the proposed project site:

1 F/T PERM, 4 F/T TEMP, 2 P/T TEMP

Will the project involve the relocation of employment positions or assets from one Ohio location to another? Yes\_\_\_ No X

If yes, state the locations from which employment positions or assets will be relocated and the location to where the employment positions or assets will be located:

N/A

State the enterprise's current employment level in Ohio (itemized for full/part-time and permanent/temporary employees):

N/A

State the enterprise's current employment level for each facility to be affected by the relocation of employment positions or assets:

N/A

What is the projected impact of the relocation, detailing the number and type of employees and/or assets to be relocated?

N/A

5. Does the Property Owner owe:

Any delinquent taxes to the State of Ohio or a political subdivision of the state?

Yes\_\_\_ No X

Any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State?

Yes\_\_\_ No X

Any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not?

Yes\_\_\_ No X

If yes to any of the above, please provide details of each instance including but not limited to the location, amounts and/or case identification numbers (add additional sheets).



6. Project Description:

REDEVELOPMENT OF 40,000 SQFT. OF UNDERUSED COMMERCIAL BUILDING INTO  
A RETAIL, DINING AND MEDIA DESTINATION IN DOWNTOWN MIDDLETOWN.

7. Project will begin JULY, 2016 and be completed NOVEMBER 2016 provided a tax exemption is provided.

8. Estimate the number of new employees the property owner will cause to be created at the facility that is the project site (job creation projection must be itemized by the name of the employer, full/part-time and permanent/temporary):

SEE ATTACHED DOCUMENT: #8a

State the time frame of this projected hiring: 1 yrs.

State proposed schedule for hiring (itemize by full and part-time and permanent and temporary employees):

SEE ATTACHED DOCUMENT: #8b

9. Estimate the amount of annual payroll such new employees will add :

SEE ATTACHED DOCUMENT: #9

(new annual payroll must be itemized by full/part-time and permanent/temporary new employees)

Indicate separately the amount of existing annual payroll relating to any job retention claim resulting from the project: N/A

10. An estimate of the amount to be invested by the enterprise to establish, expand, renovate, or occupy a facility:

A.	Acquisition of Buildings:	\$	<u>145,000</u>
B.	Additions/New Construction:	\$	<u>150,000</u>
C.	Improvements to existing buildings:	\$	<u>165,000</u>
D.	Machinery & Equipment:	\$	<u>60,000</u>
E.	Furniture & Fixtures:	\$	<u>60,000</u>
F.	Inventory:	\$	<u>25,000</u>
	Total New Project Investment:	\$	<u>605,000</u>

11. Business requests the following tax exemption incentives: 100 % for 12 years covering real property as described above. Be specific as to the rate, and term.

Business's reasons for requesting tax incentives (be quantitatively specific as possible)

SEE ATTACHED DOCUMENT: # 11

Submission of this application expressly authorizes City of Middletown to contact the Ohio Environmental Protection Agency to confirm statements contained within this application including item # 5 and to review applicable confidential records. As part of this application, the property owner may also be required to directly request from the Ohio Department of Taxation, or complete a waiver form allowing the Department of Taxation to release specific tax records to the local jurisdiction considering the request.

The Applicant agrees to supply additional information upon request.

The Applicant affirmatively covenants that the information contained in and submitted with this application is complete and correct and is aware of the ORC Sections 9.66(C)(1) and 2921.13(D)(1) penalties for falsification which could result in the forfeiture of all current and future economic development assistance benefits as well as a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

AMI VITORI

Name of Property Owner



Signature

07.19.16

Date

AMI VITORI, OWNER

Typed Name and Title

\* A copy of this proposal must be forwarded by the local governments to the affected Board of Education along with notice of the meeting date on which the local government will review the proposal. Notice must be given a minimum of fourteen (14) days prior to the scheduled meeting to permit the Board of Education to appear and/or comment before the legislative authorities considering the request.

\*\* Attach to Final Community Reinvestment Area Agreement as Exhibit A

Please note that copies of this proposal must be included in the finalized Community Reinvestment Area Agreement and be forwarded to the Ohio Department of Taxation and the Ohio Department of Development within fifteen (15) days of final approval.



July 19, 2016

City of Middletown  
1 Donham Plaza  
Middletown, OH 45042

RE: Community Reinvestment Area (CRA) Program Application

Please see the below responses to the application for 1131 Central Avenue to receive tax abatement through the CRA program.

**#8a**

*Torchlight Pass:* 2 F/T PERM, 2 P/T  
*Construction Team:* 8 F/T TEMP  
*Gracie's Restaurant:* 3 F/T PERM, 15 P/T  
*ID Training Academy:* 1 F/T PERM, 3 P/T  
*Hair Salon(Zip + Jo):* 1 F/T PERM, 2 P/T  
*Haven Joy + Wellness:* 2 F/T PERM, 10 P/T

**#8b**

*Torchlight Pass:* 2 F/T PERM (*current*), 2 P/T (1 P/T *current*, 1 P/T *within 3 months*)  
*Construction Team:* 8 F/T TEMP (*current*)  
*Gracie's Restaurant:* 3 F/T PERM (*within 2 months*), 15 P/T (*within 3-6 months*)  
*ID Training Academy:* 1 F/T PERM (*current*), 3 P/T (*within 3-6 months*)  
*Hair Salon(Zip + Jo):* 1 F/T PERM (*within 2 months*), 2 P/T (*within 6 months*)  
*Haven Joy + Wellness:* 2 F/T PERM (*within 3 months*), 10 P/T (*within 3-6 months*)

**#9**

**Estimated Annual Payroll for employees at 100% of proposed above:**

*Torchlight Pass:* \$150,000  
*Construction Team:* \$65,000  
*Gracie's Restaurant:* \$250,000  
*ID Training Academy:* \$140,000  
*Hair Salon(Zip + Jo):* \$60,000  
*Haven Joy + Wellness:* \$280,000

**#11**

I am requesting the tax incentives to offset the large capital outlay that is being made, largely from personal funds, as the current valuation on the building is only \$195,000. This valuation created only \$156,000 in loan to value borrowing power, which is not enough to renovate the property and maintain it as a profitable entity.



---

This depressed valuation is a direct result of the current market in downtown Middletown. My vision for a more vibrant and economically sustainable downtown requires an investment of over \$400,000 on my part; and as such, every dollar that can be saved and used most efficiently is essential to my project's success. A tax abatement for 12 years will allow my investment to grow and provide re-investment as I will put money back into my businesses and property and nourish profitability.

Please note that 1131 Central Avenue has received an adjusted tax valuation beginning in 2017 as a result of a contested application in 2015. The new taxable property valuation will be \$141,395; which is the value we would like to maintain for the life of the abatement.

**RESOLUTION NO. R2016-37**

**A RESOLUTION AUTHORIZING AN AGREEMENT GRANTING TAX ABATEMENT TO TORCHLIGHT PASS LLC FOR REDEVELOPMENT OF 1131 CENTRAL AVENUE IN THE DOWNTOWN MIDDLETOWN COMMUNITY REINVESTMENT AREA.**

**WHEREAS**, the City of Middletown has created a Community Reinvestment Area (CRA) in downtown Middletown in accordance with Chapter 3735 of the Ohio Revised Code, and by Resolution No. R2010-19 and as amended by Ordinance No. O2010-87; and

**WHEREAS**, Torchlight Pass LLC has proposed to redevelop the property located at 1131 Central Avenue, which is located in the CRA, and have applied for an abatement of real property tax in accordance with the applicable laws and ordinances; and

**WHEREAS**, the application has been received and investigated by the City and City Council has determined that the remodeling and redevelopment of the existing property and construction of new structures within the property constitutes a commercial project with a public purpose for which tax abatements may be granted and has further determined that the project meets the goal of establishing commercial activity in the CRA; and

**WHEREAS**, the Middletown City School District has waived any notice requirements under Ohio Revised Code Section 3735.671 and approved this tax exemption by the Comprehensive School Compensation Agreement between the Middletown City School District and the City of Middletown dated November 30, 2015; and

**WHEREAS**, Butler Technology and Career Development School District was provided the required notice in accordance with Ohio Revised Code Section 5709.83 on or about September 12, 2016;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

**Section 1**

Based on the aforesaid review and investigation of the application, City Council hereby finds and determines that Torchlight Pass LLC is qualified by financial responsibility and business experience to create and preserve employment opportunities in the Downtown Middletown Community Revitalization Area as designated by the City Council, and to improve the economic climate of the City. City Council also finds and determines that the aforesaid application submitted by Torchlight Pass LLC describing the proposed project complies with the requirements of Ohio Revised Code Chapter 3735 and Middletown Resolution No. R2010-19 as amended by Ordinance No. O2010-87, and is satisfactory to the City, and which application is hereby approved.

## **Section 2**

City Council hereby authorizes the City Manager to enter into an agreement, pursuant to Ohio Revised Code Section 3735.671, with Torchlight Pass LLC. The agreement shall be in a form substantially similar to Attachment "1", attached hereto.

## **Section 3**

City Council further authorizes the tax abatement in amount of one hundred percent (100%) for a period up to 12 years in duration as a commercial property designated under Resolution No. R2010-19, and as amended by Ordinance No. O2010-87.

## **Section 4**

City Council hereby authorizes and directs the City Manager, Director of Law and Director of Economic Development to take such additional steps, provide such information and certifications to the State of Ohio and Torchlight Pass LLC as is necessary and appropriate to carry out and implement the terms and conditions of the aforesaid agreement.

## **Section 5**

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

## **Section 6**

This resolution shall take effect and be in force from and after the earliest period allowed by law.

/s/ Lawrence P. Mulligan, Jr.  
Lawrence P. Mulligan, Jr., Mayor

1<sup>st</sup> Reading: September 20, 2016

2<sup>nd</sup> Reading: October 4, 2016

Adopted: October 4, 2016

Effective: November 4, 2016

Attest: /s/ Amy Schenck  
Clerk of the City Council