

January 29, 2007

Via Hand Delivery

Ms. Reneé J. Jenkins  
Director of Administration  
Secretary of the Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

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RE: In the Matter of the Complaint of Ohio Power Company v. Consolidated Electric Cooperative, Inc.;  
PUCO Case No. 06-890-EL-CSS

Dear Ms. Jenkins:

Enclosed are an original and ten (10) copies of the Proposed Testimony of Brian Newton, to be filed in connection with the above-referenced matter on behalf of Consolidated Electric Cooperative, Inc.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,



Carolyn S. Flahive

Enclosure

cc: Steven Lesser, Attorney Examiner

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Complaint of</b>	)	
<b>Ohio Power Company,</b>	)	
	)	<b>Case No. 06-890-EL-CSS</b>
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>Consolidated Electric Cooperative, Inc.,</b>	)	
	)	
<b>Respondent.</b>	)	

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**PROPOSED TESTIMONY OF BRIAN NEWTON**

**JANUARY 29, 2007**

*Counsel for Respondent Consolidated Electric  
Cooperative, Inc.*

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**PROPOSED TESTIMONY OF BRIAN NEWTON**

Q. State your name and business address?

A. Brian L. Newton; 5255 SR 95, Mt. Gilead, Ohio 43338

Q. By whom are you employed, and describe your duties with that employer?

A. I am employed by Consolidated Electric Cooperative, Inc. ("Consolidated") in the position of President. As such, I serve as the chief executive officer of Consolidated with overall responsibility for its operations.

Q. Describe Consolidated, its organization and business purpose.

A. Consolidated is a non-profit corporation organized and operated under the laws of the State of Ohio. Its business is the distribution of electrical power and energy to its member-consumers. Consolidated serves over 15,700 member-consumers in various portions of Delaware, Franklin, Knox, Licking, Marion, Morrow, Richland, and Union counties. Consolidated operates on a cooperative basis which means that its member-consumers ultimately own the cooperative and elect a board of trustees which governs its operations. Attached to my testimony as Exhibit A is a copy of Consolidated's Code of Regulations which describes at Article I, Section 6, Consolidated's commitment to serve its customers. It is my understanding that Consolidated is not subject to general Public Utilities Commission of Ohio ("Commission") regulation because it operates on a non-profit cooperative basis.

It is my understanding that Consolidated is an "electric light company" and an "electric supplier" as defined in Ohio Revised Code Sections 4905.03 and 4933.81 et seq.

Q. Are you familiar with the circumstances surrounding the complaint by Ohio Power Company ("Ohio Power") in Commission Case No. 06-890-EL-CSS regarding Consolidated's electric distribution service to certain member-customers in the Village of Lexington, Ohio ("Lexington")?

A. Yes. I am familiar with matters pertaining to that complaint from the perspective of Consolidated.

Q. Let's discuss the Lexington situation. Is it true that Consolidated is currently providing electric distribution service to areas outside its certified territory to the residential customers that are located at 155 and 163 Woodside Ct. as well as 113 and 121 Woodside Blvd. in Lexington, Ohio and that are designated as lots 1735, 1736, 1728, and 1729 respectively of the Woodside subdivision?

A. Yes.

Q. Can you describe the nature of the electric distribution service that is provided at those locations?



1 A. Yes. These residences are new homes that have just been built in a new phase of the  
2 residential "Woodside" subdivision in Lexington. Consolidated received a specific  
3 request to provide service to these particular lots. We received correspondence on or  
4 about March 29, 2005 from Charles Pscholka, Administrative Director for Lexington,  
5 informing Consolidated that in accordance with the recommendation of the developer of  
6 the Woodside subdivision, "and in accordance with Franchise Ordinance number 04-66,  
7 dated December 20, 2004, . . . [Lexington] does desire and request Consolidated Electric  
8 Cooperative to provide electric service to the remaining undeveloped lots within the  
9 Woodside subdivision." This correspondence is attached to my testimony as Exhibit B.  
10 The correspondence also reflects where these lots are located within the Woodside  
11 subdivision. We were able to run single phase underground lines across Woodside Blvd.  
12 to the back of the lots in question.

13 Q. For the record, did Ohio Power have existing electric distribution facilities in place on  
14 any of the properties which you are now serving in the Woodside subdivision?

15 A. No. Ohio Power does serve homes across the street from the lots we serve. Like our  
16 lines, the AEP electric distribution lines access those properties across the street from  
17 underground facilities located in the rear of those properties.

18 Q. Since the complaint has been filed in this Commission proceeding, has Consolidated  
19 commenced electric distribution service to any new customers in the Woodside  
20 subdivision in Lexington outside its certified territory boundaries in addition to the four  
21 mentioned above that are referenced in Ohio Power's complaint?

22 A. Yes, I believe that we currently serve member-customers who occupy seven lots within  
23 the subdivision, and we would anticipate providing service to the remaining five  
24 undeveloped lots. The customers occupying these lots in the subdivision that were not  
25 specifically mentioned in the complaint are 1734, 1737, and 1738, all of which are  
26 depicted on Exhibit B. A list of these member-customers is attached as Exhibit C.

27 Q. Given the fact that the electric distribution facilities serving all of these customers are  
28 located within the certified territory of Ohio Power, why is Consolidated providing  
29 electric distribution service to the customers?

30 A. Ordinance No. 04-66 of Lexington, a certified copy of which is attached as Exhibit D,  
31 provides, among other things, that Consolidated is authorized to "render public utility  
32 service in said village and to the inhabitants thereof by supplying electricity to said  
33 village and the inhabitants thereof." I am not a lawyer, but it is my understanding that  
34 municipalities like Lexington under the constitution and statutes of Ohio have the right to  
35 decide which electric utilities are going to be authorized to provide electric distribution  
36 service within their boundaries. Accordingly, since Lexington has authorized  
37 Consolidated to serve within the entirety of its corporate limits, it is my belief that we  
38 have every right, and indeed the obligation, to serve these new customers, if we are asked  
39 to do so.



1 Q. Do you believe that the adoption of Ordinance 04-66 by Lexington changed the rights of  
2 Consolidated within that municipality?

3 A. Yes. Attached to my testimony as Exhibit E is a certified copy of Ordinance No. 73-45  
4 in which the Village of Lexington provided franchise rights to our corporate predecessor  
5 Morrow Electric Cooperative, Inc. ("Morrow"). Consolidated, as its name implies, was  
6 formed as the result of the merger of Delaware Rural Electric Cooperative, Inc. and  
7 Morrow Electric Cooperative, Inc.) As that ordinance indicates, Morrow was limited to  
8 providing electric distribution service only to areas within the corporate limits that were  
9 located in Morrow's certified territory. Significantly, Ordinance No. 04-66 contains no  
10 such limitation. Consolidated's acceptance of that franchise ordinance is set forth on  
11 Exhibit F to my testimony. I also attach a certified copy of Lexington's charter as  
12 Exhibit G.

13 Q. Can you explain what role you played in having the language of the franchise agreement  
14 change?

15 A. I was aware in 2004 that Ohio Power's franchise agreement with Lexington, Ordinance  
16 No. 69-21, a certified copy of which is attached to my testimony as Exhibit H, involved  
17 the grant to Ohio Power of a non-exclusive franchise to operate through the village. I  
18 was informed that dissatisfaction with Ohio Power's service had been expressed by some  
19 of its customers within the corporate limits. I sensed concern on the part of municipal  
20 officials that dissatisfaction with electric distribution service might cause economic  
21 development to occur elsewhere. We asked the village council for Lexington to change  
22 our franchise rights so that they mirrored the rights of Ohio Power provided by Ordinance  
23 No. 69-21. That ordinance did not confine Ohio Power to serving customers in the  
24 village whose facilities were located in Ohio Power's certified territory. Given municipal  
25 power in the area of franchising and contracting with electric suppliers, there might be  
26 occasions where a new electric distribution customer could choose Consolidated.

27 Q. Is it your understanding of Consolidated's franchise rights that they include the right to  
28 have existing customers who are already being provided electric distribution service by  
29 another franchised electric supplier such as the customers that Ohio Power is currently  
30 serving in the Woodside Subdivision change over to Consolidated?

31 A. No. There are several reasons for my answer. First, while I am not a lawyer, from what I  
32 understand, the so called Miller Act precludes a public utility as defined therein from  
33 abandoning or withdrawing or being forced to abandon or withdraw electric lines or  
34 service, even inside a municipality, without an order from the Commission. Second, I  
35 also rely on what I understand is the testimony of Charles Pshcolka, Lexington's village  
36 administrator, who says that in enacting Ordinance No. 04-66, Lexington had no  
37 intention of permitting displacement of existing service arrangements, or of allowing  
38 uneconomic duplication of facilities. Third, it would seem that as a practical matter, it is  
39 not likely that a customer will want to change suppliers because of the contribution in aid  
40 of construction or similar charges for duplicating facilities that normally would be  
41 required of the customer. Therefore, practical economics dictates that it is not likely in  
42 today's world that there would be a strong economic incentive for customers already



1 receiving electric distribution service to change suppliers of such service. I would also  
2 point out that Mr. Pshcolka identified the encouragement of economic development as a  
3 reason for multiple franchises. I believe that this reason is not likely to apply in the case  
4 of any existing customer because it is generally unlikely that simply switching electric  
5 distribution suppliers would promote economic development within the municipality.  
6 Fourth, it would be both highly impractical and contrary to the public interest to  
7 unnecessarily duplicate electric lines throughout a municipality even if it would be in the  
8 narrow economic interest of certain customers to do so. Such duplication of electric  
9 lines, poles and other distribution facilities would inevitably result in many practical  
10 impositions upon the residents of the municipality such as increased safety hazards,  
11 disruption of traffic and travel during construction and maintenance of duplicating  
12 facilities and the general view of residents that electric lines are not a thing of beauty and  
13 are highly undesirable in the eyes of adjoining landowners and the general public except  
14 to the extent required to provide adequate service. I believe that the municipality itself  
15 would want to exercise its municipal power to prohibit the unnecessary duplication of  
16 electric distribution facilities in such instances and, failing that, the interests of the  
17 general public in eliminating such duplication of facilities must be considered. Evidence  
18 of this municipal policy is set forth in Ordinance No. 929.02, a certified copy of which is  
19 attached as Exhibit I.

20 Consequently, it would be the position of Consolidated that its franchise rights in  
21 Lexington do not include the right to unnecessarily duplicate electric distribution  
22 facilities by extending service to a load center already receiving adequate electric  
23 distribution service from Ohio Power. This position is based on practical economics,  
24 good utility practice, concern for the public safety and welfare and present public policy,  
25 such as is reflected in existing Ohio law.

26 Q. A question has been raised by the attorney examiner as to whether there exists the  
27 possibility that the homeowners you now serve in the Woodside subdivision could later  
28 elect to seek electric distribution service from Ohio Power and would Ohio Power have a  
29 duty to serve such customers. What are your views on this?

30 A. I believe my answer to the prior question largely answers this question as well. I believe  
31 that as a result of the municipal policies of Lexington and the other reasons described in  
32 my last answer, a duty to serve should not be imposed on Ohio Power once the customer  
33 at a new load center has chosen a supplier. Again, I believe that practical economics,  
34 good utility practice, protection of the public interest and the achievement of a reasonable  
35 balance between the encouragement of economic development and eliminating the  
36 unnecessary duplication of electric distribution facilities support this conclusion. Ohio  
37 Power would have no duty to serve those customers already receiving adequate electric  
38 distribution service from Consolidated.

39 Q. What do you say to those who would assert that Ohio Power assumed when it made its  
40 investment in distribution facilities to serve Lexington in the area that it did so in reliance  
41 on the assumption that it would be serving all of the customers in Lexington, and that to  
42 now introduce a competitive element may frustrate its ability to serve all of the customers  
43 and potentially could cause stranded investment?



1 A. I would say that Ohio Power never had an exclusive franchise from Lexington. Because  
2 of the non-exclusivity of its franchise, It would have had no legal basis for making such  
3 an assumption. Second, everybody would agree that Lexington has the unquestioned  
4 power to form its own electric system and compete with Ohio Power for new customers  
5 in Lexington. Third, I understand that under the constitution, Lexington could  
6 accomplish the same competitive result by contracting with another electric supplier to  
7 provide all service within the village limits. In other words, the risk that the municipality  
8 will exercise its constitutional right to authorize competition is inherent in doing business  
9 in a municipality. In fact, there are even greater risks than that to Ohio Power. My  
10 understanding is that once a franchise expires, then the electric supplier that was  
11 previously permitted to compete for all new customers in the municipality, could be  
12 precluded altogether by the municipality from doing so.

13 Q. It will no doubt be asserted that the actions of Consolidated could lead to "cherry  
14 picking" of larger loads. What is your response to this?

15 A. Consolidated stands ready to provide service to any new electric load centers in  
16 Lexington pursuant to its non-exclusive franchise. I will say that our aid to construction  
17 policy for residential services in most cases may make it infeasible for new residential  
18 customers to take service from us at a distance that is remote from our existing lines.  
19 Thus, as I indicated in earlier answers, the practicalities of the situation are such that it is  
20 unlikely that there will be substantial competition between Ohio Power and Consolidated  
21 in the areas of the municipality that are already developed or that are too far from existing  
22 Consolidated lines for said development to be feasible. A copy of Section 15 of our aid  
23 to construction policy with respect to "Permanent Service Extensions" is attached hereto  
24 as Exhibit J.

25 Q. Does this complete your testimony?

26 A. Yes it does.



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served upon the following persons, via regular U.S. mail, postage prepaid, this 29<sup>th</sup> day of January, 2007:

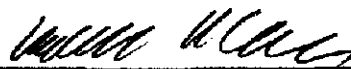
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\_\_\_\_\_  
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**CODE OF REGULATIONS**  
**of**  
**CONSOLIDATED ELECTRIC COOPERATIVE, INC.**

**TABLE OF CONTENTS**

**ARTICLE I - MEMBERSHIP..... 1**

**ARTICLE II - RIGHTS AND LIABILITIES ..... 3**

**ARTICLE III - MEETING OF MEMBERS ..... 3**

**ARTICLE IV - BOARD OF TRUSTEES ..... 4**

**ARTICLE V - OFFICERS..... 7**

**ARTICLE VI - NONPROFIT OPERATION ..... 10**

**ARTICLE VII - FINANCIAL TRANSACTIONS ..... 12**

**ARTICLE VIII - MISCELLANEOUS..... 12**

**ARTICLE IX - SEAL ..... 13**

**ARTICLE X - AMENDMENTS..... 13**

**ARTICLE XI - PARTIAL INVALIDITY CLAUSE ..... 13**

**ARTICLE XII - INDEMNIFICATION ..... 13**

**Articles of Incorporation.....15**

**Statement of Nondiscrimination.....17**



**CODE OF REGULATIONS**  
**of**  
**CONSOLIDATED ELECTRIC COOPERATIVE, INC.**

**ARTICLE I - MEMBERSHIP**

**Section 1. Requirements for Membership.**

Any person, whether a natural person or a firm, association, corporation, partnership, body politic or subdivision thereof, will become a member of Consolidated Electric Cooperative, Inc. (hereinafter called the "Cooperative") upon receipt of electric, natural gas, propane, oil or telecommunications products, Commodities, or services (hereinafter collectively called "Products, Commodities, and Services") from the Cooperative, provided that such person has first:

- (A) Made a written application for membership therein;
- (B) Agreed to purchase from the Cooperative certain Products, Commodities, and Services as hereinafter specified; and
- (C) Agreed to comply with and be bound by the Cooperative's Articles of Incorporation, Code of Regulations, Terms and Conditions of Service, rules and regulations, and policies adopted by the Board of Trustees of the Cooperative (hereinafter sometimes called the "Board").

Where systems, or portions thereof, other than those constructed by the Cooperative are acquired, or are merged into or otherwise become a part of the Cooperative's system of Products, Commodities, and Services, all persons, firms, corporations, institutions, or other organizations then receiving service from said acquired systems shall become and shall be considered as members of the Cooperative provided that the other requirements for membership specified above have been met.

No member may hold more than one membership in the Cooperative, regardless of whether the member purchases more than one type of Products, Commodities, and Services, and no membership in the Cooperative shall be transferable, except as provided in this Code of Regulations.

**Section 2. Single Membership.**

Applications for single membership only shall be accepted; however, in those cases where applications for joint membership have been accepted prior to July 1, 1996, the term "member" as used in this Code of Regulations shall include natural persons holding a joint membership and all provisions relating to the rights and liabilities of membership shall apply equally to the holders of a joint membership. Without limiting the generality of the foregoing, the effect of the hereinafter specified actions by or in respect of the holders of a joint membership shall be as follows:

- (A) The presence at a meeting of either or both shall be regarded as the presence of one member and shall constitute a joint waiver of notice of the meeting;
- (B) The vote of either separately or both jointly shall constitute a joint vote;
- (C) A waiver of notice signed by either or both shall constitute a joint waiver;
- (D) Notice to either shall constitute notice to both;
- (E) Expulsion of either shall terminate the joint membership;
- (F) Withdrawal of either shall terminate the joint membership; and
- (G) Either but not both may be elected or appointed as an officer or Board member, provided that such person meets the qualifications for such office.
- (H) Payment of any capital credit, refund, or other money or thing of value to one joint member shall be deemed a payment to both joint members, and shall discharge the Cooperative's liability for said payment.

**Section 3. Conversion of Membership.**



Upon the death of either holder of a joint membership, or upon divorce or dissolution of a member's marriage, such membership shall be held solely by the survivor/remaining member who continues to qualify as a member at the time of the divorce or dissolution; provided, however, that the estate of the deceased or either member to a divorce or dissolution shall not be released from any debts due the Cooperative.

**Section 4. Purchase of Products, Commodities, and Services.**

Each member shall purchase from the Cooperative those Products, Commodities, and Services used on the premises specified in such member's application for membership to the extent specified in such application or in any applicable contract between such member and the Cooperative or any affiliate of the Cooperative, and shall pay therefor at rates or prices which shall from time to time be fixed by the Board. The production or use of any Products, Commodities, and Services on such premises, regardless of the source thereof, by means of facilities which shall be interconnected with Cooperative facilities, shall be subject to such policies, rules, and regulations as shall be fixed from time to time by the Cooperative. It is expressly understood that amounts paid for Products, Commodities, and Services in excess of the cost of service are furnished by the patrons of the Cooperative, whether members or non-members, as capital and each patron shall be credited with the capital so furnished as provided in this Code of Regulations. Each patron shall pay all amounts owed by such patron to the Cooperative as and when the same shall become due and payable.

**Section 5. Termination of Membership or Service.**

- (A) Any member may withdraw from membership upon compliance with such uniform terms and conditions as the Board may prescribe.
- (B) Upon the withdrawal, death, or cessation of existence of a member, or upon the Cooperative ceasing to provide Products, Commodities, and Services to a member, the membership of such member shall terminate. The Board may adopt uniform rules governing the membership status of persons to whom the Cooperative temporarily discontinues providing Products, Commodities, and Services. Termination of membership in any manner shall not release a member or such member's estate from any debts or obligations due the Cooperative.
- (C) Any member or patron whose membership in the Cooperative is withdrawn or terminates or to whom the Cooperative discontinues providing Products, Commodities, and Services, for any reason, shall remain obligated to abide by any uniform rules adopted by the Board governing the termination of membership or service including those relating to the recovery of stranded investments of the Cooperative resulting from such termination as well as any contractual obligations to the Cooperative, including but not limited to those arising pursuant to Section 5 of this ARTICLE I or any other provision of this Code of Regulations or the Cooperative's rate schedules, rules, and regulations or other contract provision.

**Section 6. Service to All Persons within the Cooperative's Service Area.**

- (A) The Cooperative shall provide Products, Commodities, and Services to all persons, whether members or non-members within, where applicable, the Cooperative's service area who: (1) desires such Products, Commodities, and Services and, (2) meets all requirements established by the Cooperative as a condition of such service. Conditions of service may be set forth in the rate schedules, Terms and Conditions of Service, policies, rules, and regulations of the Cooperative. No discrimination or preference shall be made between member and non-member patrons of the Cooperative with respect to rates, prices or terms or conditions of service. As used in this Code of Regulations, the term "service area" shall apply to providing electric distribution service only and shall mean the entire geographic area within the certified territory of the Cooperative as determined by the Public Utilities Commission of Ohio pursuant to Sections 4933.81-4933.99 of the Ohio Revised Code, or which can otherwise be lawfully served by the Cooperative.
- (B) Nothing contained in this Code of Regulations, in the Cooperative's Terms and Conditions of Service, rules and regulations, policies, or otherwise, shall be construed to prevent the Cooperative from selling Products, Commodities, and Services or otherwise rendering Products, Commodities, and Services to non-members or to prohibit the Cooperative from entering into and performing



franchises or other contracts with political subdivisions, bodies politic, or governmental agencies or instrumentalities, which franchises or contracts provide for the selling of such Products, Commodities, and Services or otherwise rendering Products, Commodities, and Services to any such subdivisions, bodies, agencies, instrumentalities or the citizens thereof.

## **ARTICLE II - RIGHTS AND LIABILITIES**

### **Section 1. Property Interest of Members.**

Upon dissolution, after:

- (A) All debts and liabilities of the Cooperative have been paid; and
- (B) All capital furnished through patronage has been retired as provided in this Code of Regulations;

The remaining property and assets of the Cooperative shall be distributed among the members and former members in the proportion which the aggregate patronage of each bears to the total patronage of all members during the ten years next preceding the date of the filing of the certificate of dissolution.

### **Section 2. Non-Liability for Debts of the Cooperative.**

The private property of the members shall be exempt from execution or other liability for the debts of the Cooperative and no member shall be liable or responsible for any debts or liabilities of the Cooperative.

## **ARTICLE III - MEETING OF MEMBERS**

### **Section 1. Annual Meeting.**

The annual meeting of the members shall be held during the Spring in each year at such place within any of the counties wherein Products, Commodities, and Services are provided by the Cooperative, as selected by the Board and which shall be designated in the notice of the meeting, for the purpose of reporting on the election of Board members and transacting such other business as may be determined by the Board. It shall be the responsibility of the Board to make adequate preparations for the annual meeting. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Cooperative. In the event that such annual meeting is not held, for any reason, a special meeting in lieu thereof shall be called and held as soon thereafter as convenient, and any business transactions, votes, or reports on the election of Board members at such meeting shall be as valid as if transacted or made at the annual meeting.

### **Section 2. Special Meetings.**

Special meetings of the members may be called by action of the Board, or upon a written request signed by any five Board members or by petition of twenty per centum or more of all the members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. A special meeting of the members may be held only at the place within any of the counties wherein Products, Commodities, and Services are provided by the Cooperative, on the day and at the hour designated by the Board.

### **Section 3. Petition Requirements.**

Petitions to call a special meeting must state the reason or reasons for the special meeting and the issues to be voted upon at said meeting. The Secretary must verify membership of petition signees and twenty per centum requirement. Once the Secretary has verified that the petition meets the requirements, notice will be provided to the membership as set forth in Section 2.

### **Section 4. Notice of Members' Meetings.**



Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting or an annual meeting at which business requiring special notice is to be transacted, the purpose or purposes for which the meeting is called, shall be delivered not less than ten days nor more than forty-five days before the date of the meeting, either personally or by mail (including publication within a magazine mailed to the members) by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the Chair or Vice Chair of the Cooperative, to each member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at such member's address as it appears on the records of the Cooperative, with postage prepaid. The failure of any member to receive notice of any annual or special meeting of the members shall not invalidate any action which may be taken by the members at any such meeting.

#### **Section 5. Quorum.**

A quorum is defined as not less than the total of 3% of the entire membership (of record on the date of the meeting) either present at a meeting or voting by mail or by electronic means or any combination thereof. Business may not be transacted or voted on at any meeting of the members unless a quorum is achieved.

#### **Section 6. Voting.**

Unless otherwise provided by law, by the Articles of Incorporation, or by this Code of Regulations, each member is entitled to one vote upon each matter submitted to a vote of the members, provided the matter has been included in the notice detailing the business to be transacted or voted upon as provided in Section 4.

The means of voting shall include a vote in person, a vote by mail, or a vote by electronic means, according to the instructions accompanying the ballot, which shall govern the validity of the votes. A spouse of a member not present may vote on behalf of such member, but a member may not assign the vote nor shall voting by proxy be allowed. If the member is a firm, association, corporation, partnership, body politic, or subdivision, the vote shall be cast by a duly authorized representative.

All questions shall be decided by a majority of the members voting thereon (unless otherwise provided in this Code of Regulations), except for the approval of previous meeting minutes, which shall be decided by a majority of the members in attendance at the meeting where the approval is being sought.

The Chair of the Board of Trustees shall appoint three inspectors, who shall verify the votes upon each matter submitted to a vote of members and shall determine the results. The certificate of any vote, made by the inspectors, shall be *prima facie* evidence of the vote thereof. If the right of any person to vote shall be challenged, then the inspectors, in consultation with the Cooperative's attorney, shall make the final determination of such right.

#### **Section 7. Order of Business.**

The order of business at the annual meeting of the members and, so far as possible, at all other meetings of the members, shall include the following matters with the order to be determined by the Board or the chairman of such meeting:

- (A) Reading of the notice of the meeting and proof of the mailing thereof, or the waiver or waivers of notice of the meeting, as the case may be;
- (B) Approval of unapproved minutes of previous meetings of the members and the taking of necessary action thereon;
- (C) Report on the election of Board members;
- (D) Presentation and consideration of reports of officers, Board members and committees;
- (E) Unfinished business;
- (F) New business; and
- (G) Adjournment.

### **ARTICLE IV - BOARD OF TRUSTEES**

#### **Section 1. General Powers.**



The entire business and affairs of the Cooperative shall be managed by a Board of Trustees (Board) which shall exercise all the powers of the Cooperative, including the power and authority to determine the Cooperative's rates, charges, tariffs, and other terms and conditions of service and to make such changes therein as the Board deems to be advisable, except such powers as are by law, the Articles of Incorporation or this Code of Regulations conferred upon or reserved to the members.

## **Section 2. Districts and Tenure of Office.**

The Board shall divide the area served by the Cooperative into nine districts that in the Board's opinion give equitable representation to the geographic areas served by the Cooperative. The Board shall have the power to change the boundaries of such districts whenever in its opinion the equitable representation of the geographic areas served by the Cooperative requires such a change.

There shall be a total of nine Board members, with each of the nine districts represented by one Board member. Three Board members, each of whom shall reside in and represent a separate one of the nine districts, shall be elected each year by and from the members to serve for a term of three years or until their successors shall have been elected and shall have qualified, which term shall commence at the conclusion of the annual members' meeting in the year in which such election occurs. In annual elections thereafter, the same rotation among the districts shall be adhered to.

A member shall vote in the district in which such member resides. If a member lives outside the service area of the Cooperative, such member shall vote in the district in which such member's account is located unless such member has accounts in more than one district, in which case such member shall designate the district with which such member wishes to vote in the nomination and election of trustees.

## **Section 3. Qualifications.**

No person shall be eligible to become or remain a member of the Board who:

- (A) Is not a bona fide member; or
- (B) Has not been a member of the Cooperative for at least three (3) most recent prior years; or
- (C) Has been convicted of, is pleading, or has pled guilty to a felony; or
- (D) Is not the designated representative of a firm, association, corporation, partnership, body politic or subdivision thereof which is a bona fide member; or
- (E) Is not a bona fide resident in the particular district within the service area of the Cooperative which such member is to represent; or
- (F) Is in any way employed by, has been an employee within the previous five (5) years, or who has a controlling financial interest in a business that sells or provides a material amount of commodities, products or services to the Cooperative or any subsidiary of the Cooperative.

Nothing contained in this section shall affect in any manner whatsoever the validity of any action taken by the Board.

## **Section 4. Nominations.**

Board members shall be nominated by a procedure commencing with a mailing from the Secretary or directed representative to each member within a district for which a Board member is to be elected not less than eighty days nor more than one-hundred days prior to the annual meeting of the members. Each mailing shall contain a nominating ballot on which the member receiving such ballot may nominate for the position any member of the Cooperative, or the designated representative of a firm, association, corporation, partnership, body politic, or subdivision thereof which is a member of the Cooperative, residing within such member's district. The nominating ballot when completed shall be returned by mail or by electronic means to the Secretary at the office of the Cooperative or directed destination and postmarked not later than fifteen days after the date the ballots were mailed to the members. The Secretary, with the assistance of a committee consisting of two other members appointed by the Board, shall verify the ballots and declare the nominees from that district to be the three members receiving the highest number of votes who also signify their willingness to serve if elected. In case of a tie vote, the nomination



shall be decided by flipping a coin, drawing names from a hat or other similar procedure. If a nominee, the Secretary shall be replaced on the committee by another Board member who is appointed by the Board but is not a nominee.

#### **Section 5. Election.**

A ballot shall be prepared by the Secretary or directed representative and mailed at least thirty days prior to the annual meeting of members to each member in the district in which nominations have been held. The ballot shall list the three nominees who have signified their willingness to serve if elected. The ballot when voted shall be returned by mail or by electronic means to the Secretary at the office of the Cooperative or directed destination and postmarked at least fifteen days prior to the annual meeting of members. The same committee which handled the verification of the nominating ballots shall verify the ballots for the election of Board members and shall thereby determine the successful candidates. In case of a tie vote, the election shall be decided by flipping a coin, drawing names from a hat or other similar procedure. The results of the election shall be announced by the Secretary, at the annual meeting of members. If a nominee, the Secretary shall be replaced on the committee by another Board member who is appointed by the Board but is not a nominee.

#### **Section 6. Removal of Board Members.**

Any member may bring specific charges of malfeasance, misfeasance or nonfeasance in office against a Board member and, by filing with the Secretary in writing a petition with a detailed description of each charge and the evidentiary basis therefor signed by at least ten per centum of the members, may request the removal of such Board member by reason thereof. If more than one Board member is sought to be removed, individual charges against each such Board member and the evidentiary basis for each such charge shall be specified. For purposes of this ARTICLE "malfeasance, misfeasance, or nonfeasance" means an act or omission amounting to gross negligence, fraud, or criminal conduct, which has a material adverse effect on the business and affairs of the Cooperative. At the next annual or special meeting of the members occurring not less than forty-five days after the filing of such charges, the member bringing the charges against the Board member shall have an opportunity to be heard in person or by counsel and to present evidence in support of the charges; and the Board member shall have the opportunity to be heard in person or by counsel and to present evidence in response to the charges. No Board member shall be removed from office unless the specific charges against such Board member are supported by clear and convincing evidence. The question of the removal of such Board member shall be considered and voted upon at the meeting of members. The removal of no more than two Board members may be considered or voted upon at any meeting of members.

A Board member may be removed from the Board by the affirmative vote of a majority of the remaining Board members if such Board member:

- (A) Fails to attend four regular meetings within a calendar year or three consecutive regular meetings of the Board (unless excused); or
- (B) Is convicted of or pleads guilty or no contest to a felony or criminal offense involving theft, dishonesty, or moral turpitude.

#### **Section 7. Vacancies.**

Any vacancy occurring in the Board shall be filled by the affirmative vote of a majority of the remaining Board members for the unexpired portion of the term and until a successor shall have been elected and shall have qualified. The vacancy shall be filled by the appointment of a member residing in the district in which the vacancy occurs.

#### **Section 8. Compensation.**

Members of the Board shall not receive any salary for their services as such; however, the Board may by resolution provide a reasonable compensation to be paid to each Board member for services rendered on behalf of the Cooperative as a Board member, such as attendance at meetings, conferences and training programs or performing committee assignments. The Board may also authorize reimbursement of Board members for expenses actually and necessarily incurred in carrying out such Cooperative business or grant a reasonable per diem allowance in lieu of detailed accounting for such expenses. A Board member may also receive compensation for services rendered as an officer of the Cooperative, but no Board member shall receive compensation for serving the Cooperative in any



other capacity, except in an emergency. No close relative of a Board member shall receive compensation for serving the Cooperative, except in an emergency. As used in this section, "close relative" means the relationships of father, mother, brother, sister, son, and daughter existing by reason of blood, marriage or adoption.

**Section 9. Regular Meetings.**

A regular meeting of the Board normally shall be held monthly at such time and place, either within or without the State of Ohio, as designated by the Board. Such regular monthly meeting may be held without notice other than such resolution fixing the time and place thereof.

**Section 10. Special Meetings.**

Special meetings of the Board may be called by the Chair or by any three Board members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. The Chair or Board members calling the meeting shall fix the time and place, either within or without the State of Ohio, for the holding of the meeting.

**Section 11. Notice of Special Board Meetings.**

Written notice of the time, place, and purpose of any special meeting of the Board shall be delivered to each Board member either personally or by mail or by electronic means, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the Chair or the Board members calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in, the United States mail addressed to the Board member at such Board member's address as it appears on the records of the Cooperative, with postage thereon prepaid, at least three days before the date set for the meeting.

**Section 12. Waiver of Notice.**

Notice of the time, place, and purposes of any meeting of the Board may be waived in writing either before or after the holding of the meeting. The attendance of any Board member at any meeting (or participation at a meeting held through the use of telephone or other communications equipment) without protesting the lack of proper notice prior to or at the commencement of the meeting shall be deemed to be a waiver by the Board member of notice of the meeting.

**Section 13. Quorum.**

A majority of the Board shall constitute a quorum, provided, that if less than such majority of the Board is present at said meeting, a majority of the Board present may adjourn the meeting from time to time, and provided further, that the Secretary shall notify any absent Board members of the time and place of such adjourned meeting. The act of a majority of the Board members present at a meeting at which a quorum is present shall be the act of the Board, except as otherwise provided in this Code of Regulations.

**Section 14. Action of Board Members Without a Meeting.**

Any action which may be authorized or taken at a meeting of the Board may be authorized or taken without a meeting in a writing or writings signed by all of the members of the Board.

**ARTICLE V - OFFICERS**

**Section 1. Number.**

The officers of the Cooperative shall be a Chair, Vice Chair, Secretary, Treasurer, President and such other officers as may be determined by the Board from time to time. The offices of Secretary and Treasurer may be held by the same person.



**Section 2. Election and Term of Office.**

Each officer, except the President and any officer appointed pursuant to Section 3 of this ARTICLE V, shall be elected by ballot annually by and from the Board at the first meeting of the Board held after the annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently possible. Each officer shall hold office until the first meeting of the Board following the next succeeding annual meeting of the members or until his successor shall have been elected and shall have qualified, subject to the provisions of this Code of Regulations with respect to the removal of officers. The President/Chief Executive Officer (CEO) shall be chosen and employed and compensation shall be set by the Board.

**Section 3. Additional Officers.**

In addition to the officers specified in Section 1 of this ARTICLE V, the Board, in its discretion, may appoint one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be deemed necessary or desirable who shall have such duties and authority as generally pertains to their respective offices and such as, may be prescribed by the Board, and who shall hold office for such period as may be prescribed by the Board.

**Section 4. Removal of Officers and Agents by the Board.**

Any officer elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Cooperative will be served thereby. Notwithstanding any other provisions of this Code of Regulations the Board may, in its discretion, authorize a written employment agreement between the Cooperative and the President/CEO containing terms and conditions of employment.

**Section 5. Resignations.**

Any officer may resign at any time by giving written notice to the Board, or to the Chair or to the Secretary of the Cooperative. Any such resignation shall take effect at the time specified therein and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Vacancies.**

A vacancy in any office, except that of President/CEO, may be filled by the Board for the unexpired portion of the term. In the event of a vacancy in the office of President/CEO, the Board shall choose and employ a President/CEO upon terms and conditions which the Board considers to be in the best interests of the Cooperative.

**Section 7. Chair.**

The Chair shall:

- (A) Be the principal officer of the Cooperative and, unless otherwise determined by the members or the Board, shall preside at all meetings of the members and the Board;
- (B) On behalf of the Cooperative, subject to the direction and instruction of the Board, sign any deeds, mortgages, deeds of trust, notes, bonds, financing statements, security agreements, contracts or other instruments, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by this Code of Regulations to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed; and
- (C) In general perform all duties incident to the office of Chair and such other duties as may be prescribed by the Board from time to time.

**Section 8. Vice Chair.**

In the absence of the Chair, or in the event of his inability or refusal to act, the Vice Chair shall perform the duties of the Chair, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chair. The Vice Chair shall also perform such other duties as from time to time may be assigned by the Board or by the Chair.



**Section 9. Secretary.**

The Secretary shall be responsible for:

- (A) Keeping the minutes of the meetings of the members and of the Board in books provided for that purpose;
- (B) Seeing that all notices are duly given in accordance with this Code of Regulations or as required by law;
- (C) The safekeeping of the corporate books and records and the seal of the Cooperative in accordance with the provisions of this Code of Regulations;
- (D) Keeping on file at all times a complete copy of the Articles of Incorporation and Code of Regulations of the Cooperative containing all amendments thereto (which copy shall always be open to the inspection of any member) and at the expense of the Cooperative, furnishing a copy of the Code of Regulations and of all amendments thereto to any member upon request; and
- (E) In general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Board.

**Section 10. Assistant Secretary.**

The Assistant Secretary, if one is appointed by the Board pursuant to Section 3 of this ARTICLE V, need not be a member of the Board and shall hold office until relieved by the Board. The Assistant Secretary shall assist the Secretary in the performance of the Secretary's duties as requested by the Secretary or by the Board.

**Section 11. Treasurer.**

The Treasurer shall be responsible for:

- (A) Custody of all funds and securities of the Cooperative;
- (B) The receipt of and the issuance of receipts for all monies due and payable to the Cooperative and for the deposit of all such monies in the name of the Cooperative in such bank or banks as shall be selected in accordance with the provisions of this Code of Regulations; and
- (C) The general performance of all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board.

**Section 12. Assistant Treasurer.**

If an Assistant Treasurer is appointed by the Board pursuant to Section 3 of this ARTICLE V, such Assistant Treasurer need not be a member of the Board and shall hold office until relieved by the Board. The Assistant Treasurer shall assist the Treasurer in the performance of the Treasurer's duties as requested by the Treasurer or by the Board.

**Section 13. President/CEO.**

The President/CEO shall:

- (A) Be the Chief Executive Officer responsible for the general direction, coordination, and control of all operations in accordance with the policies adopted by the Board, subject to the direction and instruction of the Board;
- (B) Have supervision over and be responsible for the operations of the Cooperative and, in performing this duty, carry out and administer the policies adopted by the Board;
- (C) Prepare for the Board such reports and budgets as is necessary to inform the Board concerning the operation of the Cooperative;
- (D) Be responsible for the hiring and termination of employment of all other employees of the Cooperative; and
- (E) In general perform all duties incident to the office of President/CEO as Chief Executive/Operating Officer and perform such other duties as may from time to time be assigned by the Board.

**Section 14. Bonds of Officers.**



The Treasurer and any other officer or agent of the Cooperative charged with responsibility for the custody of any of its funds or property shall be bonded in such sum and with such surety as the Board shall determine. The Board in its discretion may also require any other officer, agent, or employee of the Cooperative to be bonded in such amount and with such surety as it shall determine.

**Section 15. Compensation.**

The powers, duties, and compensation of officers shall be fixed by the Board, subject to the provisions of this Code of Regulations with respect to compensation for a Board member and close relatives of a Board member.

**Section 16. Reports.**

The officers of the Cooperative may submit at each annual meeting of the members reports covering the business of the Cooperative for the previous fiscal year.

**ARTICLE VI - NONPROFIT OPERATION**

**Section 1. Interest or Dividends on Capital Prohibited.**

The Cooperative shall at all times be operated on a cooperative nonprofit basis for the mutual benefit of its patrons. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its patrons.

**Section 2. Patronage Capital in Connection with Furnishing Products, Commodities, and Services.**

In the furnishing of Products, Commodities, and Services the Cooperative's operations shall be so conducted that all patrons, members and nonmembers alike, will, through their patronage furnish capital for the Cooperative. In order to induce patronage and to assure that the Cooperative will operate on a nonprofit basis the Cooperative is obligated to account on a patronage basis to all its patrons, members and nonmembers alike, for all amounts received and receivable from the furnishing of Products, Commodities, and Services in excess of operating costs and expenses properly chargeable against the furnishing of Products, Commodities, and Services. All such amounts in excess of operating costs expenses at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the patrons' members and nonmembers alike, as capital. The Cooperative is obligated to pay all credits to a capital account for each patron all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each calendar year the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron, and the Cooperative shall within a reasonable time after the close of the calendar year notify each patron of the amount of capital so credited to his account. All such amounts credited to the capital account of any patron shall have the same status as though they had been paid to the patron in cash in pursuance of a legal obligation to do so and the patron had then furnished the Cooperative corresponding amounts for capital.

The Board may designate separate classes of capital and separate classes of capital accounts for members based on the particular type or types of Products, Commodities or Services furnished to such members. Upon such designation, the Cooperative shall separately account for such classes of capital and treat such classes of capital separately for all purposes hereunder. A particular member may have more than one such class of capital account if such member receives more than one type of Products, Commodities, and Services from the Cooperative.

All other amounts received by the Cooperative from its operations in excess of costs and expenses shall, insofar as permitted by law, be:

- (A) Used to offset any losses incurred during the current or any prior fiscal year, and
- (B) To the extent not needed for that purpose, allocated to its patrons on, a patronage basis and any amount so allocated shall be included as part of the capital credited to the accounts of patrons, as herein provided.



In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the Board shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital credited to patrons' accounts may be retired in full or in part. Any such retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Cooperative being first retired; or the Board may, at its discretion, retire capital credited on a percentage basis, or a combination of a percentage basis and the first in-first out retired basis. In the event that such percentage basis is used, the Board shall determine the percent of total capital credited to be retired without impairment to the financial condition of the Cooperative, and this same percentage figure shall then be applied to the balance of accumulated capital credited to each patron or former patron and the resulting amount shall then be paid to each patron or former patron. The Board shall have the power to adopt rules providing for the separate retirement of that portion ("supply portion") of capital credited to the accounts of patrons which corresponds to capital credited to the account of the Cooperative by an organization furnishing Products, Commodities, and Services to the Cooperative. Such rules shall:

- (A) Establish a method for determining the supply portion of capital credited to each patron for each applicable calendar year;
- (B) Provide for separate identification on the Cooperative's books of the supply portion of capital credited to the Cooperative's patrons;
- (C) Provide for appropriate notifications to patrons with respect to the supply portion of capital credited to their accounts; and
- (D) Preclude a general retirement of the supply portion of capital credited to patrons for any calendar year prior to the general retirement of other capital credited to patrons for the same year or of any capital credited to patrons for any prior calendar year.

Notwithstanding any other provision of this Code of Regulations, the Board at its discretion shall have the power at any time to retire capital of any discontinued or former patron who is no longer actively taking receipt of Products, Commodities, and Services and who shows a remaining capital credited balance of some minimum amount as may be established by the Board from time to time, and subject to such other terms and conditions the Board may establish from time to time. Any such amount of capital to be retired under this provision shall be retired regardless of the order of priority according to year in which the capital was furnished and regardless of the percentage being retired in any one year to all patrons, past or present.

Capital credited to the account of each patron shall be assignable only on the books of the Cooperative pursuant to written instruction from the assignor and only to successors in interest or successors in occupancy in all or a part of, such patron's premises served by the Cooperative unless the Board, acting under policies of general application, shall determine otherwise, except as herein otherwise provided; provided, however, that the capital credited to the account of a patron may be applied by the Cooperative toward the payment of all past due amounts owed by the patron or, if the patron is deceased, the patron's estate, to the Cooperative.

Notwithstanding any other provision of this Code of Regulations the Board at its discretion shall have the power at any time upon the death of any natural person who was a patron, if the legal representatives of such person's estate shall request in writing that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of this Code of Regulations, to retire capital credited to any such patron immediately upon such terms and conditions as the Board, acting under policies of general application, and the legal representatives of such patron's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby.

Notwithstanding any other provision of this Code of Regulations, if any patron or former patron fails to claim any cash retirement of capital credits or other payment from, the Cooperative within four years after payment of the same has been made available to such patron by notice or check mailed to such patron at the last address furnished by such patron to the Cooperative, such failure shall be and constitutes an irrevocable assignment and gift by such patron of such capital credit or other payment to the Cooperative. Failure to claim such payment within the meaning of this section shall include the failure of such patron or former patron to cash any check mailed to such patron by the Cooperative at the last address furnished by such patron to the Cooperative. The assignment and gift provided for under this section shall become effective only upon the expiration of four years from the date when such



payment was made available to such patron or former patron without claim thereof and only after the further expiration of sixty days following the giving of a notice by mail and publication that unless such, payment is claimed within said sixty day period, such gift to the Cooperative shall become effective. The notice by mail herein provided shall be one mailed by the Cooperative to such patron or former patron at the last known address and the notice by publication shall be two consecutive insertions in a newspaper circulated in the service area of the Cooperative, which may be the Cooperative newsletter. The sixty day period following the giving of such notice shall be deemed to terminate sixty days after mailing of such notice or sixty days following the last date of publication thereof, whichever is later.

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and Code of Regulations shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions.

## **ARTICLE VII - FINANCIAL TRANSACTIONS**

### **Section 1. Contracts.**

Except as otherwise provided in this Code of Regulations, the Board may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

### **Section 2. Checks, Drafts, etc.**

All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Cooperative shall be signed by such officer or officers, agent or agents, employee or employees of the Cooperative and in such manner as shall from time to time be determined by resolution of the Board.

### **Section 3. Deposits.**

All funds except petty cash of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such financial institutions as the Board may select.

### **Section 4. Fiscal Year.**

The fiscal year of the Cooperative shall begin on the first day of January of each year and shall end on the thirty-first day of December of the same year.

## **ARTICLE VIII - MISCELLANEOUS**

### **Section 1. Waiver of Notice.**

Any member or Board member may waive in writing any notice of a meeting required to be given by this Code of Regulations. The attendance of a member or Board member at any meeting shall constitute a waiver of notice of such meeting by such member or Board member, except in case a member or Board member shall attend a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

### **Section 2. Policies, Rules and Regulations.**

The Board shall have power to make and adopt such policies, rules, and regulations, not inconsistent with law, the Articles of Incorporation or this Code of Regulations, as it may deem advisable for the management, administration, and regulation of the business and affairs of the Cooperative.



### **Section 3. Accounting System and Reports.**

The Board shall cause to be established and maintained a complete accounting system. The Board shall also cause to be made by a certified public accountant a full and complete audit of the accounts, books, and financial condition of the Cooperative on an annual basis. A report of such audit shall be submitted to the members at the next following annual meeting.

## **ARTICLE IX - SEAL**

The corporate seal of the Cooperative shall have inscribed thereon the name of the Cooperative and the word "Seal." Failure to affix such seal shall not affect the validity of any instrument duly executed on behalf of the Cooperative by its authorized officers.

## **ARTICLE X - AMENDMENTS**

This Code of Regulations may be altered, amended or repealed by the members at any annual or special meeting, provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment, or repeal. Any alteration, amendment, or repeal of this Code of Regulations shall require the affirmative vote of at least two thirds (2/3) of members voting thereon.

## **ARTICLE XI - PARTIAL INVALIDITY CLAUSE**

If any article of this Code of Regulations is found to be unconstitutional or invalid, it will not affect the validity of the remaining articles.

## **ARTICLE XII - INDEMNIFICATION**

### **Section 1. Third-Party Action Indemnification.**

The Cooperative shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed civil, criminal, administrative, or investigative action, suit, or proceeding, including all appeals (other than an action, suit, or proceeding by or in the right of the Cooperative), by reason of the fact that such person is or was a trustee, officer, employee, or volunteer as defined in Section 1702.01(N) of the Ohio Revised Code "volunteer," of the Cooperative, or is or was serving at the request of the Cooperative as a trustee, director, officer, employee, or volunteer of another domestic or foreign nonprofit corporation or corporation for profit, or a partnership, joint venture trust, or other enterprise, against expenses (including attorneys' fees), judgments, decrees, fines, penalties, and amounts paid in settlement actually and reasonably incurred by such person in connection with the action, suit, or proceeding, unless it is proved by clear and convincing evidence in a court of competent jurisdiction that such person's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Cooperative or undertaken with reckless disregard for the best interests of the Cooperative and that, with respect to any criminal action or such person proceeding, such person had reasonable cause to believe that such person's conduct was unlawful; the termination of any action, suit, or proceeding by judgments order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, constitute such proof.

### **Section 2. Derivative Action Indemnification.**

Other than in connection with an action or suit in which the liability of a trustee under Section 1702.55 of the Ohio Revised Code is the only liability asserted, the Cooperative shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or, completed action or suit, including all appeals, by or in the right of the Cooperative to procure a judgment in its favor by reason of the fact that such person is or was a trustee, officer, employee, or volunteer of the Cooperative, or is or was serving at the request of the Cooperative as a



trustee, director, officer, employee, or volunteer of another domestic or foreign nonprofit corporation or corporation for profit, or a partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of the action or suit unless it is proved by clear and convincing evidence in a court of competent jurisdiction that such person's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Cooperative or undertaken with reckless disregard for the best interests of the Cooperative, except that the Cooperative shall indemnify such person to the extent the court in which the action or suit was brought determines upon application that, despite the proof but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

### **Section 3. Determinations of Indemnification Rights.**

Any indemnification under Section 1 or Section 2 of this ARTICLE XII (unless ordered by a court) shall be made by the Cooperative only as authorized in the specific case upon a determination that indemnification of the trustee, director, officer, employee, or volunteer is proper in the circumstances. The determination shall be made (a) by a majority vote of those members of the Board who, in number constitute a quorum of the Board and who also were not and are not parties to or threatened with any such action, suit, or proceeding or (b) if such a quorum is not obtainable (or even if obtainable) and a majority of disinterested members of the Board so directs, in a written opinion by independent legal counsel compensated by the Cooperative or (c) by the court in which the action, suit, or proceeding was brought.

### **Section 4. Advances of Expenses.**

Unless the action, suit, or proceeding referred to in Section 1 or Section 2 of this ARTICLE XII is one in which the liability of a trustee under Section 1702.55 of the Ohio Revised Code is the only liability asserted, expenses (including attorneys' fees) incurred by the trustee, officer, employee, or volunteer of the Cooperative in defending the action, suit, or proceeding shall be paid by the Cooperative as they are incurred, in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the trustee, officer, employee, or volunteer in which such person agrees both (a) to repay the amount if it is proved by clear and convincing evidence in a court of competent jurisdiction that such person's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Cooperative or undertaken with reckless disregard for the best interests of the Cooperative and (b) to cooperate with the Cooperative concerning the action, suit, or proceeding.

### **Section 5. Purchase of Insurance.**

The Cooperative may purchase and maintain insurance or furnish similar protection, including, but not limited to, trust funds, letters of credit, and self-insurance, for or on behalf of any person who is or was a trustee, officer, employee, agent, or volunteer of the Cooperative, or is or was serving at the request of the Cooperative as a trustee, director, officer, employee, agent, or volunteer of another domestic or foreign nonprofit corporation or corporation for profit, or a partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Cooperative would have the power to indemnify him against liability under the provisions of this ARTICLE XII or of the Ohio Nonprofit Corporation Law. Insurance may be purchased from or maintained with a person in whom the Cooperative has a financial interest.

### **Section 6. Mergers.**

Unless otherwise provided in the agreement of merger pursuant to which there is a merger into this Cooperative of a constituent corporation that, if its separate existence had continued, would have been required to indemnify Board members, directors, officers, employees, or volunteers in specified situations, any person who served as a trustee, officer, employee, or volunteer of the constituent corporation, or served at the request of the constituent corporation as a trustee, director, officer, employee, or volunteer of another domestic or foreign nonprofit corporation, or corporation for profit, or a partnership, joint venture, trust, or other enterprise, shall be entitled to indemnification by this Cooperative (as the Surviving Corporation) to the same extent such person would have been entitled to indemnification by the constituent corporation if its separate existence had continued.



**Section 7. Non-Exclusivity; Heirs.**

The indemnification provided by this ARTICLE XII shall not be deemed exclusive of, and shall be in addition to, any other rights granted to a person seeking indemnification as a matter of law or under the Articles of Incorporation, this Code of Regulations, any agreement, vote of the members of the Cooperative or the disinterested members of the Board, any insurance purchased by the Cooperative, any action by the Board to take into account amendments to the Ohio Nonprofit Corporation Law that expand the authority of the Cooperative to indemnify a trustee, director, officer, employee, or volunteer of the Cooperative, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding an office or position, and shall continue as to a person who has ceased to be a trustee, director, officer, employee, or volunteer and shall inure to the benefit of the estate and its executors, and administrators of such a person.

**Section 8. Liability of a Board Member or Officer.**

Other than in connection with an action or suit in which the liability of a trustee under Section 1702.55 of the Ohio Revised Code is the only liability asserted, a trustee or officer of the Cooperative shall be liable in damages for any action he takes or fails to take as a trustee or as an officer, as the case may be, only if it is proved, by clear and convincing evidence, in a court with jurisdiction that his act or omission was one undertaken with deliberate intent to cause injury to the Cooperative or was one undertaken with a reckless disregard for the best interests of the Cooperative.

**ARTICLES OF INCORPORATION  
of  
CONSOLIDATED ELECTRIC COOPERATIVE, INC.**

**FIRST:** The name of this Corporation shall be Consolidated Electric Cooperative, Inc.

**SECOND:** The place in the State of Ohio where its principal office is located is 5255 State Route 95, Franklin Township, Morrow County, Ohio, east of the Village of Mt. Gilead.

**THIRD:** The purposes for which this Corporation is formed are:

(1) To engage in operations as a public utility or otherwise, rendering electric, oil, natural gas, propane, and telecommunications products, commodities, franchises and services (collectively, "Products, Commodities and Services") to members and non-member patrons; to explore for, produce, generate, manufacture, purchase, acquire and accumulate such Products, Commodities and Services for and to transmit, distribute, furnish, sell and dispose of such Products, Commodities and Services to its members and non-member patrons, to wheel electric power and energy, to drill and operate wells to produce natural gas and oil, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange and mortgage plants, buildings, works, machinery, supplies, apparatus, equipment and exploration, production, transmission and distribution lines, pipelines or systems necessary, convenient or useful for carrying out and accomplishing any or all of the foregoing purposes; and without limiting the generality of the foregoing, but in amplification thereof, to acquire in whole or in part, by purchase, lease, or otherwise, other generation, transmission and distribution systems for such Products, Commodities and Services, which purpose may be effected through the acquisition of stocks or other corporate securities evidencing the ownership of real and personal property constituting such other systems, or portions thereof or through merger or consolidation;

(2) To supply Products, Commodities and Services to its members and non-member patrons without any discrimination or preference as between members and non-member patrons and to enter into and perform franchises and other contracts with political subdivisions, bodies politic, governmental agencies or instrumentalities, industrial and commercial concerns, residential



customers and others which franchises or contracts provide for the supplying of Products, Commodities and Services or otherwise rendering Products, Commodities and Services to any such concerns, customers, subdivisions, bodies, agencies, instrumentalities, or the citizens thereof;

(3) To acquire, own, hold, use, exercise and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate, encumber, subject to liens or security interests, and in any manner dispose of franchises, rights, privileges, licenses, rights of way and easements necessary, useful or appropriate to accomplish any or all of the purposes of the Corporation;

(4) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, use, convey, sell, lease as lessor, exchange, mortgage, pledge or otherwise dispose of, encumber, subject to liens or security interests, any and all real and personal property or any interest therein necessary, useful or appropriate to enable the Corporation to accomplish any or all of its purposes;

(5) To furnish under contract with any person, partnership, firm, political subdivision, body politic or governmental agency or instrumentality, corporation or association technical services, including without limitation because of enumeration, engineering, bookkeeping, auditing, construction, line and communication equipment, repair and maintenance of distribution and transmission systems, meter reading, billing, collecting, financing, and any and all other specialized management or operation services for other firms engaged in the distribution or transmission of Products, Commodities and Services;

(6) To borrow money, to make and issue bonds, notes and other evidences of indebtedness, secured or unsecured, for moneys borrowed or in payment for property acquired, or for any of the other objects or purposes of the Corporation; to secure the payment of such bonds, notes or other evidences of indebtedness by mortgages, deeds of trust, security agreements and financing statements, or by the pledge of or other lien upon, any or all of the property, rights, privileges or permits of the Corporation, wheresoever situated, acquired or to be acquired; and to receive, acquire, endorse, pledge, hypothecate, and dispose of notes and other evidences of indebtedness;

(7) To promote and develop the use of Products, Commodities and Services and to engage in area development and similar activities in order to promote and develop the use of Products, Commodities and Services offered by the Corporation;

(8) To aid in any manner permitted by law any firm or individual, corporation or association, domestic or foreign, in which the corporation may own any shares of stock, bonds, debentures, notes, evidences of indebtedness or other securities, contracts or obligations, or in which the corporation may have any other legal or equitable interest, and to do any other act permitted by law to preserve, protect, improve or enhance the value of the same or the property represented thereby; and to organize or promote or facilitate the organization of subsidiary corporations;

(9) To do and perform, for itself, its members and its non-member patrons, any and all acts and things; and to have and exercise any and all powers, as may be necessary or convenient to accomplish any or all of the foregoing purposes or as may be permitted by law.

The enumeration of the foregoing purposes shall not be held to limit or restrict in any manner the general powers of the Corporation, and the Corporation shall be authorized to exercise and enjoy all of the powers, rights and privileges, granted to or conferred upon corporations of the character of the Corporation by the laws of the State of Ohio now or hereafter in force. Each purpose enumerated above shall be deemed to be independent of all other purposes and shall not be limited or restricted by reference from any other enumerated powers. The Corporation reserves the right, at any time and from time to time, substantially to change its purposes in the manner permitted by law.

**FOURTH:** The Corporation shall at all times be operated on a cooperative, non-profit basis for the mutual benefit of its patrons as provided in the Corporation's Code of Regulations as it now relates or may hereafter be amended.



**FIFTH:** The Corporation shall not sell, mortgage, pledge, provide a security interest in, lease or otherwise dispose of or encumber all or any substantial portion of its property, assets, rights, privileges, licenses, franchises or permits, whether acquired or to be acquired, and wherever situated, or the revenues and income therefrom, or merge or consolidate with any other corporation unless such sale, mortgage, lease, other disposition, encumbrance, merger or consolidation is authorized at a meeting of the members thereof by the affirmative vote of not less than two-thirds of all of the members of the Corporation, and unless notice of such proposed sale, mortgage, lease, other disposition, encumbrance, merger or consolidation shall have been contained in the notice of the meeting; provided, however, that notwithstanding any other provision of this Article, the Board of Trustees of the Corporation, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of mortgages, deeds of trust, security agreements and financing statements or otherwise pledging, encumbering, or subjecting to a lien or security interest, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Corporation, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the Board of Trustees of the Corporation shall determine, to secure any indebtedness of the Corporation to the United States of America or any instrumentality or agency thereof or to any other bona fide lender, lending institution or investor; provided, further, however, that notwithstanding any other provisions of this Article, the Board of Trustees of the Corporation may upon the authorization of a majority of those members of the Corporation present at a meeting of the members thereof, sell, lease, or otherwise dispose of all or a substantial portion of its property to, or merge or consolidate with, another non-profit corporation which is either an electric distribution cooperative that previously was at any time a borrower from the Rural Utilities Service or the Rural Electrification Administration, or a generation and transmission cooperative whose members are electric distribution cooperatives. Any alteration, amendment or repeal of this Article shall require the affirmative vote of not less than two-thirds of all of the members of the Corporation.

**SIXTH:** The amended Articles of Incorporation shall take the place of and supersede the existing Articles of Incorporation as heretofore amended.

#### **STATEMENT OF NONDISCRIMINATION**

Consolidated Electric Cooperative, Inc., 5255 State Route 95, Mt. Gilead, OH 43338, is the recipient of Federal financial assistance from the Rural Utilities Service, an agency of the U. S. Department of Agriculture, and is subject to the provisions of Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and the rules and regulations of the U.S. Department of Agriculture which provide that no person in the United States on the basis of race, color, national origin, age or handicap shall be excluded from participation in, admission or access to, denied the benefits of, or otherwise be subjected to discrimination under any of this organization's programs or activities.

The person responsible for coordinating this organization's nondiscrimination compliance efforts is Brian Newton, President. Any individual or specific class of individuals, who feels that this organization has subjected them to discrimination may obtain further information about the statutes and regulations listed above from and/or file a written complaint with this organization; or the Secretary, U.S. Department of Agriculture, Washington, DC 20250; or the Administrator, Rural Utilities Service, Washington DC 20250. Complaints must be filed within 180 days after the alleged discrimination. Confidentiality will be maintained to the extent possible.





## THE VILLAGE OF LEXINGTON

44 West Main Street  
Lexington, Ohio 44904  
419.884.0765  
Fax 419.884.0109  
[www.villageoflexington.org](http://www.villageoflexington.org)

Brian Newton, President  
Consolidated Electric Cooperative  
5255 State Route 95  
Post Office Box 111  
Mount Gilead, Ohio 43338

Re: Electric Service to Woodside Subdivision, Lexington, Ohio

Dear Mr. Newton,

Please be informed that the Village of Lexington, Ohio, with recommendation of the developer and in accordance with Franchise Ordinance Number 04-66, dated December 20, 2004, does desire and request that Consolidated Electric Cooperative to provide electric service to the remaining undeveloped lots within the Woodside Subdivision.

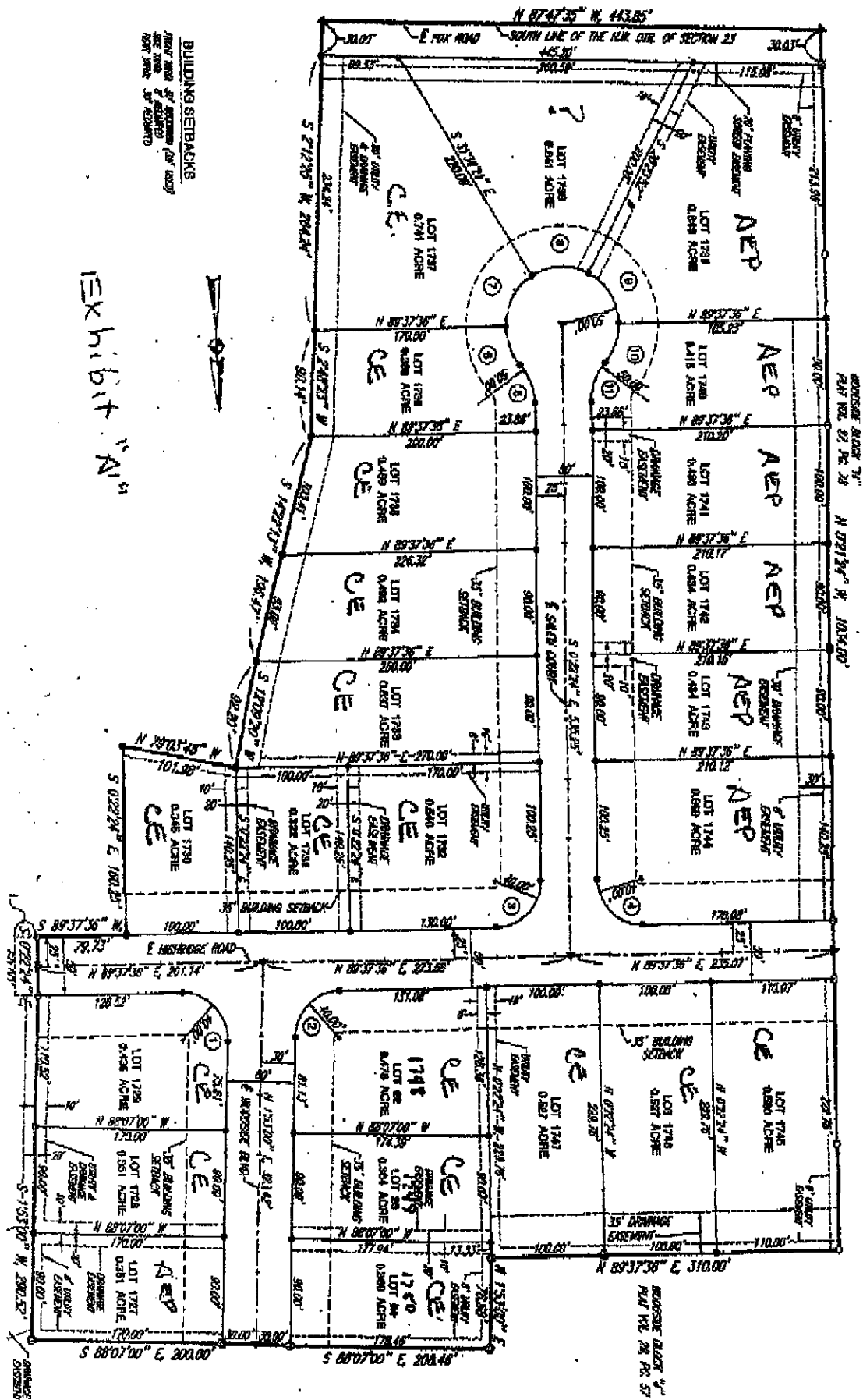
Said undeveloped lots are more fully described in Exhibit A that is attached hereto.

Sincerely,

Charles F. Pscholka  
Administrative Director  
Lexington, Ohio

enclosures







Project: NO-241NDLCTCH-OPPRTEVme241XAVTTR8.dwg, 3/2/2005 11:52:55 am

EXHIBIT "A"

PRELIMINARY



<b>WOODSIDE FUTURE PHASES</b> VILLAGE OF LEWISTON HONOLULU COUNTY, STATE OF OAHU	<b>BAILEY INVESTMENTS, INC.</b> 541 PUNAHU AVE. SUITE 200 HONOLULU, HAWAII 96813	<b>KEN</b> C.E. McArthur & Associates, Inc. 1111 KALANIANA'OLA BLVD. SUITE 200 HONOLULU, HAWAII 96813
--	--	--

No. 8286 P. 4

Mar. 2. 2004 12:34PM



Account	Sort Name	Pri	Service Address	Pri Serv	Map Loc	Mailing Address	Lot
4473101	WARD	PHILIP	E	WOODSIDE BV	00113	113 Woodside Blvd Lexington Ohio 44904	1728
4495601	MISTRETTA	MICHAEL	W	WOODSIDE BV	00121	121 Woodside Blvd Lexington Ohio 44904	1729
4588100	SORRENTI	ANGELO		WOODSIDE CT	00147	1370 Lex Ontario Rd Lexington Ohio 44903-9429-70	1734
4495700	MONASTRA	BASIL	H	WOODSIDE CT	00155	155 Woodside Ct Lexington Ohio 44904	1735
4479200	SMITH	THOMAS	R	WOODSIDE CT	00163	163 Woodside Ct Lexington Ohio 44904	1736
4587300	SORRENTI	DAVID		WOODSIDE CT	00169	1990 Kings Corner Rd East Lexington Ohio 44904-974	1737
4551801	GESOURAS	NICHOLAS		WOODSIDE CT	00176	176 Woodside Court Lexington Ohio 44904	1738



CLERK OF COUNCIL CERTIFICATE

I, Brenda J. Wilson, the duly appointed Clerk of Council of the Village of  
Lexington, Ohio do hereby certify that the attached is a true and correct copy of  
Ordinance No. 04-66, duly adopted by the Council of the Village of Lexington on  
December 20, 2004.

---

*Brenda J. Wilson*

Brenda J. Wilson  
Clerk of Council  
Village of Lexington, Ohio





ORIGINAL

ORDINANCE NO. 04 - 66

BY MR. WHITE

AN ORDINANCE GRANTING A FRANCHISE TO CONSOLIDATED ELECTRIC COOPERATIVE, ITS SUCCESSORS AND ASSIGNS, INCLUDING THE RIGHT TO ACQUIRE, CONSTRUCT, MAINTAIN, AND OPERATE IN THE STREETS, THOROUGHFARES, ALLEYS, BRIDGES, AND PUBLIC PLACES OF THE VILLAGE OF LEXINGTON, STATE OF OHIO, AND ITS SUCCESSORS, LINES FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRIC ENERGY TO THE VILLAGE OF LEXINGTON, AND THE INHABITANTS THEREOF FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES, AND FOR THE TRANSMISSION AND DISTRIBUTION OF THE SAME WITHIN, THROUGH, OR ACROSS SAID VILLAGE OF LEXINGTON, STATE OF OHIO.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LEXINGTON, STATE OF OHIO:

SECTION 1. Consolidated Electric Cooperative, its successors, and assigns (hereinafter called "Grantee") are hereby granted the right, privilege, franchise, and authority to acquire, construct, maintain, and operate in, above, under, across, and along the streets, thoroughfares, alleys, bridges, and public places (as the same now exist or may hereafter be laid out) of the Village of Lexington, State of Ohio, lines for the transmission and distribution of electric energy only, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances and appliances, including electric substations, to render public utility service in said Village and to the inhabitants thereof by supplying electric energy to said Village and the inhabitants thereof, and persons or corporations beyond the limits thereof for light, heat, power, or any other purposes or purpose for which electric energy is now or may hereafter be used, and the transmission and distribution of the same within, through, or across said Village of Lexington, State of Ohio.



SECTION 2. Said lines, appurtenances and appliances shall be constructed so as to not interfere with the traveling public in its use of the streets, thoroughfares, alleys, bridges, and public places.

SECTION 3. The rights, privileges, and franchise hereby granted shall be in force and effect for a period of twenty (20) years from the date of the passage of this Ordinance. The rights, privileges, and franchise hereby granted shall not be construed to be exclusive and the Council of the Village of Lexington hereby reserves the power to grant similar rights, privileges, and franchises to any other person or persons, firm or firms, corporation or corporations.

SECTION 4. Said Grantee shall save the Village harmless from any and all liability arising in any way from Grantee's negligence in the erection, maintenance, or operation of said lines for the distribution and transmission of electric energy.

SECTION 5. Whenever said Grantee shall begin the erection or installation of any lines or equipment, it shall comply with the provisions of Village Code 913 and/or similar chapters of the Village Code with regard to right of way excavations as that chapter now exists or is hereafter modified; promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced.

SECTION 6. Notwithstanding R.C. Chapter 4939, nothing in this grant of franchise shall be interpreted to interfere with, prevent or preclude the future ability of the Village to properly charge fees to the Grantee for the use of the Village's right of way.



SECTION 7. Wherever in this Ordinance, reference is made to the Village or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges, franchises, and obligations herein contained by or on behalf of said Village, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said Village, or of said Grantee, whether so expressed or not.

SECTION 8. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

SECTION 9. That all electric service installed under this franchise in new subdivisions shall be placed underground. All other electric service under this franchise shall be installed underground unless engineering considerations make it impracticable. Grantee shall also install underground wiring for street lights in all new subdivisions.

SECTION 10. That this Ordinance must be accepted within sixty days of its adoption by Grantee and notice of acceptance provided to the Village.

SECTION 11. That Ordinance 73-45 adopted May 21, 1973 be and the same is hereby repealed.

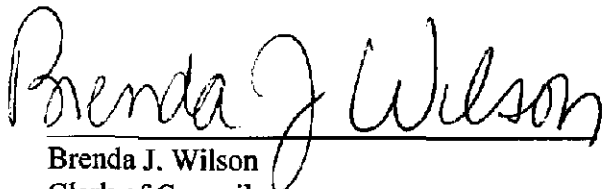
SECTION 12. That this Ordinance shall be in full force and effect from and after the earliest period allowed by law.



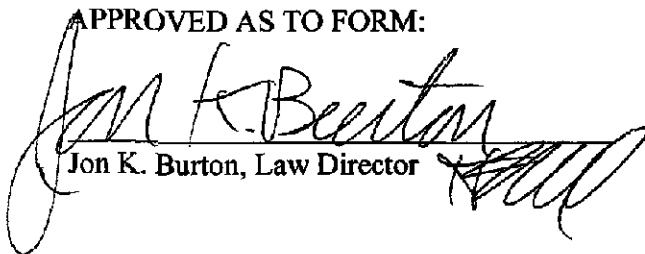
DATE: December 20, 2004

Aye 6 Nay 0 Abstain 0

  
EUGENE R. PARKISON, MAYOR

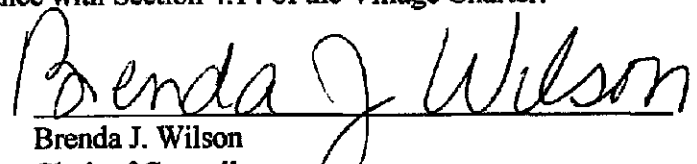
  
Brenda J. Wilson  
Clerk of Council

APPROVED AS TO FORM:

  
Jon K. Burton, Law Director

CLERK OF COUNCIL CERTIFICATE

I, Brenda J. Wilson, the duly appointed Clerk of Council of the Village of Lexington, Ohio, do hereby certify that copies of this Ordinance were duly posted for at least fifteen (15) days in at least five (5) places within this Village in accordance with Section 4.14 of the Village Charter.

  
Brenda J. Wilson  
Clerk of Council

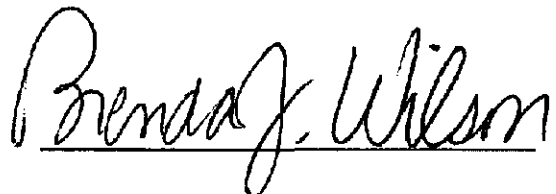


CLERK OF COUNCIL CERTIFICATE

I, Brenda J. Wilson, the duly appointed Clerk of Council of the Village of  
Lexington, Ohio do hereby certify that the attached is a true and correct copy of  
Ordinance No. 73-45, duly adopted by the Council of the Village of Lexington on

May 21, 1973

---



Brenda J. Wilson  
Clerk of Council  
Village of Lexington, Ohio





ORDINANCE NO. 73- 45

AN ORDINANCE GRANTING TO MORROW ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO ACQUIRE, CONSTRUCT, MAINTAIN AND OPERATE IN THE STREETS, THOROUGHFARES, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE VILLAGE OF LEXINGTON, STATE OF OHIO, AND ITS SUCCESSORS, LINES FOR THE DISTRIBUTION OF ELECTRIC ENERGY TO CERTAIN PARTS OF THE VILLAGE OF LEXINGTON AND THE INHABITANTS THEREOF FOR LIGHT, HEAT, POWER AND OTHER PURPOSES AND FOR THE TRANSMISSION OF THE SAME WITHIN, THROUGH OR ACROSS SAID VILLAGE OF LEXINGTON, STATE OF OHIO

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LEXINGTON, OHIO:

SECTION 1. That Morrow Electric Cooperative, Inc., its successors and assigns (hereinafter called "Grantee") are hereby granted the right, privilege, franchise and authority to acquire, construct, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, bridges, and public places (as the same now exist or may hereafter be laid out) of the Village of Lexington, State of Ohio, and its successors (hereinafter called "Village"), lines for the distribution of electric power and/or energy, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances to render public utility service in the Village and to the inhabitants thereof by supplying electric power and/or energy to the Village and to the inhabitants thereof, and persons or corporations beyond the limits thereof, for light, heat, power or any other purposes or purpose for which electric power and/or energy is now or may hereafter be used, and the transmission of the same within, through or across the Village; provided, however, that Grantee shall provide electric service hereunder only within: 1) The area or areas of the Village presently being developed and other such areas as may be developed in the future all within areas where the Cooperative may provide adequate service when requested and without crossing lines of other utilities which are in service



at the date of this request, April 2, 1973. 2) Any other area or areas annexed to the Village after the date of this Ordinance any portion of which is either being provided electric service by Grantee at the time of such annexation, or which at the date of this Ordinance is closer to the facilities of Grantee than to those of any other electric supplier.

SECTION 2. That said lines and appurtenances shall be constructed so as to interfere as little as possible with the traveling public in its use of the streets, thoroughfares, alleys, bridges and public places. The location of all poles, or conduits, shall be made under the supervision of the proper board or committee of the Village government.

SECTION 3. That the rights, privileges and franchise hereby granted shall be in force and effect for a period of fifty (50) years from the date of the passage of this Ordinance.

That the rights, privileges and franchise hereby granted shall not be construed to be exclusive and the Council of the Village hereby reserves the power to grant similar rights, privileges and franchises to any other person or persons, firm or firms, corporation or corporations.

SECTION 4. That said Grantee shall save the Village harmless from any and all liability arising in any way from negligence in the erection, maintenance or operation of said lines for the distribution of electric power and/or energy.

SECTION 5. That whenever said Grantee shall begin the erection of any lines or equipment it shall promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced.

SECTION 6. That wherever in this Ordinance, reference



is made to the Village or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges and obligations herein contained by or on behalf of said Village, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said Village, or of said Grantee, whether so expressed or not.

SECTION 7. That this Ordinance shall be accepted by the Grantee within sixty (60) days from the date of the passage of the same, and shall be in full force and effect from and after the earliest period allowed by law.

Passed: 5,21,73

Allen M. Cook  
Mayor

ATTEST:

John Enterline  
Clerk-Treasurer

APPROVED AS TO FORM:

Henry Miller  
Village Solicitor

This Ordinance posted pursuant to O.R.C. 731.24 by \_\_\_\_\_

\_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_

and removed on \_\_\_\_\_.

John Enterline  
Clerk-Treasurer





**Consolidated Electric  
Cooperative, Inc.**

Your Touchstone Energy® Partner 

Corporate Office:  
5255 St. Rt. 95  
P. O. Box 111  
Mount Gilead OH 43338-0111  
Ph: (419) 947-3055

District Office:  
680 Sunbury Road  
P. O. Box 630  
Delaware OH 43015-0630  
Ph: (740) 363-2641

Web Site: [www.conelec.com](http://www.conelec.com)

E-mail: [service@conelec.com](mailto:service@conelec.com)

Phone: (800) 421-5863

Fax: (419) 947-3082

December 22, 2004

To: The Honorable Eugene R. Parkinson  
Subject: Acceptance of Ordinance 04-66

Dear Mayor Parkinson,

Please extend my appreciation to the Council for approving our franchise agreement and I personally would like to thank you for all your assistance and support in our efforts. We look forward to forming a strong relationship with you and with the Village as we work together to serve the electrical needs of the residents of Lexington.

As you are aware, Consolidated Electric Cooperative is a non-profit entity that focuses on the members we serve and the level of service we offer, rather than focusing on bottom line returns for outside investors. Much like the Village and its relationship with residents, our customers are our member-owners and their needs and service come first. We appreciate the opportunity to serve within the Village and the day when village residents will receive electrical service from Consolidated Electric Cooperative.

In accordance to Section 10, of Ordinance 04-66, Non-exclusive Franchise Agreement with the Village of Lexington, Consolidated Electric Cooperative, as Grantee, hereby accepts Ordinance 04-66 as approved December 20, 2004.

Sincerely,



Brian Newton  
President



CLERK OF COUNCIL CERTIFICATE

I, Brenda J. Wilson, the duly appointed Clerk of Council of the Village of  
Lexington, Ohio do hereby certify that the attached is a true and correct copy of  
the Village of Lexington's Charter, duly adopted by the voters of Lexington, Ohio

November 2, 1976.

---

*Brenda J. Wilson*

Brenda J. Wilson  
Clerk of Council  
Village of Lexington, Ohio





## **CHARTER OF THE MUNICIPALITY OF LEXINGTON, OHIO**

EDITOR'S NOTE: The Lexington Charter was approved by the voters on November 2, 1976. Dates appearing in parentheses following a section heading indicate that the section was subsequently amended, enacted or repealed on the date given.

### **Preamble**

### **Article I: Name; Boundaries; Form of Government**

- 1.01 Name and boundary.
- 1.02 Form of government.

### **Article II: Corporate Powers**

- 2.01 Powers granted.
- 2.02 Exercise of powers.
- 2.03 Construction of powers.
- 2.04 Intergovernmental cooperation.

### **Article III: Council**

- 3.01 Powers of Council.
- 3.02 Number, term, and qualifications.
- 3.03 Council organization and rules.
- 3.04 President Pro Tempore.
- 3.05 Clerk of Council.
- 3.06 Council meetings.
- 3.07 Salaries of elected officials.
- 3.08 Council vacancies.

### **Article IV: Legislative Procedure**

- 4.01 Form of action by Council.
- 4.02 Introduction of ordinances and resolutions.
- 4.03 Form of ordinances and resolutions.
- 4.04 Reading ordinances and resolutions. (11-8-83)
- 4.05 Vote required for passage.
- 4.06 Content of emergency legislation.
- 4.07 Effective date of legislation.
- 4.08 Authentication.
- 4.09 Recording legislation.
- 4.10 Amendment of ordinances and resolutions. (11-8-83)
- 4.11 Zoning measure. (11-3-83)
- 4.12 Adoption of codes by reference.
- 4.13 Codification of ordinances and resolutions.
- 4.14 Publication of ordinances and resolutions.

### **Article V: The Mayor**

- 5.01 Election, term and qualifications.
- 5.02 Powers and duties.
- 5.03 Vacancy, temporary absence or disability.



**Article VI: Administrative Departments**

- 6.01 Administrative Director. (11-2-99)
- 6.02 Law Department.
- 6.03 Finance Department.
- 6.04 Police Department. (11-7-95)
- 6.05 Fire Department.
- 6.06 Municipal Engineer.
- 6.07 Other administrative departments.
- 6.08 Acting department heads.

**Article VII: Boards and Commissions**

- 7.01 Planning Commission. (11-5-85; 11-4-86)
- 7.02 (Reserved).
- 7.03 Civil Service. (11-8-83)
- 7.04 Park and Recreation Board. (11-5-85; 11-4-03)
- 7.05 Charter Review Commission. (11-2-82; 11-2-93)
- 7.06 Deposit and Investment Board.
- 7.07 Income Tax Board of Review.
- 7.08 Cemetery Board.
- 7.09 Other boards and commissions.
- 7.10 Organization - vacancies.
- 7.11 Transition to Charter form.

**Article VIII: Nominations, Elections, Initiative, Referendum and Recall**

- 8.01 Nominations and elections.
- 8.02 Initiative and referendum.
- 8.03 Recall.

**Article IX: Finance, Taxation and Debt**

- 9.01 General.
- 9.02 Purchasing procedure. (11-7-89; 11-4-03)

**Article X: General Provisions**

- 10.01 Conflicts of interest, ethics, campaign financing.
- 10.02 Removal of elected officials, members of boards and commissions.
- 10.03 Succession.
- 10.04 Effect of Charter on existing laws and rights.
- 10.05 Retirement systems.
- 10.06 Amendment or repeal of Charter.
- 10.07 Effect of partial invalidity.

**Article XI: Transitional Provisions**

- 11.01 Effective date of Charter.
- 11.02 Continuance of present officials - abolition of offices.
- 11.03 Continuance of present employees.



**CHARTER OF THE MUNICIPALITY OF  
LEXINGTON, OHIO**

**PREAMBLE**

In order that we may have the benefits of municipal home rule and exercise all of the powers of local self-government conferred under the Constitution and Statutes of the State of Ohio, We, the citizens of the Municipality of Lexington, in the County of Richland and State of Ohio, do hereby adopt this Charter for our municipality.

**ARTICLE I  
NAME; BOUNDARIES; FORM OF GOVERNMENT**

**SECTION 1.01. NAME AND BOUNDARY.**

The municipal corporation existing as the Village of Lexington under the general statutes of the State of Ohio shall continue to be a body politic and corporate under the same name under this Charter. The municipality shall have the same boundaries that exist on the effective date of this Charter, with power and authority to change its boundaries and annex territory in the manner authorized by the laws of Ohio.

**SECTION 1.02. FORM OF GOVERNMENT.**

The municipal government provided for by this Charter shall be known as the "Mayor-Council-Administrative Director Plan."

**ARTICLE II  
CORPORATE POWERS**

**SECTION 2.01. POWERS GRANTED.**

The municipality shall have all the powers that may now or hereafter lawfully be possessed or exercised by municipal corporations under the Constitution and laws of Ohio. Title to all real property shall be taken in the name of the municipality.

**SECTION 2.02. EXERCISE OF POWERS.**

All powers shall be exercised in the manner prescribed in this Charter, or if not so prescribed, in the manner provided by ordinance or resolution of Council. When not prescribed in this Charter or by ordinance or resolution, then the powers shall be exercised in the manner provided by the laws of Ohio until Council provides a different manner of exercising powers.



**SECTION 2.03. CONSTRUCTION OF POWERS.**

The powers of the municipality under this Charter shall be construed liberally in favor of the municipality, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general powers stated in this Article.

**SECTION 2.04. INTERGOVERNMENTAL COOPERATION.**

(A) In carrying out any lawful function or power of the municipality, the Council, may, by a majority vote of its members, authorize the execution of contracts or in any other manner provide for cooperation or joint action, between the municipality and:

- (1) Political subdivisions, special districts, instrumentalities, or other units of government of the State of Ohio or other states.
- (2) The State of Ohio, its officers, departments, divisions, instrumentalities or other units or agencies.
- (3) Other states, their officers, departments, divisions, instrumentalities or other units or agencies.
- (4) The federal government, its officers, departments, divisions, instrumentalities or other units or agencies.
- (5) Councils of governments or other instrumentalities consisting of other political subdivisions, special districts, instrumentalities or other governmental units or agencies allowed under the laws of Ohio, other states or the federal government.
- (6) Persons, corporations whether for profit or nonprofit, firms and other entities; unless such contracts, cooperation or joint actions are prohibited by the Constitution of the State of Ohio.

(B) The powers granted by this section shall be liberally construed to authorize intergovernmental cooperation, but shall not authorize the avoidance of the provisions of this Charter concerning taxation or initiative or referendum.

**ARTICLE III  
COUNCIL****SECTION 3.01. POWERS OF COUNCIL.**

All legislative power of the municipality shall be vested in the Council, except as otherwise provided by this Charter and the Constitution of the State of Ohio. Without limitation of the foregoing, the Council shall have and possess the following powers:

- (1) The power to levy taxes and incur debts subject to the limitations imposed thereon by this Charter.
- (2) The power to adopt and to provide for the enforcement of local police, sanitary and other similar regulations as are not in conflict with general laws.
- (3) The power to provide for the exercise of all powers of local self-government granted to the municipality by the Constitution of the State of Ohio in a manner not inconsistent with this Charter or the Constitution of the State of Ohio.



- (4) The power to fix the number of officers and employees in the various offices, departments, divisions, bureaus, boards, and commissions of the municipality and to fix the rate of their compensation, hours of work, and to provide such other fringe benefits and conditions of employment as deemed proper by the Council.
- (5) The power to require such bonds as in the opinion of the Council are necessary for the faithful discharge of the duties of the officers and employees of the municipality. The premium for said bonds shall be paid by the municipality.
- (6) The power to create, combine, change and abolish other offices, departments, divisions, bureaus, boards, and commissions. The power herein expressed in this sub-section shall be exercised by ordinance or resolution. The Council shall not abolish any office created by this Charter nor shall the Council abolish, merge, or combine the divisions of police and fire into one administrative unit.
- (7) The power to establish, by ordinance or resolution, the rates or charges made of consumers of all municipal utilities and services.
- (8) The power to acquire and to sell or otherwise convey interests in real property; and to lease, as lessor or lessee, or otherwise grant or receive interests in real property.
- (9) The power to provide for an independent audit of the accounts and records of the municipality, which may be in addition to audits by state offices and agencies as may be required under the general laws of Ohio.
- (10) To exercise all other powers granted to the Council by this Charter and by the Constitution and laws of the State of Ohio.

#### **SECTION 3.02. NUMBER, TERM, AND QUALIFICATIONS.**

(A) The Council shall consist of seven members to be elected from the municipality at large, to serve overlapping four (4) year terms of office. Members of Council shall take office on the first day of January of the year following their election.

(B) The two (2) persons elected as members of the Council at the election held in November, 1975, or any successor thereto, under the general statutory plan of government for villages shall be members of the Council under this Charter until January 1, 1980, and they shall exercise all powers, duties and functions of Council members under this Charter. At the regular municipal election to be held in 1977 four (4) members of Council shall be elected for four (4) year terms of office and one (1) member of Council shall be elected for a two (2) year term of office. At the regular municipal election to be held in 1979 three (3) members of Council shall be elected for four (4) year terms of office.

(C) Members of Council shall have been qualified electors of the municipality for at least eighteen (18) months prior to taking office and during their term of office. Except as otherwise provided under this Charter or the general laws of Ohio, members of Council shall not hold any other public office with any other unit of government; except office in a political party, notary public, service in the national guard or the armed forces of the United States. Members of Council may be officers or members in a volunteer fire department, but they may receive no additional compensation for service in the department. Except as authorized under this Charter or the general laws of Ohio, no member of Council shall hold any other office or employment with the municipality during the term for which he was elected to the Council, and no former Council member shall hold any compensated appointive office or employment with the municipality until one year after the expiration of the term for which he was elected or appointed to the Council.



**SECTION 3.03. COUNCIL ORGANIZATION AND RULES.**

The Council shall be a continuing body, but shall meet in the Council Chamber at its first meeting in January of each year for the purpose of organization. Council shall adopt, by majority vote of its members, its own rules which shall not conflict with this Charter and which shall remain in effect until amended, changed or repealed by a majority vote of the members of Council. The rules shall go into immediate effect unless a later date is specified, and shall not be subject to initiative or referendum. The rules of Council shall provide: for the number, composition and manner of appointment of committees of Council; and such other matters as Council shall determine to be necessary for the proper functioning and government of Council.

**SECTION 3.04. PRESIDENT PRO TEMPORE.**

At each organizational meeting of the Council in January of each year, the Council shall elect by a majority vote of its members and from among its membership a person to serve as President Pro Tempore of the Council, to serve until the next organizational meeting of the Council. The President Pro Tempore of the Council shall have the powers, duties, and functions as provided in Section 5.03 of this Charter, and such other powers, duties and functions as may be provided by the rules of Council or by ordinance or resolution.

**SECTION 3.05. CLERK OF COUNCIL.**

The Council shall appoint, by a majority vote of its members, a person to serve as the Clerk of Council. The Clerk of Council shall serve at the pleasure of the Council and may be removed without cause by a majority vote of the members of Council. The Clerk of Council may hold other office or position of employment in the municipality. The Clerk of Council shall have those powers, duties and functions as are provided in this Charter, by the rules of Council or by ordinance or resolution. Included in the duties of the Clerk of Council shall be the maintenance of a record of proceedings of the Council and a record of all ordinances and resolutions adopted by the Council. The Clerk of Council shall give notice of regular and special meetings of the Council to its members and to the public as may be provided by this Charter, the rules of Council or by ordinance or resolution. The Clerk of Council shall be subject to the supervision and control of the officers of the Council.

**SECTION 3.06. COUNCIL MEETINGS.**

(A) The Council shall determine, by a majority vote of its members, the frequency, dates and times of regular meetings in order to properly conduct its business, but it shall hold at least one regular meeting in each month.

(B) Special meetings of the Council may be called, for any purpose, by the Mayor or any three (3) members of Council upon at least twenty-four (24) hours notice to the Mayor and each member of the Council, which notice may be served personally or left at the usual place of residence. Members of the Council and the Mayor who attend special meetings of the Council or who are present at another regular or special meeting where a special meeting is announced by the presiding officer need not receive notice of the special meeting.



(C) Any regular or special meeting of the Council may be adjourned or recessed to another time, date or place without giving the notice required in division (B) of this section.

(D) All meetings of the Council and of other Boards and Commissions of the municipality shall be held in accordance with the general laws of Ohio pertaining to requirements for open meetings of public bodies. In the event the Courts of Ohio having jurisdiction within the municipality shall determine the general laws pertaining to requirements for open meetings of public bodies do not apply to municipal corporations that have adopted a Charter under Article XVIII of the Constitution of Ohio, then the Council shall determine the requirements for open meetings of the Council and other Boards and Commissions of the municipality by ordinance or resolution.

#### **SECTION 3.07. SALARIES OF ELECTED OFFICIALS.**

The salaries of all elected officials of the municipality shall be established by Council by ordinance or resolution to be adopted no later than July 1, of each odd numbered year commencing in the year 1979. The salaries so established shall be effective for a two (2) year period beginning January 1 of the year immediately following the adoption of the ordinance or resolution establishing them and shall apply to all elected officials whether they are beginning their terms or are in mid-term. In the event Council shall fail to establish salaries as required in this section, the salaries in effect for the prior two (2) year period shall remain in effect until changed in accordance with this section. The initial salary of elected officials under this Charter shall be that salary established for each office and in effect on January 1, 1978 and if none have been established the Council first serving under this Charter shall establish such salaries within ninety (90) days.

#### **SECTION 3.08. COUNCIL VACANCIES.**

(A) A vacancy in the Council shall be filled by a majority vote of the remaining members of the Council. If the vacancy occurs subsequent to seven (7) days before the date when candidates for the office of Council member must file their nominating petitions or if two (2) years or less remain in the term of the incumbent who created the vacancy, the person elected by the Council shall serve for the unexpired term. If the vacancy occurs at least seven (7) days prior to the date when candidates for the office of Council member must file their nominating petitions and more than two (2) years remain in the term of the incumbent who created the vacancy, the person elected by the Council shall serve until a successor is elected at the next regular municipal election for the remainder of the unexpired term. The person elected for the unexpired term at the next regular municipal election shall take office on the first day of January following his election.

(B) If the Council shall fail to elect a person to fill a vacancy in the Council under division (A) of this section within thirty (30) days after the occurrence of the vacancy, its power to do so shall lapse and the Mayor shall appoint a person to serve for the time as provided in division (A) of this section.

### **ARTICLE IV LEGISLATIVE PROCEDURE**

#### **SECTION 4.01. FORM OF ACTION BY COUNCIL.**

Action of Council shall be by ordinance, resolution or motion. Motion shall be used to conduct the business of Council, in procedural matters, for elections conducted among Council members and as otherwise provided in this Charter. All other action shall be taken by ordinance or resolution. No action of Council shall be invalidated merely because the form thereof fails to



comply with the provisions of this section.

**SECTION 4.02. INTRODUCTION OF ORDINANCES AND RESOLUTIONS.**

Any member of Council may introduce any ordinance or resolution, at a regular or special meeting, which shall be in written or printed form and shall contain a concise title.

**SECTION 4.03. FORM OF ORDINANCES AND RESOLUTIONS.**

(A) The form and style of ordinances and resolutions shall be determined by the rules of Council.

(B) Each ordinance or resolution shall contain only one (1) subject, which shall be expressed in its title; provided that appropriation ordinances may contain the various subjects, accounts, and amounts for which monies are appropriated, and that ordinances and resolutions which are codified or recodified are not subject to the limitation of containing one (1) subject.

**SECTION 4.04. READING ORDINANCES AND RESOLUTIONS.**

Each ordinance and resolution shall be read on two (2) separate days, unless this requirement is dispensed with by a vote of at least two-thirds (2/3) of the members of the Council. Each reading shall be by title only, unless any member of Council requests that the legislation be read in its entirety. (Amended 11-8-83)

**SECTION 4.05. VOTE REQUIRED FOR PASSAGE.**

(A) The vote on the question of passage of each ordinance, resolution and motion shall be taken by "yeas" and "nays" and entered on the journal, and none shall be passed without concurrence of a majority of the members of Council. Each emergency ordinance or resolution shall require the affirmative vote of at least two-thirds (2/3) of the members of Council for its enactment. If an emergency ordinance or resolution shall fail to receive the required two-thirds (2/3) affirmative vote, but receives the necessary majority for passage as nonemergency legislation, it shall become effective as nonemergency legislation.

(B) A majority vote shall mean at least four (4) members, and a two-thirds (2/3) vote shall mean at least five (5) members.

**SECTION 4.06 CONTENT OF EMERGENCY LEGISLATION.**

Each emergency ordinance or resolution shall determine that the ordinance or resolution is necessary for the immediate preservation of the public peace, health, safety or welfare, and shall contain a statement of the necessity for the emergency.

**SECTION 4.07. EFFECTIVE DATE OF LEGISLATION.**

(A) The following ordinances or resolutions shall take effect upon passage unless a later time is specified therein:

- (1) Appropriation of money.
- (2) An annual tax levy for current expenses.
- (3) Improvements petitioned for by owners of the requisite majority of the front footage or of the area of the property benefitted and to be assessed.
- (4) Submission of any question to the electorate or the determination to proceed with an election.
- (5) Approval of a revision, codification, recodification, rearrangement of ordinances.
- (6) Any emergency ordinance or resolution.



(B) All other ordinances and resolutions shall go into effect thirty (30) days after their passage by the Council.

#### **SECTION 4.08. AUTHENTICATION.**

Each ordinance and resolution shall be authenticated by the signature of the Mayor and the Clerk of Council. The failure or refusal to sign shall not invalidate an otherwise properly enacted ordinance or resolution.

#### **SECTION 4.09. RECORDING LEGISLATION.**

Each ordinance and resolution shall be recorded in a book or other record prescribed by Council. The Clerk of Council or a duly authorized representative of the Clerk shall, upon request of any person and upon the payment of a fee if established by Council, certify true copies of any ordinance or resolution, which copies shall be admissible as evidence in any court.

#### **SECTION 4.10. AMENDMENT OF ORDINANCES AND RESOLUTIONS.**

(A) Each ordinance or resolution, or section or sub-section thereof, that is revised or amended shall be set forth in its entirety in the amending ordinance or resolution; followed by the revised or amended ordinance, resolution, section or sub-section proposed to be enacted. Upon adoption, the ordinance, resolution or section or sub-section thereof subject to the revision or amendment shall be repealed and the amended or revised ordinance, resolution, section, or sub-section thereof shall be enacted. This requirement shall not prevent the amendment of an ordinance or resolution by the addition of new sections or sub-sections without setting forth the full text of the former ordinance or resolution; nor shall this section prevent repeals by implication. (Amended 11-8-83)

(B) Except in the case of a codification or recodification of ordinances and resolutions, a separate vote shall be taken on each ordinance or resolution proposed to be amended or repealed.

(C) Ordinances and resolutions which have been introduced and have received their first reading, or their first and second reading, but have not been voted on as to passage, may be amended or revised by a majority vote of the members of Council without requiring additional readings.

#### **SECTION 4.11. ZONING MEASURE.**

(A) Ordinances or resolutions establishing, amending, revising, changing or repealing zoning classifications, districts, uses or regulations shall be initiated by a member of Council. Immediately after the first reading of the ordinance or resolution, the Presiding Officer of Council shall set a date for a public hearing before a joint meeting of Council and the Planning Commission, not earlier than thirteen (13) days after the first reading. The Clerk of Council shall cause a notice of the public hearing to be published one (1) time in a newspaper of general circulation within the municipality; said publication to be made at least seven (7) days prior to the date of the public hearing. When the amendment, revision, change or repeal involves ten (10) or less parcels of land as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council by certified mail with return receipt at least seven (7) days before the date of the public hearing, to the owners of the property within, contiguous to and directly across the street from the affected parcel or parcels. Such notices shall be sent to the addresses of owners appearing on the County Auditor's current tax list and to other lists as may be required by Council. The failure of delivery of the notice shall not invalidate any ordinance or resolution. (Amended 11-8-83)



(B) Immediately after the public hearing referred to in division (A) of this section, a copy of each ordinance or resolution establishing, amending, revising, changing or repealing zoning classifications, districts, uses or regulations shall be referred to the Planning Commission. Within fifteen (15) days after receipt of referral, the Planning Commission shall return to the Clerk of Council the written recommendations of a majority of the members of the Commission. The ordinance or resolution shall be given its second reading at the next regular meeting of Council, unless an earlier special meeting is called for that purpose.

(C) A concurring vote of at least two-thirds (2/3) of the membership of Council shall be necessary to pass any zoning ordinance or resolution which differs from the written recommendations of the Planning Commission, but in no event shall an ordinance or resolution be considered as having passed unless it receives at least a majority vote of the members of Council.

#### **SECTION 4.12. ADOPTION OF CODES BY REFERENCE.**

Council may adopt or incorporate by reference, codes prepared by the state or any department, board or other agency or political subdivision of the state, or any standard or model ordinance or code prepared and promulgated by a public or private organization, including but not limited to codes and regulations pertaining to fire, fire hazards, fire prevention, plumbing, electrical, building, refrigeration machinery, piping, boiler, heating, air conditioning and housing and other matters as Council may deem appropriate. The ordinance or resolution adopting any standard ordinance or code shall make reference to the date and source of the standard ordinance or code without reproducing it at length in the ordinance. Subsequent amendments or changes to standard codes may also be adopted and incorporated by reference. When adopted by reference, publication of the standard ordinance or code shall not be required, but copies of same shall be kept in the office of the Clerk of Council to be available to interested persons.

#### **SECTION 4.13. CODIFICATION OF ORDINANCES AND RESOLUTIONS.**

By a majority vote of the members of Council, the Council may cause the ordinances and resolutions of the municipality to be revised, codified, recodified, rearranged, or published in book form. Such revisions, codification, recodification, rearrangement or publication of ordinances and resolutions in book form shall immediately be effective upon approval of a majority vote of the members of Council, and may contain new matter therein. The Clerk of Council shall cause a notice of such proposed revision, codification, recodification, rearrangement or publication of ordinances in book form to be published in the manner provided in Section 4.14 of this Charter and no further publication shall be necessary. A current service supplementing such revision, codification, recodification, rearrangement or publication of ordinances and resolutions in book form shall be maintained in the manner prescribed by the Council.

#### **SECTION 4.14. PUBLICATION OF ORDINANCES AND RESOLUTIONS.**

(A) Ordinances and resolutions shall be published by posting copies thereof in not less than five (5) public places in the municipal corporation for a period of not less than fifteen (15) days after their adoption. The public places for such posting shall be determined by the Council. If the ordinance or resolution exceeds five (5) pages, the Clerk of Council may, in lieu of posting the full ordinance or resolution, determine to post a notice setting forth the number, if any, and the title of the ordinance or resolution and a statement that copies of the ordinance or resolution are available for inspection during normal business hours in the Office of the Clerk of Council, and the posting of that notice shall be a sufficient publication.



(B) The Clerk of Council shall make and retain a certificate as to the times and places where such postings are done, and that certificate shall be prima facie evidence that the copies or the notice were posted as required by division (A) of this section. Failure to make or retain the certificate required by this division shall not invalidate any ordinance or resolution.

(C) Failure to publish by posting, or to maintain such posting, as required by division (A) of this section shall not invalidate an ordinance or resolution, and in such events the Clerk of Council may authorize publication by posting at a later date.

## **ARTICLE V THE MAYOR**

### **SECTION 5.01. ELECTION, TERM AND QUALIFICATIONS.**

(A) The person elected as Mayor at the election held in November, 1975, or any successor thereto, under the general statutory plan of government for villages shall be the Mayor under this Charter until January 1, 1980, and he shall exercise all powers, duties and functions of the Mayor under this Charter. At the regular municipal election to be held in November, 1979 and every four (4) years thereafter, the Mayor shall be elected from the municipality at large for a term of four (4) years commencing on the first day of January following the election.

(B) The Mayor shall have been an elector of the municipality for at least eighteen (18) months prior to taking office and during the term of office. Except as provided under this Charter or the general laws of Ohio the Mayor shall not hold any other public office with any other unit of government; except office in a political party, be a notary public, or serve in the national guard or the armed forces of the United States. Except as authorized under this Charter or the general laws of Ohio, the Mayor shall not hold any other office or employment with the municipality during the term for which he was elected, and shall not hold any compensated office or employment with the municipality until one (1) year after the expiration of the term for which he was elected or appointed.

### **SECTION 5.02. POWERS AND DUTIES.**

(A) The Mayor shall be the chief executive officer and the chief conservator of the peace of the municipality, and shall have the following powers and duties:

- (1) He shall be responsible for the administration of all municipal affairs as required by this Charter, the ordinances and resolutions of the municipality and the state laws, to the extent those laws are not inconsistent with this Charter or the ordinances and resolutions of the municipality and shall assure that the Charter, ordinances, resolutions and laws are faithfully executed.
- (2) He shall be the President of the Council and shall preside at all regular and special meetings of the Council. He shall have no vote except in case of a tie vote among Council members on any matter that may come before the Council; except that he may not cast a vote to break a tie vote of the Council on any matter where this Charter requires the Council to approve or concur in an action of the Mayor. The Mayor shall not have a veto power over ordinances or resolutions passed by the Council.



- (3) He shall, with the assistance and full cooperation of the Administrative Director and Finance Director, submit the annual capital and operating budget and the annual appropriation measures of the municipality to the Council for its consideration, revision and adoption.
- (4) He shall prepare and submit a full report of the administrative activities of the municipality to the Council for each fiscal year, and shall make such other reports and recommendations to the Council as he deems necessary or as the Council may require. The Administrative Director, Finance Director and other officials and employees of the municipality shall provide such assistance and cooperation as the Mayor may require concerning all matters under their supervision or control.

#### **SECTION 5.03. VACANCY, TEMPORARY ABSENCE OR DISABILITY.**

(A) In the event of a vacancy in the office of Mayor, the President Pro Tempore of Council shall become the Mayor, unless the person holding the office of President Pro Tempore of Council shall decline, by a written statement to be filed with the Clerk of Council, to succeed to the office of Mayor and elects to remain as a member of Council and as the President Pro Tempore of Council. In the event the President Pro Tempore of Council declines to succeed to the office of Mayor, the Council shall elect another of its members to succeed to the office of Mayor for the term as provided in this section. If the vacancy in the office of Mayor occurs subsequent to seven (7) days before the date when candidates for the office of Mayor must file their nominating petitions or if two (2) years or less remain in the term vacated, the person succeeding to the office of Mayor under this section shall serve for the unexpired term. If the vacancy in the office of Mayor occurs at least (7) seven days prior to the date when candidates for the office of Mayor must file their nominating petitions and more than two (2) years remain in the term vacated, the person succeeding to the office of Mayor under this section, shall serve until a successor to the office of Mayor is elected at the next regular municipal election for the remainder of the unexpired term. The person elected for the unexpired term shall take office on the first day of January following election.

(B) When the Mayor is temporarily absent from the municipality or is under a temporary disability, the President Pro Tempore of Council shall serve as Acting Mayor and shall exercise all the powers, duties and functions of the Mayor. The President Pro Tempore of Council shall continue as a Council member and as the President Pro Tempore of Council while serving as the Acting Mayor, and shall be entitled to vote on all matters coming before the Council.

### **ARTICLE VI ADMINISTRATIVE DEPARTMENTS**

#### **SECTION 6.01. ADMINISTRATIVE DIRECTOR.**

(A) There is hereby created the office of Administrative Director, who shall be appointed by the Mayor subject to the approval of the Council by a vote of at least a majority of its members. The Administrative Director shall serve at the pleasure of the Mayor and the Council and may be removed without cause by the Mayor with the approval of the Council by a vote of at least a majority of its members; or he may be removed without cause by the Council by a vote of at least two-thirds (2/3) of its members without the consent of the Mayor.



(B) The Administrative Director shall be qualified by training or experience in the management of public service enterprises, public or private safety forces, other governmental services or functions, or commercial or industrial operations. The Mayor and Council shall be the sole judges of the qualifications of the Administrative Director.

(C) The Administrative Director shall be the principal administrative officer of the municipality. He shall, subject to the supervision of the Mayor, control, direct and supervise all departments, divisions, and other sub-units of departments, except the departments of Law, Finance, Police and Fire. The Administrative Director shall perform other duties and have other powers and responsibilities as are provided in this Charter or by ordinance or resolution. In addition to and not by way of limitation upon the above stated general powers, the Administrative Director shall also have the following powers, duties and functions:

- (1) To manage and supervise the operation of all municipal utilities, including the treatment and distribution of water, the sewerage system, the generation and/or distribution of electrical energy, artificial and natural gas plants and systems, and other similar municipal utilities. He shall collect all rents, service and other charges required to be paid for municipal utilities, however the rates for services and charges for all municipal utilities shall be established by the Council.
- (2) To make such bylaws and regulations as he deems necessary for the safe, economical and efficient management and protection of all municipal utilities. Such bylaws and regulations, when not repugnant to this Charter, the municipal ordinances and resolutions or to the Constitution of Ohio shall have the same validity as ordinances.
- (3) To supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, landings, market houses, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship channels, streams, and water courses as well as the lighting, sprinkling, and cleaning of all streets, alleys, and public buildings and places.
- (4) To appoint employees of departments and divisions subject to his supervision and control, provided such positions are first authorized by the Council; but such appointments shall be subject to approval by the Mayor. Such appointments and the Mayor's approval thereof shall be in writing, and shall be filed with the Clerk of Council and shall be subject to the provisions of Section 7.03 (B) of this Charter pertaining to civil service.
- (5) To discipline and with the approval of the Mayor discharge employees of departments and divisions subject to his supervision and control.

(Amended 11-2-99)

#### **SECTION 6.02. LAW DEPARTMENT.**

(A) There is hereby created the Department of Law to be headed by a Law Director. The Law Director shall be appointed by the Mayor subject to the approval of the Council by a vote of at least a majority of its members. The Law Director shall serve at the pleasure of the Mayor and the Council and may be removed without cause by the Mayor with the approval of the Council by a vote of at least a majority of its members; or he may be removed without cause by the Council by a vote of at least two-thirds (2/3) of its members without the consent of the Mayor.



(B) The Law Director shall be an attorney-at-law duly authorized to practice law in the State of Ohio. The Law Director may serve as legal counsel to any school district, county, township, other municipality, or other political subdivision, district or unit of the federal, state or local governments and may receive additional compensation therefor; however he shall not be required to serve as legal counsel for a school district by virtue of his office as Law Director. The Law Director may also engage in the private practice of law and he may hold other public or private employment.

(C) The Law Director shall be the legal adviser, prosecuting attorney and counsel for the municipality, and, subject to the direction of Council, shall represent the municipality in all proceedings in Court or before any administrative board or body. The Law Director shall perform all other powers, duties and functions now or hereafter imposed on City Solicitors under the laws of Ohio; and shall perform other duties as required by this Charter, by ordinance or resolution, or as directed by the Mayor.

(D) The Council may provide for assistants and special counsel to the Law Director. All assistants shall be appointed by the Law Director. The assistants shall be responsible to the Law Director and when authorized, may exercise all or any part of the powers, duties and functions granted to the Law Director under this section. Special counsel may be employed by Council to perform powers, duties and functions authorized by and in the manner provided by Council.

#### **SECTION 6.03. FINANCE DEPARTMENT.**

(A) There is hereby created the Department of Finance to be headed by a Finance Director. The person holding the office of Village Clerk-Treasurer under the general statutory plan for villages at the time this Charter becomes effective shall be the Finance Director with all the powers, duties, and functions provided under this Charter, and shall hold that office until January 1, 1980. The offices of Village Clerk and Treasurer under the general statutory plan for villages shall be abolished effective January 1, 1978. Beginning January 1, 1980 and thereafter, the Finance Director shall be appointed by the Mayor subject to the approval of the Council by a vote of at least a majority of its members. The Finance Director shall serve at the pleasure of the Mayor and the Council and may be removed without cause by the Mayor with the approval of the Council by a vote of at least a majority of its members; or he may be removed without cause by the Council by a vote of at least two-thirds (2/3) of its members without the consent of the Mayor.

(B) The Finance Director shall be qualified by training or experience to carry out the powers, duties and functions of the office. The Mayor and the Council shall be the sole judges of the qualifications of the Finance Director.

(C) The Finance Director shall be the chief fiscal officer of the municipality and shall perform the powers, duties and functions now or hereafter given to City Auditors and Treasurers under the general laws of Ohio to the extent those laws are not in conflict with this Charter. The Finance Director, in addition to the powers, duties and functions prescribed by this Charter shall have other powers, duties and functions as required by ordinance or resolution, or as directed by



the Mayor. The Finance Director shall keep the financial records of the municipality, establish the accounting systems, financial records and reports used by the offices, departments, divisions, bureaus, boards and commissions of the municipality; assist the Mayor in the preparation and submission of appropriation measures, estimates, budgets, capital programs and other financial matters; provide full and complete information concerning the financial affairs and status of the municipality as requested by the Mayor or Council; and provide full and complete information and assistance concerning the finances or accounting systems or records of any office, department, division, bureau, board or commission of the municipality as requested by the Mayor or Administrative Director.

#### **SECTION 6.04. POLICE DEPARTMENT.**

(A) There is hereby created a Department of Police to be headed by a Police Chief. The Police Chief shall be appointed by the Mayor subject to the approval of the Council by a vote of at least a majority of its members. The Police Chief shall serve at the pleasure of the Mayor and the Council and may be removed without cause by the Mayor with the approval of the Council by a vote of at least a majority of its members; or he may be removed without cause by the Council, by a vote of at least two-thirds (2/3) of its members without the consent of the Mayor.

(B) The powers, duties and functions of the Police Chief and the members and the organization of the Department of Police shall be as provided in this Charter, by the ordinances and resolutions of the municipality and the general laws of Ohio, to the extent the general laws are not inconsistent with the Charter or the ordinances and resolutions of the municipality.

(C) All full-time regular police officers shall be appointed by the Mayor and subject to approval by Council upon the recommendation of the Police Chief for a probationary term of at least six months. Upon successful completion of the probationary term, the Mayor upon recommendation of the Police Chief and approval by Council shall appoint such police officers as permanent members of the Police Department. Thereafter, they shall be subject to removal from employment only in the manner provided by law.

(D) All part-time or special police officers and all other persons employed in the Police Department shall be appointed by the Mayor upon the recommendation of the Police Chief for an indefinite term.

(Amended 11-7-95.)

#### **SECTION 6.05. FIRE DEPARTMENT.**

The Council may establish and provide for the organization, powers, duties and functions of a Department of Fire, which may be a full time department, a part time or volunteer department; or the Council may contract with any other governmental agency or private corporation or association to provide all or part of the fire services for the municipality. In addition to those powers, duties and functions provided by this Charter or by ordinances or resolution, the officials and members of any fire department providing fire services to the municipality, may exercise those powers, duties and functions authorized by the general laws of Ohio pertaining to municipal fire departments to the extent they are not inconsistent with this Charter or the ordinances and resolutions of the municipality.



**SECTION 6.06. MUNICIPAL ENGINEER.**

The Council may provide engineering services to the municipality by annual contracts or by contracts for shorter or longer periods of time. The Council may also create such engineering positions of employment as it deems appropriate.

**SECTION 6.07. OTHER ADMINISTRATIVE DEPARTMENTS.**

(A) In addition to the administrative offices and departments specifically established and created by this Charter, the administrative offices, departments, divisions, bureaus and other sub-units existing under the laws of Ohio and ordinances and resolutions of the municipality on the effective date of this Charter shall continue, with their existing powers and duties, until they are abolished, merged, combined or otherwise altered or reorganized by Council.

(B) Each department, division, bureau or other sub-unit shall be organized and have those powers, duties and functions as are provided under this Charter; under the ordinances or resolutions of the municipality; and under the laws of Ohio to the extent such laws do not conflict with the provisions of this Charter or the ordinances and resolutions of the municipality.

**SECTION 6.08. ACTING DEPARTMENT HEADS.**

In the event of a vacancy or the temporary absence or disability of the head of any administrative department, the Mayor may appoint an acting head of the department until the vacancy is filled or the temporary absence or disability is removed.

**ARTICLE VII  
BOARDS AND COMMISSIONS****Section 7.01. PLANNING COMMISSION.**

(A) There is hereby created a Planning Commission consisting of the Mayor, two (2) members of the Council to be appointed by a majority vote of the Council to serve during their current term on Council, and four (4) electors of the municipality to be appointed by the Mayor to serve overlapping six (6) year terms of office, and to serve without compensation.

(B) The Planning Commission shall perform those duties provided by this Charter and by the law of Ohio with respect to zoning, planning and platting of lands and such further duties as are assigned to it by ordinance or resolution, provided that the final decision on all matters before the Planning Commission shall be made by Council. In the event of a conflict between state law and an ordinance or resolution of this Village, the ordinance or resolution shall prevail. In the absence of an ordinance or resolution, state law shall apply except to the extent it is inconsistent with the provisions of this Charter.

(Amended 11-5-85; 11-4-86)

**SECTION 7.02. (RESERVED)****SECTION 7.03. CIVIL SERVICE.**

(A) Until the municipality attains city status, the employees of the municipality shall have that tenure, if any, as provided by the laws of Ohio pertaining to the general statutory plan of government for villages, except as those laws may conflict with the provisions of this Charter.



(B) After the municipality attains city status, the Council shall establish a Civil Service Commission by ordinance or resolution fixing its membership, the method of appointment, terms of office, powers, duties and functions; provided that appointments and promotions in the classified civil service shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. All compensated positions of employment shall be in the classified civil service except the following offices and positions which shall be in the unclassified or exempt service:

- (1) Members of Council.
  - (2) The Clerk of Council and other employees of the Council.
  - (3) The Mayor.
  - (4) The Administrative Director.
  - (5) The Finance Director.
  - (6) The Law Director, Assistant Law Directors, and special legal counsel.
  - (7) All heads of Departments.
  - (8) Professional engineers employed by the municipality.
  - (9) Members of Boards and Commissions established by this Charter or by Council.
  - (10) Volunteer members of the Fire Department, members of the auxiliary police unit within the Police Department, and part time employees of the Departments of Police and Fire.
  - (11) The Secretary of each Board and Commission established by this Charter or by Council, provided that if such Secretary holds other employment within the classified civil service of the municipality, this section shall not exempt such person from the requirement of competitive examination to hold such other employment.
  - (12) Persons of exceptional professional or scientific qualifications engaged as consultants.
  - (13) Unskilled laborers as defined and authorized by the Civil Service Commission.
  - (14) Temporary employees who are not employed for more than ninety (90) continuous days or for more than ninety (90) days in one year.
  - (15) Special categories of employees employed under federal or state programs, as determined by the Civil Service Commission.
- (Amended 11-8-83)

#### **SECTION 7.04. PARK AND RECREATION BOARD.**

(A) There is hereby created a Park and Recreation Board consisting of seven (7) electors of the Municipality. Six shall be appointed by the Mayor for overlapping terms of office of five (5) years and shall be subject to the approval of Council by a vote of a majority of its members. One member shall be associated with the principal youth soccer organization existing in the Village, one member shall be associated with the principal youth baseball/softball organization existing in the Village, one member shall be associated with the Lexington senior citizens, and three members shall represent the Village at large. The seventh member of the Board shall be that member of Council currently serving as Chairman of the Buildings and Grounds Committee of Council. (Amended 11-4-03)



(B) The Park and Recreation Board shall have those powers, duties and functions as provided by this Charter and as provided by the ordinances and resolutions of the Municipality. (Amended 11-5-85)

#### **SECTION 7.05. CHARTER REVIEW COMMISSION.**

(A) There is hereby created a Charter Review Commission which shall consist of five (5) members to be appointed as follows: two (2) shall be appointed from the membership of the Council by a majority vote of the members for one (1) year terms of office; and three (3) shall be electors who are not members of the Council to be appointed by the Mayor for overlapping terms of office. The first members appointed by the Mayor shall be appointed so that one (1) serves for a one (1) year term, one (1) serves for a two (2) year term and one (1) serves for a three (3) year term. Thereafter each member appointed by the Mayor shall serve for a three (3) year term of office. Members of the Commission shall serve without compensation. Terms of the Commission shall begin on the first day of July after their appointment, commencing in the year 1978. (Amended 11-2-82)

(B) The Charter Review Commission shall meet only in odd numbered years unless a meeting shall be called because of an emergency by a majority of its members in an even numbered year. The Charter Review Commission shall continuously review the provisions of this Charter and the operations of the Municipality and shall report its recommendations, if any, for changes or revisions in this Charter to the Council no later than the first day of June of each year in which it meets. The Clerk of Council shall publish the recommendations, if any, of the Commission in full at least once in a newspaper of general circulation in the Municipality. The Council shall submit any amendments to the Charter recommended by the Commission to the voters in the manner provided by the Constitution and laws of Ohio. The Council shall appropriate funds to the Commission as determined to be necessary by the Commission to carry out its powers, duties and functions, including amounts required to pay any consultants or special legal counsel selected by the Commission. (Amended 11-2-93)

#### **SECTION 7.06. DEPOSIT AND INVESTMENT BOARD.**

(A) There is hereby created a Deposit and Investment Board consisting of the Mayor, Finance Director and Law Director.

(B) The Deposit and Investment Board shall deposit and invest the monies of the municipality in the manner and as provided by the ordinances and resolutions of the municipality. If ordinances and resolutions providing for the deposit and investment of the monies of the municipality do not exist or are not adopted, those monies shall be deposited and invested in the manner provided by the laws of Ohio until otherwise provided by the ordinances and resolutions of the municipality.

#### **SECTION 7.07. INCOME TAX BOARD OF REVIEW.**

The Council may, by ordinance or resolution, establish a Board of Review to function as an appeal board and to perform other duties in regard to the administration of the municipal income tax. The membership of the Board, their term of office, method of appointment and the Board's powers, duties and functions shall be provided by ordinance or resolution. Meetings of the Board, when hearing or deciding an appeal of a taxpayer shall not be open to the public unless the taxpayer filing the appeal requests the meeting to be open. Copies of proceedings of the Board shall be promptly filed with the Finance Director.



**SECTION 7.08. CEMETERY BOARD.**

Control over cemeteries and burial grounds owned by the municipality shall be vested in a Board of Cemetery Trustees as that Board is organized under the laws of Ohio pertaining to general statutory plan villages; and the Board shall be governed in all respects and have those powers, duties and functions as provided by the laws of Ohio pertaining to general statutory plan villages, unless otherwise inconsistent with this Charter. When a cemetery or burial ground is owned in common or jointly by the municipality and one or more other municipal corporations or townships, the control over the cemetery or burial ground shall be vested and governed in all respects by the laws of Ohio relating to union cemeteries. If the laws of Ohio shall now or hereafter fail to provide for the government and operation of any cemetery or burial ground owned solely, or in common or jointly with other units of government, the Council shall provide by ordinance or resolution for the organization of a board, together with its powers, duties and functions to control and operate the cemetery or burial ground.

**SECTION 7.09. OTHER BOARDS AND COMMISSIONS.**

The Council may create, change and abolish other boards and commissions as it determines to be necessary, and may provide for their organization, membership, terms of office of members, powers, duties and functions by ordinance or resolution.

**SECTION 7.10. ORGANIZATION - VACANCIES.**

(A) Unless otherwise provided in this Charter, each board and commission of the municipality, including the Board of Review for income tax administration described in Section 7.07 of this Charter but excluding the governing bodies of cemeteries described in Section 7.08 of this Charter, shall:

- (1) Organize at its first meeting each year by electing a chairman, vice chairman and secretary. The chairman and vice chairman shall be a member of the board or commission and the secretary may be elected from within or without the membership of the board or commission. The secretary shall keep an accurate and complete record of the proceedings of the board or commission; and shall file a copy of its proceedings with the Clerk of Council for public inspection. The Income Tax Board of Review shall file copies of its proceedings with the Finance Director.
- (2) Take action by motion, and a majority vote of the members of the board or commission shall be necessary to take any action. A majority of the members shall constitute a quorum. All members of Boards and Commissions shall be electors of the municipality.
- (3) Adopt rules for the conduct and government of the board or commission, however the rules may not conflict with the provisions of this Charter or ordinances and resolutions of the municipality.

(B) Unless otherwise provided in this Charter, a vacancy during the term of any member of a board or commission created by this Charter or by ordinance or resolution shall be filled for the unexpired term in the manner authorized for an original appointment.



**SECTION 7.11. TRANSITION TO CHARTER FORM.**

All boards and commissions of the municipality existing at the effective date of this Charter, whether or not specifically mentioned in the Charter, shall continue in existence after this Charter becomes effective; and the terms of members holding office at the effective date of the Charter shall be continued until the expiration of the term and successors have been appointed under the Charter. From and after the effective date of this Charter, all boards and commissions and members thereof shall be subject to the provisions of this Charter.

**ARTICLE VIII****NOMINATIONS, ELECTIONS, INITIATIVE, REFERENDUM AND RECALL****SECTION 8.01 NOMINATIONS AND ELECTIONS.**

(A) Nomination for the office of Mayor and members of Council shall be made by petition, signed by qualified electors of the Municipality not less in number than thirty-five (35). The petition shall be accompanied by a declaration of candidacy and shall be filed with the election authorities not later than the time required by the general laws of Ohio for candidates for municipal offices who are to be nominated by petition. No primary shall be held for candidates for Mayor or members of Council.  
(Amended 11-3-92)

(B) The Mayor and members of Council shall be elected at non-partisan elections to be held at the times and to be otherwise conducted in the manner provided by the election laws of Ohio, unless otherwise provided for in this Charter.

(C) The Council may, by a two-thirds (2/3) vote of its members, at any time, order a special election by ordinance or resolution, the purpose of which shall be set forth in the ordinance or resolution; and which may include the referral of a proposed or pending ordinance or resolution to the voters for their approval or rejection.

(D) All regular and special elections shall be conducted in the manner and at the times provided by the election laws of Ohio, except as otherwise provided in this Charter.

**SECTION 8.02. INITIATIVE AND REFERENDUM.**

(A) Ordinances and resolutions may be proposed by initiative petition and adopted by election, and ordinances and resolutions adopted by Council shall be subject to referendum as provided by the Constitution and laws of Ohio, except:

- (1) Initiative and referendum petitions shall be filed with the Finance Director.
- (2) Ordinances and resolutions initiated by petition or subjected to referendum shall be submitted to the electors for approval or rejection at the next general or primary election occurring subsequent to ninety (90) days after certification of the text of the ordinance or resolution to the Board of Elections, unless Council, by a majority vote of its members, submits such ordinances or resolutions for approval or rejection at a special election.

**SECTION 8.03. RECALL.**

(A) The electors shall have the power to remove any elected official of the municipality from office by a recall election in the manner provided in this section.



(B) If the elected official shall have served six (6) months of a term, a petition demanding removal may be filed with the Clerk of Council, who shall note thereon the name and address of the person filing the petition and the date of filing; and shall deliver to the person a receipt, and attach a copy of the receipt to said petition. The petition may be circulated in separate parts, but the separate parts shall be bound together and filed as one (1) instrument. Each part shall contain the name and office of the person whose removal is sought and a statement of the grounds for removal. The petition shall be signed by at least that number of electors which equals twenty-five percent (25%) in number of the electors voting at the last preceding regular municipal election.

(C) Within twenty (20) days after the date of filing a petition, the Clerk of Council shall determine whether or not the petition meets the requirements of this section. If the Clerk of Council shall find the petition insufficient, he shall promptly certify the particulars in which the petition is defective, deliver a copy of the certificate to the person who filed the petition and make a record of the delivery. The person who filed the petition shall be allowed a period of ten (10) days after the day on which the delivery was made, in which to make the petition sufficient. If the Clerk of Council finds the petition sufficient, he shall promptly certify its sufficiency to Council, deliver a copy of the certificate to the person whose removal is sought and make a record of that delivery.

(D) If the person whose removal is sought does not resign within five (5) days after the day on which delivery has been made, Council shall thereupon fix a day for holding a recall election, not less than seventy-five (75) days nor more than ninety (90) days after the date of delivery, and shall cause notice of the recall election to be published on the same day of each week, for two (2) consecutive weeks, in a newspaper of general circulation in the municipality. At the recall election, this question shall be placed upon the ballot: "Shall (naming the person whose removal is sought) be allowed to continue as (naming the position held)" with provision on the ballot for voting affirmatively or negatively. In the event a majority of the vote is negative, the person shall be considered as removed and the office shall be deemed vacant. The person removed at the recall election shall not be eligible for appointment to the vacancy. If the person is not removed at the recall election, no further recall petitions shall be filed against such person for a period of one (1) year following the election.

(E) A removal by recall election shall not bar the person removed from becoming a candidate for office in future elections.

## **ARTICLE IX FINANCE, TAXATION AND DEBT**

### **SECTION 9.01 GENERAL.**

The laws of Ohio relating to budgets, appropriations, taxation, debts, bonds, assessments and other fiscal matters of the municipality shall be applicable to the municipality, except as modified by or necessarily inconsistent with the provisions of this Charter, or when provision therefor is made in the Constitution of Ohio.



**SECTION 9.02 PURCHASING PROCEDURE.**

(A) The Administrative Director shall be the contracting officer of the municipality; provided that the Council by a two-thirds (2/3) vote of its members may authorize any department head to act as the contracting officer for matters within the jurisdiction of that department. The authorization to a department head to act as contracting officer for his department may be revoked by Council by a two-thirds (2/3) vote of its members. The Council, or any member thereof, may at any time inspect any contract, purchase order or statement of an amount due from the municipality; and the appropriate contracting officer shall cooperate fully with the Council, or member thereof, to facilitate such inspection.

(B) When any expenditure or contract is more than the amount specified by the laws of Ohio for which work may be accomplished only after advertisement and bidding, such contract or expenditure shall first be authorized and directed by ordinance or resolution passed by Council, and after advertisement once a week for at least two (2) weeks in a newspaper of general circulation in the municipality. If satisfactory bids are received, the appropriate contracting officer shall award a written contract to the lowest and best bidder.

(C) When it becomes necessary to make alterations or modifications in connection with any work or improvements covered by contract, they shall be made only upon the order of the appropriate contracting officer. No such order shall be effective until the price to be paid for the work or material, or both, under the altered or modified contract, shall have been agreed upon in writing and signed by the contractor and the appropriate contracting officer on behalf of the municipality. (Amended 11-7-89)

(D) Except as otherwise authorized by the Revised Code of Ohio, no contract, agreement or other contractual obligation involving the expenditure of money shall be entered into or authorized by the appropriate contracting officer unless the Finance Director, Mayor or their duly authorized representative shall first certify:

(1) That the money required for such contract, agreement, obligation or expenditure is in the municipality's treasury or in the process of collection, and

(2) That the money has been appropriated by Council for the specified purpose, and it remains unencumbered.

Said certification as to the availability of funds and the appropriation of funds shall be filed and recorded in the accounting records of the municipality and a copy furnished to the vendor or contractor. Without the certification, contractual obligations shall be void and unenforceable against the municipality unless recognized by Council as a moral obligation. (Amended 11-4-03)

(E) The appropriate contracting officer shall not divide any order or contract to avoid the requirements of competitive bidding. (Amended 11-7-89)

**ARTICLE X  
GENERAL PROVISIONS****SECTION 10.01. CONFLICTS OF INTEREST, ETHICS, CAMPAIGN FINANCING.**

The laws of Ohio pertaining to conflicts of interest and criminal misbehavior, ethics and financial disclosure by municipal officials and employees, and campaign financing and other election practices of candidates for municipal office shall apply under this Charter.



**SECTION 10.02 REMOVAL OF ELECTED OFFICIALS, MEMBERS OF  
BOARDS****AND COMMISSIONS.**

(A) Council may remove from office any elected official of the municipality, or any member of a board or commission established by this Charter or by ordinance or resolution, for any of the following reasons:

- (1) Failure to meet or maintain the qualifications of office as fixed in this Charter; or, if not fixed in the Charter, as established by ordinance or resolution.
- (2) Final conviction of a felony or misdemeanor involving moral turpitude during a term of office.
- (3) Failure by a member of Council to attend three (3) consecutive regular Council meetings, unless any of the absences is excused by a majority vote of the members of Council; or failure by a member of a board or commission to attend three (3) consecutive regular meetings of said board or commission unless any of the absences is excused by a majority vote of the members of the board or commission.
- (4) Gross misconduct; malfeasance, or nonfeasance in office; or judicial declaration of incompetency.

(B) Charges under this section may be brought only by any two (2) members of Council. The charges shall be in writing and shall specify the ultimate facts upon which the charges are based. The charges shall be filed with the Clerk of Council who shall set a date, time and place for a hearing on the charges, which hearing shall be not less than fifteen (15) nor more than forty-five (45) days after the charges are filed. The Clerk of Council shall cause a copy of the charges and notice of the date, time and place of the hearing, to be served on the accused by causing the copy of the charges and notice to be handed to the accused; or by sending the copy of the charges and notice to the last known place of residence of the accused by certified mail for delivery to addressee only, with a return receipt requested. If the copy of the charges and notice sent by certified mail are returned to the Clerk of Council undelivered, or if the return receipt for the copy of the charges and notice is not returned to the Clerk of Council within ten (10) days after they are mailed, the Clerk of Council shall cause a copy of the charges, together with notice of the date, time and place of the hearing, to be served on the accused by leaving the copy and notice at the last known place of residence of the accused within the municipality.

(C) The presiding officer of Council may continue the hearing from time to time as the circumstances may require. The Mayor, President of Council or any judge of the Court of Common Pleas or Municipal Court with jurisdiction in the Municipality shall have power to issue subpoenas for witnesses and the production of evidence on behalf of the persons bringing the charges, the accused person or Council. The testimony of witnesses at the hearing shall be under oath administered by the officer of Council presiding at the hearing or by any other person authorized by law to administer oaths.



(D) Removal of the accused person shall be upon the affirmative vote of two-thirds (2/3) of the members of Council, or the affirmative vote of two-thirds (2/3) of the remaining members of Council if the accused is a member of Council. An accused member of Council shall not vote on any matter affecting the question of his removal. If Council votes to remove the accused person, the officer of Council presiding at the hearing at which the vote for removal was passed shall issue an order removing the accused, and the accused shall be suspended from office without compensation after the date of suspension.

(E) The accused person may appeal from a decision of Council for removal from office by filing a notice of appeal in the Court of Common Pleas having jurisdiction within the Municipality. The notice of appeal shall be filed within thirty (30) days after the issuance of the order removing the accused. The appeal to the Court of Common Pleas shall be limited to questions of law and to the issue of whether Council abused its discretion. Further appeals may be taken to higher courts as provided by law. If the accused person does not appeal within the thirty (30) day period, or if the Court of Common Pleas or higher court finally affirms the decision of Council removing the accused, the suspension shall become permanent; the accused shall forthwith forfeit the office; the office shall become vacant and shall be filled in the manner provided by this Charter. If the Court of Common Pleas or higher court reverses the decision of Council removing the accused, he shall be immediately restored to office and shall be paid any compensation denied during the period of suspension.

#### **SECTION 10.03. SUCCESSION.**

The Municipality of Lexington under this Charter is hereby declared to be the legal successor of the Municipality of Lexington under the laws of Ohio; and shall have title to all property, real and personal, owned by its predecessor, including all monies on deposit and all taxes in process of collection, together with all accounts receivable and rights of action. The Municipality shall be liable for all outstanding orders, contracts and debts of its predecessor, and for any other obligations for which it may be held liable by any court of competent jurisdiction. All contracts entered into by the Municipality or for its benefit prior to January 1, 1978 shall continue in full force and effect.

#### **SECTION 10.04. EFFECT OF CHARTER ON EXISTING LAWS AND RIGHTS.**

(A) The adoption of this Charter shall not affect any pre-existing rights of the Municipality, nor any right, liability, pending suit or prosecution, either on behalf of or against the municipality or any officer thereof, nor any franchise granted by the municipality, nor pending proceedings for the authorization of public improvements or the levy of assessments therefor. Except as a contrary intent appears in this Charter, all acts of Council of the municipality, including ordinances and resolutions in effect at the date this Charter becomes effective, shall continue in effect until amended or repealed.



(B) No action or proceeding pending against the municipality or an officer thereof shall be abated or affected by the adoption of this Charter. All actions or proceedings shall be prosecuted or defended under the laws in effect at the time they were filed.

#### **SECTION 10.05. RETIREMENT SYSTEMS.**

The laws of Ohio governing the retirement of officers and employees of the municipality shall be applicable under this Charter.

#### **SECTION 10.06. AMENDMENT OR REPEAL OF CHARTER.**

This Charter may be amended or repealed by the voters as provided by the Constitution of Ohio.

#### **SECTION 10.07. EFFECT OF PARTIAL INVALIDITY.**

A determination that any article, section, division, or part of any article, section or division of this Charter is invalid shall not invalidate nor impair the force and effect of any other part, except to the extent that the other part is wholly dependent for its operation upon the part declared invalid.

### **ARTICLE XI TRANSITIONAL PROVISIONS**

#### **SECTION 11.01. EFFECTIVE DATE OF CHARTER.**

This Charter shall be submitted to the electors of the municipality at an election to be held November 2, 1976. If approved by a majority of those voting, the Charter shall take effect from the date the election is certified for the purpose of designating, nominating and electing officers of the municipality and conducting municipal elections. For all other purposes this Charter shall take effect on January 1, 1978.

#### **SECTION 11.02 CONTINUANCE OF PRESENT OFFICIALS - ABOLITION OF OFFICES.**

Except as otherwise provided by this Charter, all persons holding office at the time this Charter takes effect shall continue in office and in the performance of their duties until other provisions have been made in accordance with this Charter for the performance or discontinuance of the duties of the office. When that provision shall have been made, the term of any officer shall expire and the office shall be abolished. The powers conferred and the duties imposed upon any officer, body, commission, board, department or division of the municipality under the laws of Ohio or under any municipal ordinance, resolution or contract in force at the time this Charter takes effect shall, if the office, body, commission, board, department or division is abolished by this Charter, be thereafter exercised and discharged by those upon whom are imposed corresponding functions, powers and duties by this Charter or by any ordinance or resolution of Council thereafter enacted.

#### **SECTION 11.03 CONTINUANCE OF PRESENT EMPLOYEES.**

Every employee of the municipal government on January 1, 1978, shall continue in such employment subject in all respects to the provisions of this Charter and ordinances, resolutions, rules or regulations enacted or promulgated under the Charter.



**CHARTER OF THE MUNICIPALITY OF  
LEXINGTON, OHIO**

**CERTIFICATE**

We, the qualified members of the Charter Commission of the Municipality of Lexington, Ohio, elected November 4, 1975, have framed the foregoing Charter and have fixed November 2, 1976, as the time of the election at which the Charter shall be submitted to the electors of the Municipality of Lexington.

George M. Billman  
Lawrence F. Hannon  
Kenneth E. Clever  
Suzanne C. Heichel  
Richard T. Connolly  
Donald L. Herbert  
Allen M. Cook  
Charles F. Pscholka  
Rita M. Erre  
Barbara G. Schnuerer  
Helen L. Garverick  
John W. Ward  
Homer D. Grant  
Richard P. Worley

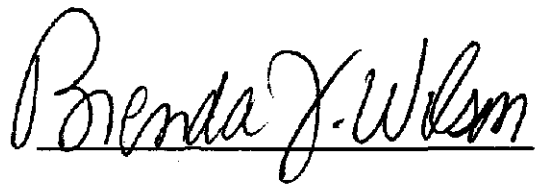
John B. Rhind, Chairman



CLERK OF COUNCIL CERTIFICATE

I, Brenda J. Wilson, the duly appointed Clerk of Council of the Village of  
Lexington, Ohio do hereby certify that the attached is a true and correct copy of  
Ordinance No. 69-21, duly adopted by the Council of the Village of Lexington on  
June 16, 1969.

---



Brenda J. Wilson  
Clerk of Council  
Village of Lexington, Ohio





1-5T 6-2-69  
2nd 6-9-69  
Third 6-16-69

ORDINANCE NO. 69-21

An Ordinance granting to Ohio Power Company, its successors and assigns, the right to acquire, construct, maintain and operate in the streets, thoroughfares, alleys, bridges and public places of the Village of Lexington State of Ohio, and its successors, lines for the distribution of electric energy to the Village of Lexington and the inhabitants thereof for light, heat, power and other purposes and for the transmission of the same within, through or across said Village of Lexington, State of Ohio.

Be it ordained by the Council of the Village of Lexington, State of Ohio, and it is hereby ordained by authority of the same that:

Section I.

Ohio Power Company, its successors, and assigns (hereinafter called "Grantee") are hereby granted the right, privilege, franchise and authority to acquire, construct, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, bridges and public places (as the same now exist or may hereafter be laid out) of the Village of Lexington, State of Ohio, lines for the distribution of electric energy, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances to render public utility service in said Village and to the inhabitants thereof by supplying electric energy to said Village and the inhabitants thereof, and persons or corporations beyond the limits thereof, for light, heat, power or any other purposes or purpose for which electric energy is now or may hereafter be used, and the transmission of the same within, through or across the said Village of Lexington, State of Ohio.

Section II.

Said lines and appurtenances shall be constructed so as to interfere as little as possible with the traveling public in its use of the streets, thoroughfares, alleys, bridges and public places. The location of all poles, or conduits, shall be made under the supervision of the proper board or committee of the Village government.

Section III.

The rights, privileges and franchise hereby granted shall be in force and effect for a period of fifty (50) years from the date of the passage of this ordinance.

The rights, privileges and franchise hereby granted shall not be construed to be exclusive and the Council of the Village of Lexington hereby reserves the power to grant similar rights, privileges and franchises to any other person or persons, firm or firms, corporation or corporations.



Section IV.

Said grantee shall save the Village harmless from any and all liability arising in any way from negligence in the erection, maintenance or operation of said lines for the distribution of electric energy.

Section V.

Whenever said Grantee shall begin the erection of any lines or equipment it shall promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced.

Section VI.

Wherever in this ordinance, reference is made to the Village or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges and obligations herein contained by or on behalf of said Village, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said Village, or of said Grantee, whether so expressed or not.

Section VII.

This ordinance shall be accepted by the grantee within Sixty (60) days from the date of the passage of same.

Passed in Council, this 16 day of June, 1969.

Edward C. Kent  
Mayor

of the Village of

Lexington, Ohio

Clerk

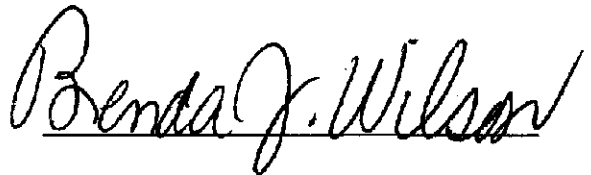
Ray D. Smith



CLERK OF COUNCIL CERTIFICATE

I, Brenda J. Wilson, the duly appointed Clerk of Council of the Village of  
Lexington, Ohio do hereby certify that the attached is a true and correct copy of  
Codified Ordinance 929.02 of the Village of Lexington.

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Brenda J. Wilson  
Clerk of Council  
Village of Lexington, Ohio  
December 19, 2006





**929.02 USE OF STREET RIGHT OF WAY BY UTILITY SERVICE PROVIDERS AND CABLE OPERATORS.**

(a) Council hereby declares that all entry upon or use of street right of way within this Village by utility service providers or cable operators threatens the public health, safety and welfare, and shall not be permitted except in accordance with the provisions of this section.

(b) No utility service provider nor cable operator shall enter upon or use any public street right of way within this Village to install, construct, repair, position, maintain or operate lines, poles, pipes, conduits, ducts, equipment or related appurtenances and facilities without the express consent of this Village. Nothing in this section shall be construed to limit the rights of any utility service provider or cable operator granted under an existing contract with this Village.

(c) Any utility service provider or cable operator, which makes any excavation or otherwise disturbs any street right of way shall restore the area disturbed to the same condition as existed prior to the work and in doing so, shall be subject to the same regulations which apply to any other person, firm or corporation who disturbs a street right of way.

(d) The Village Law Director is hereby directed to proceed without further authorization from this Council to seek an injunction from the Court of Common Pleas of Richland County against any utility service provider or cable operator who violates subsection (b) or (c) hereof. (Ord. 00-10. Passed 4-2-00.)



- a. In addition to aid-to-construction advance, such temporary service shall also be subject to any applicable special service fee for the type of service involved.
- F. *Applicable rates to apply:* nonpermanent, seasonal and temporary service shall be furnished and billed in conformance to Cooperative's applicable schedule.

## **15. Permanent Service Extensions**

- A. *Residential extensions:* the Cooperative will extend its single-phase distribution facilities to supply electric service to structures where, as determined by Cooperative, the element of permanency exists and where the electric service is normally used on a year-round basis.
- a. To serve such permanent installation, Cooperative will, at no cost to the Member, extend its facilities along and immediately adjacent to the right-of-way limits of highways that have been legally dedicated to public use by the governmental authority having jurisdiction over same and where such highways are maintained by such governmental authority, excluding limited access highways.
- b. In addition to the above, Cooperative will, at no cost to the Member, construct extensions from said distribution facilities provided, however, the total estimated cost of all facilities (primary, secondary and service drop), does not exceed \$1,000.
- c. An aid-to-construction will be required to be paid by Member whenever the total estimated cost of all facilities (primary, secondary and service drop) to construct the extension exceeds \$1,000.
- d. If the permanent service extension is likely to be used for additional future services, as determined by the Cooperative, please refer to the appropriate Cooperative management policy to determine the additional aid-to-construction fees and/or credits applicable.
- B. *Nonresidential and three-phase service:* where an extension, enlargement or expansion of Cooperative's facilities is involved (including furnishing of three-phase service), Cooperative reserves the right to require an aid-to-construction advance where, as determined by Cooperative, the probable additional revenue is insufficient to justify the investment and operating expenses involved.
- a. Cooperative reserves the right not to furnish three-phase service to Members when Cooperative determines that single-phase service will adequately supply Member's load requirements.

## **16. Billing, Payments, Meter Reading and Meter Testing**

- A. *All bills are due and payable* when rendered on or before the date specified on Member's bill for electric service. If an account of Member is not so paid, the late charge as set forth in rate schedule is payable.
- B. Cooperative will allow at least 10 days between the date of bill and the final payment date specified on Member's bills.
- C. *Bills are payable in person or by mail* at the main or branch offices of Cooperative or at any authorized and designated collection agency of Cooperative, or through the use of electronic transfer, on or before the date and/or time limit specified on bill. Failure to receive bill or the existence of a Member deposit or capital credits will not entitle Member to any discount or to the remission of any charge for nonpayment within the date of time limit specified.
- D. *The words "month" or "regular billing period"* as used herein are hereby defined to be the elapsed time between two successive meter readings, approximately 30 days apart.
- E. Cooperative may bill at other than monthly intervals, in which event the length of the rate blocks and the applicable minimum and service charge will be multiplied by the number of months between meter readings. Cooperative may estimate on a monthly basis between meter readings.
- F. *In the event of meter stoppage* or the failure of any meter to register the full amount of current consumed, Cooperative reserves the right to bill for such period on an estimated consumption based upon Member use of electricity in a similar period of like use.
- G. *Members who intend to move* from premises or discontinue the use of electricity or in any way terminate their liability hereunder shall give the Cooperative reasonable notice of such intention. The Member and/or property owner will be liable in accordance with the laws of this state, for all electricity used upon the premises until such notice is given and the Cooperative has furnished the final meter reading and/or service has been disconnected.
- H. *When the accuracy of a meter is questioned*, upon request from the Member, the Cooperative will test the meter. If the meter is found to be correct within plus or minus two percent, to partially cover the expense to make such a test the applicable charge specified elsewhere shall be paid by Member to Cooperative.
- a. If the meter being tested is found to be more than two percent slow or fast, no charge shall be made for testing. If the meter is more than two percent fast, the Cooperative will adjust the bill in proportion to the error up to the date of installation of a new meter or the recalibration of existing meter, but said adjustment period shall not exceed one year.
- I. *Meter reading:* the Cooperative normally reads its meters. At the option of the Cooperative, Members receiving single phase service may individually read their meters accurately as near as practicable on the date specified by Cooperative.