City Council Meeting Agenda

Monday, May 4, 2015 ~ 7:30 P.M.

Louis J. R. Goorey Worthington Municipal Building
John P. Coleman Council Chamber
6550 North High Street
Worthington, Ohio  43085

Bonnie D. Michael, President
Robert F. Chosy, President Pro-Tem
Rachael Dorothy
Scott Myers
David M. Norstrom
Douglas Smith
Michael C. Troper

Matthew H. Greeson, City Manager
D. Kay Thress, Clerk of Council

If you have questions regarding this agenda please contact the Clerk of Council at 614-786-7347. This agenda and amendments that may be made to it can be found at www.worthington.org
CALL TO ORDER

Roll Call

Pledge of Allegiance

VISITOR COMMENTS

SPECIAL PRESENTATION

1) Military Appreciation Month

NEW LEGISLATION TO BE INTRODUCED

2) Resolution No. 13-2015

Designating Public Depositories and Awarding Public Monies of Active and Interim Deposits.

3) Resolution No. 14-2015

Authorizing an Amendment to the Final Development Plan for 50 West Wilson Bridge Road and Authorizing Variances (FMS Architects/Chase Bank).

4) Ordinance No. 15-2015

Approving the Provisions of a Collective Bargaining Agreement Between the City of Worthington, Ohio and the International Association of Firefighters Local #3498 and Authorizing the City Manager to Execute Same on Behalf of the City.

5) Ordinance No. 16-2015

Amending Ordinance No. 40-2014 (As Amended) to Adjust the Annual Budget by Providing for An Appropriation from the General Fund Unappropriated Balance for Sewer Fund Obligations.

REPORTS OF CITY OFFICIALS

Discussion Item(s)

6) Proposed 2015 Street Improvement Program
7) Regulation of Running Bamboo

REPORTS OF COUNCIL MEMBERS

OTHER

EXECUTIVE SESSION

ADJOURNMENT
City Manager Report to City Council for the Meeting of Monday, May 4, 2015

SPECIAL PRESENTATION

1) Military Appreciation Months

Mayor Scott Holmes will attend the meeting and present the proclamation for Military Appreciation Months. Local military groups, including the American Legion, VFW and Blue Star Mothers have been invited to attend.

NEW LEGISLATION TO BE INTRODUCED

2) Resolution No. 13-2015 – Public Depositories

Proposals have been accepted for the City’s public depositories (bank accounts) for the time period of June 1, 2015 through May 31, 2020. Staff is recommending Park National Bank as the depository of active funds. This Resolution awards the active deposits to Park National Bank. It further provides authority to the Finance Director, at the time the City has interim funds to deposit (funds that are not necessary to meet current demands but will be needed in an interim timeframe), to solicit rates from various banking institutions and deposit them with the institution(s) that have the best rates. Additional information is provided in the attached memorandum from the Finance Director.

**Recommendation:** Introduction and Approval of Resolution as Presented

3) Resolution No. 14-2015 – Amendment to Development Plan – Chase Bank

Chase Bank has applied to modify its drive thru lanes to convert them to two drive-up ATM lanes, one lane for through traffic and one lane will be blocked with two bollards. A signage change is included in this request. This Resolution approves the amendment to the Final Development Plan and grants variances to permit an additional wall-mounted sign on the ATM and to allow the signage to exceed the maximum area of 100 square feet. Additional information is included in the attached memorandum from the Director.
of Planning & Building. Municipal Planning Commission has reviewed this request and recommends approval with conditions, which are incorporated into this Resolution and the attached drawings.

**Recommendation:** Introduction and Approval of Resolution as Presented

4) **Ordinance No. 15-2015 – Collective Bargaining Agreement between the City of Worthington and the International Association of Firefighters Local #3498**

The City has reached a tentative agreement with the IAFF Local #3498 for the Fiscal Years 2015 through 2017. The IAFF members have voted to approve the agreement.

**Recommendation:** Introduction for Public Hearing on May 18, 2015

5) **Ordinance No. 16-2015 – Supplemental Appropriation**

This Ordinance appropriates $10,000 in the General Fund for transfer to the Sewer Fund. The Sewer Fund is supported by revenues collected by the City of Columbus via water bills and distributed to the City of Worthington. The timing of those distributions has begun to fluctuate and when they are delayed, it creates cash flow problems for the Sewer Fund. This transfer will provide sufficient funding in the Sewer Fund to allow for fluctuations in the timing of the distributions from the City of Columbus.

**Recommendation:** Introduction for Public Hearing on May 18, 2015

**REPORTS OF CITY OFFICIALS**

**Discussion Item(s)**

6) **Proposed 2015 Street Improvement Program**

A copy of the proposed 2015 Street Improvement Program will be distributed to the City Council at the meeting. Staff would like to confirm the date for the tour of the streets, which is suggested for May 8, 2015.

7) **Regulation of Running Bamboo**

Attached is information previously distributed by City staff to the City Council for consideration regarding the potential regulation of running bamboo. Staff is requesting direction from the City Council regarding whether the City Council wants to move forward with this type of legislation and if so, whether the approach presented in the attached information should be modified prior to an ordinance being scheduled for introduction and public hearing.
EXECUTIVE SESSION

I respectfully request an executive session regarding collective bargaining matters.
RESOLUTION NO. 13 - 2015

Designating Public Depositories and Awarding Public Monies
of Active and Interim Deposits.

WHEREAS, applications for active deposits of the City of Worthington, Ohio, have been received from Huntington National Bank, Key Bank, and Park National Bank, each of which has agreed to accept all or any part of the active deposits; and,

WHEREAS, applications for interim deposits of the City of Worthington, Ohio, have been received from Huntington National Bank, Key Bank, Park National Bank, CF Bank and Fifth Third, each of which has agreed to accept all or any part of the interim deposits;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That the active depository of the City of Worthington shall be Park National Bank and that the active deposits are awarded to Park National Bank as provided in Section 135.04 of the Ohio Revised Code, for the five year period commencing June 1, 2015, upon executing and delivering the security required by law.

SECTION 2. That the interim deposits, whenever made, shall be awarded by the Finance Director as interim monies become available for such fixed maturities not less than 14 days nor more than 1 year as he may determine advisable at the time funds become available, and to such of the eligible institutions who made applications and offer the highest interest rate for each maturity so elected. In the event more than one of said eligible institutions offers the same interest rate, the Finance Director shall, if feasible, divide the award between such eligible institutions in substantially equal payments or amounts. The Finance Director shall have and exercise the authority and discretion granted to him by Section 135.09 of the Ohio Revised Code. Nothing herein contained shall limit the Finance Director in the investment of interim monies pursuant to the authority granted him by Section 135.14 of the Ohio Revised Code.

SECTION 3. This Resolution shall be in full force and effect from and after June 1, 2015.

Adopted ____________________

______________________________
President of Council

Attest:

______________________________
Clerk of Council
MEMORANDUM

To: Matthew H. Greeson, City Manager
From: Molly Roberts, Finance Director
Date: April 29, 2015
Subject: Designating Public Depositories

In accordance with Ohio Revised Code Section 135.12, requests for proposals were accepted on April 20, 2015 for the designation of public depositories for the City of Worthington. The attached resolution covers the period June 1, 2015 through May 31, 2020 and includes active funds, interim funds and inactive funds. The following definitions apply:

Active Funds - A public deposit necessary to meet current demands on the treasury.

Interim Funds - A public deposit not necessary to meet current demands but will be needed before the end of the period of designation.

Inactive Funds - A public deposit not designated as active or interim funds.

The attached resolution designates active and interim funds and identify’s interim funds as being fixed maturities of not less than 14 days nor more than 1 year in length. Historically, our active funds reflect public deposits to meet our current obligations in our corporate checking and payroll clearing accounts. We process invoices for payment each week and therefore maintain sufficient depository balances to meet these obligations. All other funds are then invested in certificates of deposits with maturities of one year or less or in federal instruments with maturities of less than three years.

Administrative Regulation 4.8, established an Investment Policy for City Funds and identifies the types of investments the Director of Finance may invest in. These include government securities, certificates of deposit, savings accounts, repurchase agreements, money market funds and now accounts. The investment policy is reviewed annually during the budget review process and identified in the annual budget ordinance.
Proposals for this depository period were received from Huntington National Bank, Key Bank, Park National Bank and CF Bank. CF Bank, however, is only seeking a public depository award for interim and inactive funds to capture investment opportunities. The proposals received from Huntington National Bank, Key Bank, and Park National Bank were all competitive and responsive. Park National Bank is offering a flat monthly service fee for all account activity in the amount of $880.00 per month. Based on this service fee structure, we could potentially save over $500.00 per month in comparison to our current fee structure. Thus, it is my recommendation to award the depository of active funds to Park National Bank. This designation would include the following accounts: general, payroll, subdivision trust, performance trust, mayor’s court and EMS lockbox.
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<th>Huntington Per Unit</th>
<th>Huntington Avg Monthly</th>
<th>Park National Per Unit</th>
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Earnings Credit Allowance

| Earnings Credit Allowance | 0.25% | 0.20% |

Average Collected Balance

| Average Collected Balance | $2,880,930.000 | $2,000,000.000 |
RESOLUTION NO. 14-2015

Authorizing an Amendment to the Final Development Plan for 50 West Wilson Bridge Road and Authorizing Variances (FMS Architects/Chase Bank).

WHEREAS, FMS Architects/Chase Bank has submitted a request for an amendment to the Final Development Plan for 50 West Wilson Bridge Road; and,

WHEREAS, Sections 1175.01(f) and 1107.01 of the Codified Ordinances of the City of Worthington provide that when an applicant wishes to change, adjust or rearrange buildings, parking areas, entrances, heights or yards, following approval of a Final Development Plan, and variances are included, the modification must be approved by the City Council; and,

WHEREAS, the proposal has received a complete and thorough review by the Municipal Planning Commission on April 23, 2015 and approval has been recommended by the Commission.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That the amendment to the approved Final Development Plan to install additional wall-mounted signage at 50 West Wilson Bridge Road as per Case No. ADP 02-15, Drawings No. ADP 02-15 dated April 10, 2015 attached hereto as Exhibit “A” be approved.

SECTION 2. That there be and hereby are granted variances from Code Section 1170.05(a) and 1170.05(b) to permit an additional wall-mounted sign on the ATM and to allow for the signage to exceed the maximum area of 100 square feet per business on a building.

SECTION 3. That the Clerk of Council be and hereby is instructed to record this Resolution in the appropriate record book.

Adopted ________________

________________________________
President of Council

Attest:

________________________________
Clerk of Council
MEMORANDUM

TO: Matthew H. Greeson, City Manager
FROM: R. Lee Brown, Director
DATE: April 29, 2015
SUBJECT: Resolution for Amendment to Development Plan and Variances – 50 West Wilson Bridge Road (FMS Architects/Chase Bank) (ADP 02-15)

Findings of Fact & Conclusions

Background & Request:
This property has housed a bank since 1968. In 1991, a drive-thru lane was added at the north end for installation of an ATM accessible by motor vehicles. Now, the property owner has taken the drive-thru lanes that accessed a teller out of service, and would like to add another drive-up ATM. The property is subject to Conditional Use Permit approval for changes to the drive-thru, and Amendment to Development Plan approval due to the size of the site, as well as being located in the Architectural Review District.

Project Details:
1. There are four lanes in the drive-thru area. As proposed, the lane closest to the building would be for through traffic; the second lane would be blocked with two bollards; and the third and fourth lanes would have ATMs. Currently, 2 lanes are blocked with bollards and signs saying “Please use our 24-Hour Drive-Up ATM” and with the logo. The same sign is on the vacuum tube by the building. As part of the change, 2 vacuum tubes would be removed and 1 other would be decommissioned.
2. The ATM topper would have signage which would be considered wall mounted. The drawing shows one sign on the front of each ATM. Variances for an additional wall mounted signage would be needed as part of the Amendment to Development Plan application. Signage on the canopy is proposed to change to reflect the appropriate lane designations, and has already been accounted for as directional signage.
Land Use Plans:

Wilson Bridge Road Corridor Study
The 2011 Wilson Bridge Road Corridor Study recommends this site include a mix of uses to ensure the corridor is economically competitive in the region. The purpose of the plan is to guide the redevelopment of the corridor, creating a safe, welcoming environment for shoppers, workers and residents. Enhancement of storefronts, public spaces, buildings, streetscapes, signage, public art, and landscaping plays an important role in the redevelopment of the corridor.

Worthington Comprehensive Plan
The 2005 Worthington Comprehensive Plan states that careful consideration should be taken for the redevelopment of The Shops at Worthington Place; including the site’s edges as a means of enhancing the attractiveness and success of the site and the corridor.

Recommendation:
Staff is recommending approval of the application as proposed.

On April 23, 2015 the Municipal Planning Commission reviewed and recommended approval with conditions to City Council on an Amendment to Development Plan. Those conditions have been incorporated into the amended drawings.
Amendment to Development Plan Application

1. Property Location: 50 W. Wilson Bridge Rd.

2. Present Use & Proposed Use: Bank / Bank

3. Present & Proposed Zoning: C-2 / C-2

4. Applicant: Andy Johnson - FMS Architects
   Address: 995 W. 3rd Ave., Columbus, OH 43212
   Phone: (614) 545-3709

5. Property Owner: J.P. Morgan Chase & Co., Contact: Christian Siegel
   Address: 1111 Polaris Pkwy.
   Phone: (216) 225-8499

6. Project Description: Drive-up ATM addition at an existing bank, with inactive lane and VAT cover signage.

7. Variances Requested: Additional directional signage; additional wall sign for new ATM

PLEASE READ THE FOLLOWING STATEMENT AND SIGN YOUR NAME:

The information contained in this application and in all attachments is true and correct to the best of my knowledge. I further acknowledge that I have familiarized myself with all applicable sections of the Worthington Codified Ordinances and will comply with all applicable regulations.

Applicant (Signature): [Signature]

JPMorgan Chase Bank, National Association, a national banking association

[Signature]

MPC Approval Date: 4/22/15
City Council Approval Date:
4/10/15

City of Worthington
Attn: Lynda Bitar
374 Highland Ave.
Worthington, OH 43085

Re: Chase Worthington Square Drive-Up ATM Addition
    Project No. 14706

Dear Ms. Bitar,

Following is a supporting statement for the above project. The Chase Bank branch,
located at 50 W. Wilson Bridge Rd. will be providing an exterior renovation to serve its
customers. The renovation will include removing (1) existing vacuum tube,
decommissioning (2) others, and providing a new drive-up ATM machine in an extended
concrete island. In addition, a bollard with signage will be placed in one of the previous
drive-thru lanes. Signage will be placed on the remaining (2) vacuum tubes that have
decommissioned. Sample renderings of the signage, a similar rendered elevation
configuration, and associated details are included in the set of documents attached. If
any additional supporting material is needed, please feel free to ask. Thanks.

Sincerely,

Andy Johnson – FMS Architects
Project Manager
<table>
<thead>
<tr>
<th>Company</th>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>Zip Code</th>
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<tr>
<td>The Kroger Co.</td>
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<td>Tom Carter</td>
<td>40 Northwoods Blvd.</td>
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<td>OH</td>
<td>43235</td>
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<td>Tsai &amp; Chan LLC</td>
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<td>447 James Parkway</td>
<td>Heath</td>
<td>OH</td>
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<td>Englefield Oil Co.</td>
<td>John S. Gordon</td>
<td>7007 N. High St.</td>
<td>OH</td>
<td>43085</td>
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<td>54 W. Wilson Bridge Rd.</td>
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<tr>
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<td>1111 Polaris Parkway</td>
<td>Columbus</td>
<td>OH</td>
<td>43240</td>
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<tr>
<td>Chase Bank</td>
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</table>
EXISTING DRIVE-UP ATM LANE

EXISTING VAT LANE

EXISTING VAT LANE

EXISTING VAT LANE AND AHD

1 DEMO. PLAN

SCALE: 1/4"=1'-0"

1. REMOVE PORTION OF EXISTING CONCRETE ISLAND AS SHOWN. REFER TO SHEET 7-A FOR ADDITIONAL INFORMATION.

2. REMOVE EXISTING VAT & BOLLARD, REMOVE ADDITIONAL VAT TUBING ABOVE CANOPY AND TERMINATE AT BUILDING, PROVIDE WATERPROOF COVER & SEAL, FINISHED TO MATCH EXISTING, AT PENETRATIONS THROUGH CANOPY AND AT BUILDING AS REQUIRED.

3. REMOVE EXISTING VAT LINE, EXCEPT FOR VAT ON ISLAND & NEW DRIVE-UP ISLAND ATM POWER/DATA SECURITY CONNECTIONS. REFER TO SHEET 8-A FOR ADDITIONAL INFORMATION. ALL WORK SHALL BE COMPLETED IN A NEAT WORKMANLIKE MANNER. IF TRENCHING AND MATERIAL REPLACEMENT IS NOT COMPLETED IN THE SAME NIGHT THEN CONTRACTOR SHALL PROVIDE TRENCH COVERS TO PREVENT TRIPPING OR INJURIES.

4. REMOVE EXISTING BOLLARD AND SIGNAGE AT LANES, PATCH SLAB AS REQUIRED.

5. REMOVE EXISTING WINDOW SIGNAGE.

6. REMOVE EXISTING VAT COVER SIGNAGE.

7. MODIFY EXISTING ATM TOWER TO REMOVE SIGNAGE ON ALL SIDES EXCEPT SIDE FACING DRIVER, COORD. WITH SIGNAGE AND ATM GROUP.

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NEW WORK PLAN

SCALE: 1/4"=1'-0"

NEW WORK PLAN CODED NOTES

1. INSTALL NEW DRIVE-UP ISLAND ATM PER ATM GROUPS DIRECTION.
   PROVIDE AND INSTALL POWER, DATA AND SECURITY REQUIREMENTS AS
   REQUIRED PER QSD 1-3R-13.1 LATEST REVISION & DETAILS ON SHEET
   A3.1 CENTER PAIR IN LANE AND SPACE AT 48" O.C.
   LUMPED MATERIALS OR DETAILS ON DRAWING AS BUTFROMED IN DIR
   FOR THE DURABILITY AS FEINKNopf MACIOCE
2. INSTALL 2) NEW INACTIVE LANE BOLLARDS. REFER TO DETAILS ON SHEET
   A3.1 CENTER PAIR IN LANE AND SPACE AT 48" O.C.
3. PROVIDE OPAQUE FILM ON INTERIOR WINDOW SURFACE.

CHASE WORTHINGTON SQUARE ATM
PROJECT #: 14706 SHEET: A3.1 - SK-2
DATE: 4/27/15
SCALE: 1/4"=1'-0"

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F E I N K N O F F  M A C I O C E  S C H A P P A  A r c h i t e c t s
95 West 3rd Avenue, Columbus, Ohio 43212

ARCHITECTURAL REVIEW BOARD
CITY OF WORTHINGTON
DATE 4/23/15

APPROVED
WORTHINGTON MUNICIPAL PLANNING COMMISSION
DATE 4/23/15

CONTROL No. 08-15

APPROVED
DATE 4/10/15

CLERK OF COMMISSION

AHP 02-15
BOLLARD DETAIL AT INACTIVE LANE

5/4" = 1'-0"
ORDINANCE NO. 15-2015

Approving the Provisions of a Collective Bargaining Agreement Between the City of Worthington, Ohio and the International Association of Firefighters Local #3498 and Authorizing the City Manager to Execute Same on Behalf of the City.

WHEREAS, International Association of Firefighters Local #3498 has been certified by the State Employee Relations Board, pursuant to Chapter 1147 of the Ohio Revised Code, as the exclusive representative for purposes of collective bargaining for certain bargaining units within the Division of Fire and Emergency Medical Services of the City of Worthington; and,

WHEREAS, the City and the International Association of Firefighters Local #3498 have negotiated a tentative collective bargaining agreement; and,

WHEREAS, the City Manager has requested City Council to approve the provisions of said collective bargaining agreement following ratification of same by Local #3498;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That City Council hereby approves the provisions of the “Collective Bargaining Agreement Between the City of Worthington, Ohio and the International Association of Firefighters Local #3498 for the Period January 1, 2015, through December 31, 2017,” including the provisions relating to economic matters for which funds are hereby approved and which will be appropriated in accordance with the City Charter at the time for the annual budget appropriation ordinance for each year of said Agreement.

SECTION 2. That the City Manager and Director of Law be and they hereby are authorized and directed to execute said Agreement on behalf of the City and that the Assistant City Manager, Director of Finance, Fire Chief, and the Personnel Director, be and they are hereby authorized to execute said Agreement in their capacity as members of the City negotiation committee.

SECTION 3. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed ________________

President of Council

Attest:

_____________________

Clerk of Council
ORDINANCE NO. 16-2015

Amending Ordinance No. 40-2014 (As Amended) to
Adjust the Annual Budget by Providing for An
Appropriation from the General Fund
Unappropriated Balance for Sewer Fund
Obligations.

WHEREAS, the Charter of the City of Worthington, Ohio, provides that City Council may at any time amend or revise the Budget by Ordinance, providing that such amendment does not authorize the expenditure of more revenue than will be available;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That there be and hereby is appropriated from the General Fund unappropriated balance to:

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>101.1110.560985</td>
<td>Operating Transfer</td>
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</table>

**General Fund Total** $ 10,000.00

SECTION 2. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed ______________

___________________________________
President of Council

Attest:

___________________________________
Clerk of Council
MEMORANDUM

TO: Matthew H. Greeson

FROM: Pam Fox

DATE: March 12, 2015

SUBJECT: Proposed Ordinance Regulating the Growth of Running Bamboo

In response to complaints from residents last year of the encroachment of bamboo from neighboring properties, causing difficulty in the removal and/or containment of the plant, City Council has asked for proposed legislation regulating the growth of this type of bamboo.

A draft of an ordinance has been submitted to you for your review for the regulation of the growth of running bamboo. Contained within the ordinance are a purpose clause, definitions, prohibitions on the growth of the bamboo onto neighboring properties, notice requirements, enforcement procedures and appeal rights. At the last Council meeting where this topic was discussed, I understood that some Council members were not interested in invoking any criminal penalties for the failure to contain bamboo, so the enforcement and penalty provisions of the ordinance are civil in nature.

This ordinance was crafted following a review of several local jurisdictional laws, none of which are in Ohio. My memo of last year outlined the various ways in which bamboo is regulated and enforced, so other options may be available to the City if Council wishes, but I tried to include as much of the provisions as I feel we legally could enforce without creating property or due process violations.

The ordinance is fairly specific and should require some robust discussion if the Council continues to be interested in adopting this type of regulation. I would encourage anyone to give me a call to discuss any of the provisions contained in the draft if there are any questions or concerns. Also, if you would like to resubmit my memo of last year to Council, I can get that to you.

Please let me know if you want any other information to be presented with this legislation.
MEMORANDUM

TO: Matthew H. Greeson
FROM: Pam Fox
DATE: June 5, 2014
SUBJECT: Regulation of the Planting of Bamboo

For the past several months, the City has received complaints from residents of instances where neighbors’ bamboo has encroached into their yards and created difficulty in removal and containment. Specifically, some residents in the City have planted a variation of bamboo known as ‘running bamboo’, which have strong underground rhizomes that grow quickly and develop new shoots that can extend several feet beyond the original planting, oftentimes popping up in neighboring yards. Running bamboo is challenging to contain, and unwanted by those residents who have chosen not to plant it as a cultivated addition to their landscaping.

The staff is aware of a number of properties in the City that have bamboo, and when considering whether the growing, containing or prohibition of bamboo should be regulated, it is likely that a number of residents will be affected. The Codified Ordinances do not contain any provisions that would give the City the ability to regulate bamboo, although we do have a section prohibiting the growth of noxious weeds and other undesirable vegetation (Section 521.13). The State of Ohio identifies both noxious weeds and invasive plant species and regulates the planting and growth of them, mostly when administering state and federal grant programs. Bamboo is not identified as a noxious weed or invasive plant species by the State.

We have not found any communities in Ohio that have passed laws regulating bamboo, but have reviewed several ordinances from communities on the East Coast. The State of Connecticut passed legislation last October to address running bamboo, making people who plant, or allow running bamboo to be planted on their property liable for any damage the plant causes to a neighboring property, including the cost of removing it. The law also restricts the planting of bamboo to 100 feet from a neighboring property or public right-of-way (bamboo was popping up through city streets) and failure to comply results in a fine.
The ability of the City to regulate bamboo and if so, how, is explored below. Various methods of enforcement and ways to achieve the desired result of containing the growth of the plant to the property on which it is planted, is also addressed. The overriding question is whether the problems that the residents are having with bamboo should be addressed through legislation passed by City Council, or whether private causes of action are more appropriate under the circumstances.

**Power of the City to Regulate Bamboo**

Under home rule, the City is able to exercise all powers of local self-government and to adopt and enforce within its limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. Under this authority, the City enforces its noxious weed ordinance in Section 521.13. These ordinances have been found to be a permissible and constitutional exercise of a City’s home rule authority as long as the provisions of the ordinance are not vague or administered in an arbitrary and capricious manner. No one has suggested that bamboo be considered either a noxious weed or an invasive plant species, but the regulation of the planting and maintenance of it, primarily because of the damage it can do to abutting properties, can fall under the same home rule provisions as those regulations of noxious weeds.

If bamboo is to be regulated, it is important to identify with some specificity what the regulation is, particularly since the private property rights of citizens are being considered, in order to avoid a claim that the ordinance is too vague. The City of Worthington’s noxious weed ordinance was challenged several years ago by Sondra Davis. She argued, among other things, that the ordinance was vague because it didn’t clearly define what constituted a “weed” so that those enforcing the ordinance could understand what was and was not prohibited. The Federal Court determined that it was enough that the Code described a noxious weed as any uncultivated plant over 10” and it was not, therefore, unconstitutionally vague. The City of Newark, on the other hand, was found to have an unconstitutionally vague ordinance where it did not provide for a prior determination or definition of noxious weeds when it prohibited ‘weeds or plant growth which [were] noxious or detrimental to the public health and welfare or a public nuisance’ (further defined to include uncontrolled growth of weeds).

The State of Ohio has developed both a noxious weed list and an invasive plant species list, and has delegated authority to the Department of Agriculture to develop those lists, but bamboo is not included on either. Because the State neither prohibits nor permits bamboo regulation, the City may consider it as a local law. In so doing, because private property rights are being affected, a valid governmental purpose will have to be adopted, which will involve a finding that bamboo can have a negative effect on the health, safety and welfare of the citizens.

Alternatively, those residents who have concerns about the intrusion of bamboo onto their property may explore private remedies, including a private nuisance or trespass cause of action, against their neighbor. These remedies are civil in nature and do not involve the local government.
Types of Bamboo Regulation

While no communities in Ohio (or in the Midwest) have been found to regulate bamboo, some communities in Pennsylvania and on the East Coast have undertaken legislation to prohibit or restrict its planting or growth, and last year the State of Connecticut passed a statewide measure to regulate it. The legislation is varied and addresses if the bamboo can be planted, and if so, how or where. Methods of enforcement also vary. It distinguishes between existing plantings and new plantings, but all of them pertain to some species of running bamboo. A sample of this legislation follows:

State of Connecticut:

- No person shall permit bamboo to grow beyond the property’s boundaries, or be liable for any damages to neighboring property, including the cost of removal (applies to bamboo in existence on the effective date of the statute and new plantings).
- No bamboo can be planted within 100 feet from an abutting property or a public right-of-way unless it’s contained by an adequate underground barrier or planted in an above-ground container. A violator shall be fined $100 for every day the violation occurs. Law applies to plantings after the effective date of the statute.
- Retail sellers of bamboo are required to provide a statement to each purchaser of bamboo disclosing that bamboo is a fast growing plant that may spread if not properly contained. It shall also include information on how to properly contain it. A violation subjects the retailer to a $100 fine for each plant sold in violation (while this regulation of the sale of bamboo may be appropriate for the State of Connecticut, it would not be for a municipality).

Local Regulation Features:

- Prohibits future planting of bamboo or requires it to be planted a specified distance from abutting property (10/40/100 feet).
- Prohibits planting unless in an above-ground container or within a barrier system (constructed to city specifications).
- Prohibits existing bamboo from being maintained or otherwise permitted to exist within 10/40/100 feet from the right-of-way.
- Existing or future bamboo must not encroach or grow upon neighboring property.
- Bamboo owners required to take reasonably expected measures to prevent bamboo growth onto adjoining neighbors (i.e., cutting it down, installing barriers, applying herbicide).
- Prohibition on discarding the bamboo or its rhizomes in a compost or mulch or at the local yard waste post.

At least one township classifies bamboo as one of a series of defined invasive species as its justification for regulation. Almost all of the others’ stated purpose clauses cite the preservation and protection of private and public property, the protection of indigenous plant materials from the invasive spread of running bamboo, and maintenance of the general welfare of the residents.
Enforcement

The goal of all regulatory schemes is compliance with the code. To this end, enforcement measures should be carefully crafted to achieve the desired result. Enforcement of violations of a proposed bamboo regulation is only effective if it results in the containment of the bamboo to the property on which it is planted. As with similar types of regulations, the property owner is entitled to notice and an opportunity to cure. In this case, the property owner would be in violation if the bamboo were too close to a neighboring property or encroaching onto a neighboring property, depending upon the type of prohibition enacted. A notice to correct would be issued and time given to comply. If a property owner fails to comply, then enforcement could involve a fine, a criminal citation, or removal by the City with a charge back to the homeowner. Any of these enforcement methods would need to be evaluated against the desired result and should be compelling enough to cause the owner to correct the violation and prevent future violations. A civil fine might be instituted along with a method of collection. A violation could be classified as a criminal cause of action, just as we classify other types of property maintenance violations. Removal by the City could be included as a remedy, but it would involve using the resources of our employees or contracting out the work to a third party.

Conclusion

Regulation of the planting or growth of bamboo involves a spectrum of options, but they all come with particular challenges. If the City determines to undertake bamboo regulation, then the rules will apply to all property owners city-wide. The enforcement of the regulations should be carefully crafted to accomplish the goals of the legislation.

Private property matters can be addressed through private causes of action or self-help remedies. Property rights already permit homeowners to remove unwanted tree branches, shrubbery or weeds from their properties which originate next door, and this is no different.

If you need any additional information or have any questions, please do not hesitate to contact me.
ORDINANCE NO. xx-2014

Enacting Section 1180.08 of the Codified Ordinances of the City of Worthington to Regulate the Growth of Running Bamboo.

WHEREAS, the growing of running bamboo, if not controlled and/or contained, results in a rapid spreading and infestation of bamboo plants through its root system and underground rhizomes; and

WHEREAS, the growth of the bamboo plants may cause serious damage to structures and plant materials located in the path of the underground root system; and

WHEREAS, property owners adjacent to parcels that contain bamboo cite difficulty and expense in attempts to keep unwanted running bamboo from extending onto their yards and spreading; and

WHEREAS, the City wishes to preserve and protect private and public property from the damaging spread of bamboo, protect indigenous plant materials from the invasive spread of bamboo, and maintain the general welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

Section 1. That Section 1180.08 of the Codified Ordinances of the City is enacted to read as follows:

1180.08 GROWTH OF BAMBOO.

(a) Definitions. As used in this chapter, certain terms are defined as follows:

(1) “Bamboo” means any tropical or semi-tropical grasses classified as “running bamboo” with monopodial (leptomorph) rhizome (root) systems which typically send off the rhizomes far away from the plant.
(2) “Bamboo Owner” means any property owner or resident who has planted and/or grows Bamboo, or who maintains Bamboo on the property, or who permits Bamboo to grow or remain on the property even if the Bamboo has spread from an adjoining property. Any property owner or resident at whose property Bamboo is found will be considered a Bamboo Owner, except any property owner or resident who:
(i) Did not plant or grow or cause Bamboo to be planted or grown on his or her property; and
(ii) Has provided satisfactory proof to the City that, within a reasonable period of time after discovering the encroachment of Bamboo onto the property from an adjoining or neighboring property, advised the owner of such property of an objection to the encroachment of the Bamboo; and
(iii) Has initiated steps for the removal of the Bamboo from the property, including remedies at law.

(b) Applicability. For purposes of this Section 1180.08, Bamboo found growing upon property shall constitute presumptive evidence that the Bamboo was planted and/or grown by and with the consent of the owner upon whose property the Bamboo is growing. If the Bamboo is found to have encroached, spread, invaded or intruded upon any property other than the property on which it was planted, including public property and right-of-way, it shall be presumed that the Bamboo is “running bamboo” as defined herein, and subject to the provisions of this Section 1180.08.

(c) Notification. Within 120 days after the effective date of this Section, each Bamboo Owner shall notify the City in writing that Bamboo is present on his or her property.

(d) Duty to Confine. All Bamboo Owners must confine Bamboo in a manner that will prevent the Bamboo from encroaching, spreading, invading or intruding onto any other private or public property or right-of-way, and shall be required to take any such reasonable measure to do so. A Bamboo Owner who fails to confine Bamboo to the Bamboo Owner’s property shall be subject to the penalty provisions of Section 1180.08 (h) herein.

(e) Property Owners Affected by Bamboo. In the event that a property owner notifies a Bamboo Owner that Bamboo is encroaching, spreading, invading or intruding upon such property owner’s property, as required under Section 1180.08(a)(2)(ii), such notifying property owner shall give consent to the Bamboo Owner for the Bamboo Owner to enter such notifying property owner’s property in order that the Bamboo Owner may remove the Bamboo thereon. Failure to give consent shall hold the notifying property owner responsible for the removal of the encroaching Bamboo at such property owner’s cost. Consent hereunder shall also be deemed to be consent given to a contractor that the Bamboo Owner may hire for the removal of the Bamboo, and to the City or the City’s contractor should that become necessary.

(f) Failure to Confine. In the event Bamboo growing on a Bamboo Owner’s property encroaches or grows onto an adjoining or neighboring
property, and the Bamboo Owner fails to remove the Bamboo, or fails to cause it to be removed following a request to do so by the affected adjoining property owner within ten (10) days from the date of the request, the affected adjoining property owner shall notify the Director of Service and Engineering of such encroachment. The Director shall be provided satisfactory proof from the affected adjoining neighbor that the Bamboo Owner was notified of the encroachment and had the requisite number of days to remove the Bamboo. The Director shall confirm the presence of the encroaching Bamboo and shall notify the Bamboo Owner in writing of such encroachment, which notice shall:

1. Specify the nature and location of the violation;
2. Provide notice of the requirement to remove all portions of the Bamboo plant from the affected adjoining property within ten (10) days from the date of the notice; and
3. State that the failure to comply with the notice and order may hold the Bamboo Owner liable to the City for the cost of removal, in addition to any fines that may be imposed pursuant to Section 1180.08(h).

(g) Appeal. If a Bamboo Owner believes that the determination of the Director of Service and Engineering that he or she is in violation of the provisions of this Section 1180.08 is in error, then that determination may be appealed to the City Manager within five (5) days of receipt of the notice to remove the Bamboo issued pursuant to subsection (f) hereof, by the filing of a written notice of appeal. The Bamboo Owner shall have the opportunity to present relevant evidence to the City Manager, with or without legal counsel. A record of the hearing shall be kept, including without limitation all documentary evidence presented together with a record of the testimony offered by any witnesses, whose testimony shall be duly sworn. The decision of the City Manager shall be rendered at the hearing and mailed to the person to whom the original notice was served by regular and certified mail, within five (5) days of the date of the decision.

At the hearing, the City Manager may direct the Bamboo Owner to remove the encroaching Bamboo within ten (10) days of the receipt of the appeal decision. Alternatively, the City Manager may order the Bamboo to be removed by the City, either with City crews or by contracting with a third party to have it removed, in which case the Bamboo Owner will be charged with the cost of removal, plus a 25% administrative fee as set forth in subsection (j) hereof.

(h) Penalty. Any Bamboo Owner, whether a person, firm, corporation, or other legal entity, that is found to have failed to remove Bamboo when noticed to do so under Section 1180.08(f) shall be fined $100.00 per day
for each day that the Bamboo remains after the expiration of the 10-day notice period given by the Director of Service and Engineering. This penalty shall be vacated only if the Bamboo Owner is found not to be responsible for the Bamboo removal as a result of an appeal determination.

(i) City Removal of Bamboo. If the Bamboo Owner fails to remove the Bamboo as directed in the notice sent pursuant to subsection (f) or as a result of an order to do so by the City Manager at the appeal hearing, the Director of Service and Engineering shall cause the Bamboo to be removed and destroyed, and may employ the necessary labor and equipment to perform such task, together with any cleanup work required, within appropriations previously made by Council.

(j) Statement of Cost to Owner. When the Director of Service and Engineering causes Bamboo to be removed as provided in subsection (i) above, a statement of the cost thereof shall be mailed to the Bamboo Owner by certified mail, return receipt requested. If the certified mail is returned or refused, then such statement may be sent by ordinary mail, or personal service by posting at the subject property if the Bamboo Owner is the occupant thereof, by any means that assures and documents delivery. Such statement of cost shall include the following costs of the City:

(1) Labor.
(2) Transportation of equipment.
(3) Equipment rental.

The minimum fee to be charged shall be twenty-five dollars ($25.00) per hour. A 25% administrative fee shall be charged on the total amount of the costs of removal.

(k) Cost Payment; Unpaid Costs a Lien. The Bamboo Owner may pay such fees as are charged in accordance with subsection (j) hereof to the City Clerk within thirty days after receipt of the statement of the costs. Any payment so received shall be restored to the appropriation from which the cost was paid. If the fee is not paid when due, the Director of Finance shall certify to the County Auditor the proceedings taken under this section, together with a statement of the charges for services as listed in subsection (j) hereof and a legal description of the premises. Such amounts shall be entered upon the tax duplicate and shall be a lien upon such lands from the date of entry, and shall be collected as other taxes and returned to the City General Fund as provided by Ohio Revised Code Section 731.54. These costs shall be separate from any fine that may be imposed as a penalty under subsection (h) hereof.
Section 2. That notice of passage of the Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center, and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed ______________

Attest: _________________ P.H.

Clerk of Council Effective

President of Council

Introduced P.H.