AN ORDINANCE

BY: VICE MAYOR BYINGTON NO. 4819

TO AMEND EXISTING SECTION 167.01, *BOARD OF SEWER AND WATER APPEALS,* OF THE OAKWOOD ADMINISTRATIVE CODE AND EXISTING SECTION 311.02, *PARADES AND BLOCKING STREETS; PARADE AND ASSEMBLY APPEALS BOARD,* OF THE OAKWOOD TRAFFIC CODE, TO ALLOW MEMBERS OF THE "LOCAL BOARD OF TAX REVIEW" TO SERVE AS THE "BOARD OF SEWER AND WATER APPEALS" AND AS THE "PARADE AND ASSEMBLY APPEALS BOARD."

WHEREAS, pursuant to Chapters 148 and 167 of the city's Administrative Code, and Chapter 311 of the city's Traffic Code, the city has established various 3-member boards to hear appeals pertaining to local income taxes, sewer and water matters, and parade and assembly permits; and

WHEREAS, Chapter 167, which establishes the Board of Sewer and Water Appeals, and Chapter 311, which establishes the Parade and Assembly Appeals Board, specify that these boards are comprised of the same members as the Board of Tax Appeals, who serve in multiple capacities, fulfilling the responsibilities of all three boards; and

WHEREAS, under legislation mandated by the State of Ohio and adopted by Council on November 2, 2015, what was formerly known as the "Board of Tax Appeals" is now known as the "Local Board of Tax Review," and the Law Director has recommended an update to Chapters 167 and 311 to reflect this new terminology and provide for continuity in the multiple roles of these board members; and

WHEREAS, Council finds the Law Director's recommendation to be well-taken, and in the public interest, and hereby accepts the same;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAKWOOD, STATE OF OHIO, THAT:

SECTION I.
Section 167.01, *Board of Sewer and Water Appeals,* of the Oakwood Administrative Code is hereby amended to read as follows, with new text in **bold** type and deleted text in ~~strikethrough~~ type:

167.01 BOARD OF SEWER AND WATER APPEALS.

A. Creation and membership. There is hereby created a Board of Sewer and Water Appeals to conduct hearings and make determinations as authorized by this chapter. The members of the ~~Board of Tax Appeals~~ **Local Board of Tax Review, as established under Chapter 148-1,** ~~of this City~~ shall, for the purposes set forth herein, constitute the Board of Sewer and Water Appeals. The character of the board and terms of office of its members shall be as prescribed in Codified Ordinance ~~148.13(B)(1)~~ **148-1.18(A)**.

B. Claims for damages. The Board of Sewer and Water Appeals is hereby vested with jurisdiction and authority to hear and decide claims for damages based upon injuries to persons and/or property caused by the operation of the sewer and/or water systems of this City. Acting under the law of Ohio, the board shall determine all relevant issues, including but not limited to, the questions of whether or not any malfunction occurred, the existence and extent of claimed injuries and to what extent, if any, the City of Oakwood is liable for such damages. Claimants shall have the burden of proving by a preponderance of the evidence that they have the right to recover damages from the City on such claims.

C. Alleged errors in bills. Further, the board shall also have jurisdiction to hear and decide the correctness of and liability for billing statements for water service, and alleged violations of regulations of the Water Department, after public hearing as provided in the Water Department Rules and Regulations.

D. Facts and law. The board shall determine the facts and shall apply the law with regard to the sewer and/or water systems of this City, but shall not have authority to vary, to waive or to refuse to apply any provision of such law. (For subpoena power see ADMIN 160.02)

E. Meetings and rules. All meetings of the Board of Sewer and Water Appeals shall be held at the call of its chairman and at such times as the board may determine. All hearings conducted by such board shall be open to the public to the extent required by the rules of procedure set forth in Chapter 111 of the Codified Ordinances. The board shall keep minutes

of its proceedings and may not adopt its own rules and procedures. The members of this board shall serve as such without compensation.

F. Right of appeal. The ultimate decisions of this board upon claims presented to it shall be final administrative decisions and shall be subject to judicial review upon appeal by either the claimant or the City to the court system in the manner provided by the statutes of Ohio.

SECTION II.

Section 311.02, *Parades and Blocking Streets; Parade and Assembly Appeals Board,* of the Oakwood Traffic Code is hereby amended to read as follows, with new text in **bold** type and deleted text in ~~strikethrough~~ type:

311.02 PARADES AND BLOCKING STREETS; PARADE AND ASSEMBLY APPEALS BOARD.

(a) No person shall conduct or participate in any parade upon that portion of any street or highway which is open to the use of the public as a thoroughfare for purposes of vehicular traffic, nor block off any such portion of a street or highway area, without first obtaining a permit from the Director of the Department of Public Safety of this City.

(b) A parade is defined to be a formal or informal march or procession of two or more individuals, vehicles or animals moving from one point to another in an organized manner so as to interfere with the free and uninterrupted use by the public of such street or highway.

(c) Applications for such permits shall be made on forms prescribed by the City and shall contain such information as is reasonably necessary to a fair determination of whether a permit should be issued, including but not limited to the exact portions of any street or highway to be blocked off, the exact route of the parade, the date and hours of the day for which the permit is requested, the number of persons anticipated to be involved and the number, type and size of vehicles and animals anticipated to be involved. Applications shall be filed with the Director of the Department of Public Safety not less than 4 days before the time intended for such parade or blocking off. (Ord. 3069. Passed 11-20-78.)

(d) The permit shall be issued unless the Director finds that the resultant conditions would unreasonably hinder the use by the public of such portion of the street or highway or would require the diversion of sufficient police officers or firemen so as to deprive the City of normal police and fire protection, in which case the application shall be rejected or conditions imposed as set forth below.

(e) The permit or any order accompanying it may prescribe reasonable conditions as to the hours, the places of assembly and of dispersal, the route and manner of march or travel, the number, type and size of animals and vehicles and the streets, highways or portions thereof which may be used or occupied. Further, the Director may require additional conditions for the issuance of the permit, including but not limited to requirements and restrictions that the person conducting the parade or blocking off the street assume, in writing, the obligation of paying the costs to the City of supervising and directing such parade or blocking off, including the cost of providing personnel from the Departments of Safety and Service or any other City personnel, including the costs of the services of outside contractors, and including that such person provide evidence of ability to pay such costs.

(f) The Director of the Department of Public Safety shall issue the permit (with or without conditions) or a written rejection of the application within four days after the application was filed. It shall be the duty of the applicant to pick up the permit or rejection at the City offices.

(g) If the decision of the Director was to reject the application, or to approve it but subject to conditions imposed by the Director, the City shall take the initiative in providing for an administrative hearing and review within 5 days after the rejection or conditional approval was issued. There is hereby created a Parade and Assembly Appeals Board to conduct such hearings and to review and make determinations as authorized herein. The members of the ~~Board of Tax Appeals~~ **Local Board of Tax Review, as established under Chapter 148-1,** ~~of this City~~ shall, for the purposes set forth herein, constitute such Parade and Assembly Appeals Board. **The character of the board and terms of office of its members shall be as prescribed in Codified Ordinance 148-1.18(A).** (See ADMIN 160.02 for subpoena power)

(1) Notice. Notice of the hearing before such Board shall be given to the applicant for the permit by telegram, night-letter or other form of delivery of a written notice of the date, place and hour of the hearing.

(2) Decision. The Board shall reverse the decision of the Director and shall grant the permit applied for, without conditions, unless it finds that the rejection of the application, or the conditions imposed upon approval of the application, were based upon a valid and correct determination by the Director, supported by clear and convincing evidence presented to the Board, that resulting conditions would have unreasonably hindered use by the public of such street or highway or would have required the diversion of police or fire personnel so as to deprive the City of its normal protection. The decision of the Board shall be made and issued at a public meeting of that body held not later than three days after the administrative review hearing referred to above.

(3) Judicial appeal. Decisions of this board shall constitute final administrative decisions so as to be subject to judicial review under Chapter 2506 of the Ohio Revised Code upon appeal to the court system by the applicant for such a permit. The applicant may combine such an appeal with a request for immediate restraining order and/or injunctive relief as authorized by the Ohio Rules of Civil Procedure. The applicant shall be informed of this right of judicial review.

SECTION III.
This ordinance shall be and remain in force from and after the earliest period allowed by law.

PASSED BY COUNCIL OF THE CITY OF OAKWOOD, this 22nd day of February 2016.

Mayor William D. Duncan

ATTEST:

Clerk of Council

TO THE CLERK:

Please publish the foregoing by incorporating the same into the Codified Ordinances of the city.

City Attorney Robert F. Jacques