

This Special Meeting of Council was called to order on Thursday, July 27, 2017 at 8:00 p.m. by Steve Michniak, Council President. There was a moment of silence in place of an invocation and then Mayor Broska lead the Pledge of Allegiance.

PRESENT: Bridget Pavlick, Steve Michniak, Tim Claypoole, Jeff Allen, Jessica Timmons

ABSENT: John Ruediger, Julie Field

ALSO PRESENT: Glenn Broska, Mayor
Paul Janis, Law Director
Caroline Kremer, Clerk of Council

MOTION: TO EXCUSE MR. RUEDIGER AND MRS. FIELD.

Moved by Mrs. Pavlick, seconded by Mr. Allen. Upon voice vote, **motion carried.**

Special Business

T-6357

AN ORDINANCE ACCEPTING THE FINAL REPORT OF THE 2017 CHARTER REVIEW COMMISSION, AUTHORIZING AND DIRECTING THE PORTAGE COUNTY BOARD OF ELECTIONS TO PLACE ON THE BALLOT AT THE NOVEMBER 7, 2017 GENERAL ELECTION, OR AT THE EARLIEST ELECTION PERMITTED THEREAFTER BY LAW TO BE HELD IN THE CITY OF STREETSBORO, THE QUESTION OF AMENDING SECTIONS 3.01, 3.02, 3.08, 4.02, 4.03, 4.14, 4.15, 4.17, 12.02, 24B.03 OF THE CITY CHARTER, AND REPEALING SECTION 23.03 OF THE CITY CHARTER.

Clerk read by title as directed for third reading.

MOTION: TO ADOPT ORDINANCE.

Moved by Mr. Allen, seconded by Mrs. Pavlick. Upon roll call: Mr. Allen-No. Mr. Allen said he didn't know why Council was voting on this tonight because Mr. Janis had already forwarded this on to the Board of Elections and he didn't understand why he had done that before the vote tonight. Mr. Allen said Mr. Janis had sent Council a legal opinion that there was case law for this, but Mr. Allen thought there also had to be case law on their constitutional right as elected officials for their vote. He also said if this would fail tonight, he thought Council was in a position that they needed to hire counsel for Council. Mrs. Pavlick-Yes, Mr. Claypoole-Yes, Ms. Timmons-No, Mr. Michniak-Yes. **Motion failed 3-2.** Mr. Janis confirmed that under Council rules four member of the entire Council were needed to pass an ordinance (not just a majority of those present at the meeting). Mr. Allen said he felt Council was in a position where Council needed counsel for Council at this point.

MOTION: THAT WE HIRE COUNSEL FOR COUNCIL.

Moved by Mr. Allen, seconded by Ms. Timmons. She didn't feel Council was being supported at this point; she didn't know if Council had a neutral opinion. Mr. Michniak commented that Council had the July 26, 2017 letter that the Law Director submitted to Faith Lyons, Director of the Portage County Board of Elections, along with the proposed Charter amendments, which laid out the City's Law Department's opinion and laid out its argument for that. He said there were at least two Members of Council here tonight who felt they weren't able to get legal advice in a way that would be from their position or to get their questions answered as to their

legal standing as a Councilperson. Mr. Michniak said Mr. Janis represented the City as a whole and he had laid out his legal argument in the July 26, 2017 letter. Mr. Michniak thought it put Mr. Janis in a weird position to advise the two Council Members, other than what he had already laid out as to what he believed the Charter required.

Mr. Michniak asked what Mr. Allen meant by “counsel for Council;” did he want somebody to talk to about it as to his options just on this limited issue? Mr. Allen said yes, just on this limited issue.

Mrs. Pavlick also felt that maybe this section of the Charter needed looked at. She said she had an issue with it because it had something presented to Council, but told Council how to vote. She didn’t think that was constitutionally favorable to her. She supported having the Council President find counsel that could speak to those issues of that section of the Charter.

Justin Ring, 1456 Crescent Drive, commented that section of the Charter designated that Council shall forward the proposed Charter amendments, but it didn’t designate the manner by which they shall forward it. He said if it was by vote, then it was not constitutional for a Charter to dictate how a Council Member had to vote, but if there was no specification in that section of the Charter of how it needed to be forwarded then it should revert back to the rest of the Charter, which would dictate that Council vote on it. He thought it could not compel a Council Member to vote in any specific manner, especially if it was against their own interest. He recommended Council hire counsel for a second opinion on this matter.

Mr. Allen agreed with Mrs. Pavlick. He didn’t understand why it would be before Council if Council couldn’t vote yes or no on it. If Council had no say and had to forward it, then why would it be before Council? And why did other parts of the Charter require a vote on legislation to go to the voters. Mr. Allen agreed somewhat with Mr. Ring’s theory that the Charter was ambiguous in that.

Mr. Michniak commented that if Council was asking for some counsel appointed to represent or advise Council on the limited issue of the Charter Review Commission amendments and their placement with the Board of Elections and everything that goes along with it, there would have to be some sort of money to do that.

Mayor Broska said judging from the Supreme Court’s decision where you could substitute the name Streetsboro instead of Broadview Heights, they had already decide the constitutionality of this and they affirmed it was okay for a Charter to contain that type of language. Mr. Michniak and Mr. Allen said that could very well be the legal advice they get, but Mr. Allen thought there could also be compelling case arguments that said Council had a vote and couldn’t be told how to vote. He thought there had to be other case law out there that protected their constitutional right with their vote because they were elected to represent the people. Mr. Janis commented that the Ohio Constitution of 1912 had included how City Charters were adopted and amended and it provided that for an amendment by a petition from the citizens, that Council would have a right to review and submit it to the Board of Elections for one sole issue and that was to assess the adequacy of the petitions, not the content of the amendments. That’s where most of the case law flows from. After a few decades the idea of Charter Review Commissions came into play and the Charter Review Commission took the place of petitions so there was nothing for the Council to review when it came to assessing what the Charter Review Commission gave them because there were no petitions; Council wasn’t assessing the validity of the signatures or the petitioners or anything like that. For whatever reason the Streetsboro Charter left in there the idea that the Council must forward the Charter amendment proposals from the Charter Review Commission as submitted. It could have said that the Charter Review Commission could submit them directly to the Board of Elections, if it wanted to, but it didn’t do that for whatever reason and that’s the only reason Council was meeting today because that anachronism was still there that related back to the original Ohio Constitution of 1912. Mr.

Allen said Mr. Janis may be correct and that may be the legal opinion Council would get, but Mr. Allen thought Council needed some other legal opinion to see.

Mr. Michniak thought the motion on the floor would need to include some direction to the Finance Director; it couldn't be an unlimited amount.

Mr. Claypoole questioned, since he was a stickler for the rules, if this idea could even be discussed here since this was a Special Council Meeting and agenda items could not be added to special meetings. Mr. Michniak thought this was part of the discussion regarding the Charter amendments going to the ballot and wasn't a new item. Mr. Janis noted that Council could only appropriate money by ordinance and a separate appropriation ordinance would need to be on an agenda before Council could spend the money.

Leon Jankowski, 9121 Ranch Road, said the legislation had been voted on and defeated, so he was confused. He wanted what was best for the people of the City. There shouldn't be more discussion to try to sway someone's vote. Mrs. Pavlick responded that they were not trying to sway anyone's vote, they were discussing whether Council should get legal counsel for themselves to investigate whether this was truly something that needed to be looked at in our Charter. Mr. Michniak said although the legislation was defeated, it actually wasn't defeated because it had been sent on. He felt both sides were trying to do what was correct for the City. Mr. Michniak had been on the Charter Review Commission twice and was on the Commission when the "Council shall forward the Charter Review Commission amendments" language was put into the Charter. Mayor Broska asked what was the Charter Review Commission's thoughts when adding that language to the Charter. Mr. Michniak recalled that they intended the proposals to go to the ballot, that the content would not be messed with. He didn't anticipate years down the road that it would become an issue. At that time he felt they were discussing the opposite effect where the Charter Review Commission put something to the ballot and the Council Members ignored it. Mayor Broska said that was what was happening today. Mr. Michniak thought there was a question in the mind of some Council Members as to the validity of that statute passing. They challenged the constitutionality of being told they had to forward something on as a legislative body; that was their question. Mr. Michniak said he couldn't answer that question because he wasn't the attorney for the City and the attorney for the City had spoken in a nice letter, but there were questions some Council Members didn't feel they've had answered appropriately yet and wanted an outside opinion.

Mr. Allen said the biggest question he had was why was this in front of Council if it had to be forwarded. Mr. Janis answered it was because the Charter said the Council shall submit the Charter amendments from the Charter Review Commission to the Board of Elections, it was just a procedural thing. He agreed with Mr. Allen that it was superfluous procedure, but that's what was written in the Charter, and he thought he had adequately explained that it came from the original Constitution of 1912; at that date the only way to change a Charter was by petition which the Council would have had the right to review for sufficiency.

Mr. Michniak added that, from his memory, the Charter Review Commission that put that language in the Charter wasn't aware of any Supreme Court opinion. Although the opinion predated their action, it wasn't brought up. He recalled that the idea was so that any Council couldn't say that they didn't want something to go before the voters.

Mayor Broska commented that a Charter Review Commission of 7 people was appointed by the Mayor and confirmed by Council and met in public meetings for six months. That language in the Charter was so that all the work the Charter Review Commission did for six months couldn't be destroyed by a Council that didn't agree with what the Charter Review Commission came up with. He said after the first few meetings no one from Council came to the Charter Review Commission meetings and now, under a deadline, this had failed tonight, and so the administration would have to sue its own City, which was pathetic.

Mr. Claypoole commented that the reason he quit going to the Charter Review Commission meetings was because he felt it was clear what their intent was and no matter what comments came from him or the others in the audience, it would be a waste of his time because their intent was clear. Mr. Allen agreed and said he went to the first meeting and their minds were made up, there was no talking to them, there was no negotiating, no telling them what it felt like sitting in a Council chair, there was no reason to go. He said the Mayor had given them his agenda and they were going to pass it.

Mr. Allen said he was still interested in getting counsel for Council. He thought Mr. Janis' explanation explained very well that they were on the same page; that the Charter had a problem and was ambiguous which put Council in a very bad position and it put the City in a very bad position. Mr. Janis would agree that it was ambiguous except for the fact that there was a Supreme Court case that said it wasn't; that Council must pass this and forward it to the Board of Elections.

Mr. Ring said the Charter Review Commission came up with none of their own ideas, they were all the Mayor's agenda. He also noted that City Council had a budget line for Contractual Services that was already appropriated with \$500, so Council wouldn't have to appropriate additional money to have a retainer to hire outside counsel. Mr. Michniak said Council wouldn't spend any money until it was done by ordinance, which could be done at the next meeting. He wanted this motion to be clear so whoever would come would understand the parameters of their legal advice to whoever on Council wanted to talk to them. Mr. Michniak thought the motion on the floor should also state a certain amount of money, until/unless Council further passed any additional money. They didn't know how long the attorney would need or much money it would cost.

Mr. Claypoole wondered if this needed voted on tonight since the Council Present could call a Special Finance Committee meeting. Mr. Allen agreed it could be done at the next meeting, but Mr. Michniak said Council's ability to talk to an outside attorney would have to wait until the money was available and then it would be a moot point after the Board of Elections deadline of August 9. There was discussion about scheduling a special meeting for Monday, July 31, but it wasn't certain what Council Members would be available that day. Mr. Michniak would be absent, but could arrange for an attorney to attend and for legislation to authorize any payment.

Mayor Broska asked Mr. Michniak, who worked at the County Prosecutor's Office and was around many other attorneys daily, if there had been any conversation among the colleagues about this situation. Mr. Michniak said no, and he didn't have anyone picked out because he had expected this to pass with three votes tonight. He still thought the questions the Council Members had still needed answered by some legal counsel, but he always felt in the end it would end up on the ballot anyhow. Mayor Broska thought the Supreme Court case made that abundantly clear and it was a shame we had to go this route. He said Council had the right every year to put Charter amendment items on the ballot and perhaps if Council felt strongly enough about this, they could place it on the ballot for amendment next year.

Mr. Ring understood the Supreme Court case that had been presented was clear, but wondered if Mr. Janis had looked up any case law on Charters compelling elected officials to vote a certain way and if that was constitutional or not and if there was any case law in Ohio that contradicted or affirmed that stance. Mr. Janis responded that he would have to do a whole different series of case research to answer that question, but he noted that there were many Charters that read the same as Streetsboro's specifically because it was an anachronism that was carried through from 1912. There was one case that was directly on point which he had provided to Council.

Mr. Michniak asked Mr. Janis to lay out the possible future routes regarding this issue. 1) the Board of Elections could accept the July 26, 2017 letter, get an opinion from their legal counsel and then place the Charter amendments on the ballot, 2) or they might not and then Mr. Janis would be forced to bring an action (a petition for a writ of mandamus) to force the Council to submit the matter to the Board of Elections. The courts wouldn't actually call Council in to take a vote, they would issue a writ of mandamus and the writ would go to the Board of Elections to put on the ballot the Charter amendments that were approved.

Mr. Michniak summarized that the motion on the floor was to seek out some counsel to advise those Council Members at some point. He thought there should be a separate motion to set a Special Finance Committee meeting for funding, but Mr. Allen said the Council President could call a special meeting. Mr. Allen didn't expect to spend more than \$2,000. Mr. Claypoole clarified that the vote was to recommend to Mr. Michniak to go find somebody that he thought would be acceptable to discuss placing the Charter amendments on the ballot and not to authorize any expenditure of funds, just to have Mr. Michniak find someone in anticipation of future legislation. Mr. Michniak said that person could then appear at the Special Finance Committee meeting where Council could actually allocate the money. Upon roll call, **motion carried 5-0.**

Mr. Michniak would find someone, maybe out-of-county, and forward the contact information to the Clerk since he would be out of town for the special meetings of July 31, 2017 where there could be an executive session and they could decide what to expend. Mr. Claypoole commented that he was fine with hiring counsel, he also felt that Council shouldn't be required to vote a certain way, but he wanted to clarify the proper procedure to do this. Mr. Michniak thought legislation would be needed to spend money, which would need six votes for emergency legislation; the appropriation measure only needed majority vote and could take effect immediately. Maybe only five Council Members could attend on July 31, 2017. It was noted that department heads could spend up to \$3,500 for purchases without Board of Control or Council approval, but this would require a contract (authorized by ordinance). Mr. Michniak thought Council could hire their own counsel, but the timing right now was an issue. He suggested placing the items on an agenda for special meetings on Monday, July 31, take the appropriate votes, and then if the items needed additional readings/votes, they could try to schedule additional meetings, maybe for Monday, August 7. Even if it went past the Board of Elections deadline Mr. Michniak thought the Council Members would still need to talk to somebody to answer the questions they had. Mr. Ring noted that citizens of the City could also file a complaint with the Board of Elections, which would stop the process at least temporarily, so that was an option too. Mr. Michniak clarified for the Clerk there would be a Special Finance Committee meeting and a Special Council meeting on Monday, August 7, 2017 at 7 p.m. for the purpose of hiring counsel to advise Council on the Charter amendments issue and for the appropriation of money. Mr. Michniak asked the Law Department to draft a contract with a blank line for the name since he didn't know who it would be. He would try to find somebody out-of-county that didn't know anybody here.

T-6353 A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND ACCEPT FEDERAL CONGESTION MITIGATION/AIR QUALITY FUNDS PROGRAMMED BY THE AKRON METROPOLITAN AREA TRANSPORTATION STUDY (AMATS) TO IMPROVE THE FROST ROAD CORRIDOR, PHASE 2, AND DECLARING AN EMERGENCY IN ORDER TO MAKE FUNDING AVAILABLE AS SOON AS POSSIBLE.

The Clerk clarified that this legislation already had second reading and this would be the third reading, so a motion to adopt the legislation now, if not passed by six votes, would fail since

this was written as emergency legislation. Mr. Michniak suggested removing the emergency clause and passing these next four pieces of legislation by majority vote and then they would take effect in 30 days. Mrs. Pavlick was concerned that would be beyond the July 31, 2017 deadline to apply for the AMATS grants. Mayor Broska said it would be possible to lose \$2.5 million from the State for a safety grant because these couldn't get passed in time. He had asked AMATS for an extension but had not received a reply yet. He thought if these could be passed at third reading tonight as non-emergency legislation, they would be in effect by the time AMATS actually met to discuss the applications in 2-3 months.

MOTION: TO REMOVE THE EMERGENCY LANGUAGE FROM THE LEGISLATION.

Moved by Mrs. Pavlick, seconded by Mr. Allen. Upon voice vote, **motion carried.**

Clerk read by title as amended as directed.

MOTION: TO ADOPT RESOLUTION NO. 2017-83 AS AMENDED.

Moved by Mr. Allen, seconded by Mrs. Pavlick. Upon roll call, **motion carried 5-0.**

T-6354 A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND ACCEPT FEDERAL CONGESTION MITIGATION/AIR QUALITY FUNDS PROGRAMMED BY THE AKRON METROPOLITAN AREA TRANSPORTATION STUDY (AMATS) TO IMPROVE THE STATE ROUTE 43 CORRIDOR, AND DECLARING AN EMERGENCY IN ORDER TO MAKE FUNDING AVAILABLE AS SOON AS POSSIBLE.

MOTION: TO REMOVE THE EMERGENCY LANGUAGE FROM THE LEGISLATION.

Moved by Mrs. Pavlick, seconded by Mr. Allen. Upon voice vote, **motion carried.**

Clerk read by title as amended as directed.

MOTION: TO ADOPT RESOLUTION NO. 2017-84 AS AMENDED.

Moved by Mr. Allen, seconded by Mrs. Pavlick. Upon roll call, **motion carried 5-0.**

T-6355 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO CONTRACTS WITHOUT COMPETITIVE BIDDING WITH TRUMBULL INDUSTRIES, INC. AND HARNER PLUMBING, INC. FOR THE PURCHASE AND INSTALLATION OF TWO REVERSE FLOW PRESSURE REDUCING VALVES, AND DECLARING AN EMERGENCY IN ORDER TO ACCEPT TIME-SENSITIVE PROPOSALS.

Mrs. Pavlick asked if this legislation should also be amended to non-emergency and adopted tonight to take effect in 30 days, or move it to the special meetings of August 7, 2017 when all seven members were expected to attend and it could be passed as emergency legislation and be effective sooner so it could be implemented quicker. Mayor Broska wanted it effective as soon as possible because there would still be a 15-30 day wait for the parts to come it.

MOTION: TO MOVE T-6355 TO THE SPECIAL COUNCIL MEETING OF AUGUST 7, 2017.

Moved by Mrs. Pavlick, seconded by Mr. Allen. Upon voice vote, **motion carried.**

T-6356 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO CONTRACTS WITHOUT COMPETITIVE BIDDING WITH STRYKER CORPORATION AND PFUND SUPERIOR SALES CO., INC. FOR THE PURCHASE AND INSTALLATION OF A HYDRAULIC COT LIFTER, FOR USE BY THE FIRE DEPARTMENT, AND DECLARING AN EMERGENCY IN ORDER TO ACCEPT TIME-SENSITIVE PROPOSALS.

MOTION: TO REMOVE THE EMERGENCY LANGUAGE FROM THE LEGISLATION.

Moved by Mrs. Pavlick, seconded by Mr. Allen. Upon voice vote, **motion carried.**

Clerk read by title as amended as directed.

MOTION: TO ADOPT ORDINANCE NO. 2017 85 AS AMENDED.

Moved by Mr. Allen, seconded by Mrs. Pavlick. Upon roll call, **motion carried 5-0.**

T-6360 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO CONTRACT WITH THE PORTAGE COUNTY COMBINED GENERAL HEALTH DISTRICT IN ORDER TO OBTAIN THE CITY'S REQUIREMENTS FOR INSPECTION AND TESTING OF STORM SEWER OUTFALL LOCATIONS WITHIN THE CITY OF STREETSBORO FROM THE DATE OF EXECUTION OF THE CONTRACT THROUGH DECEMBER 31, 2019, AND DECLARING AN EMERGENCY IN ORDER TO COMMENCE THE CONTRACT SERVICES AS SOON AS POSSIBLE.

Clerk read by title as directed for second reading

T-6361 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITHOUT COMPETITIVE BIDDING WITH CHAMPION ENERGY SERVICES LLC FOR THE PURCHASE OF THE CITY'S REQUIREMENTS FOR ELECTRIC POWER NECESSARY FOR STREETLIGHTING, FOR A PERIOD OF THREE YEARS COMMENCING AUGUST 21, 2017, AND DECLARING AN EMERGENCY IN ORDER TO ACCEPT A TIME-SENSITIVE PROPOSAL.

Clerk read by title as directed for second reading.

T-6362

AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT AND RELEASE IN THE CASE OF *IN RE ESTATE OF LEONARD E. BAHNEY, DECEDENT*, PORTAGE COUNTY PROBATE CASE NO. 2016 ES 00500, RELATIVE TO THE COMPROMISE OF A CERTAIN JUDGMENT LIEN GRANTED TO THE CITY AND ENCUMBERING AN ASSET OF SAID ESTATE, AND DECLARING AN EMERGENCY IN ORDER TO EXECUTE THE SETTLEMENT AGREEMENT AND RELEASE AS SOON AS POSSIBLE.

Clerk read by title as directed for second reading.

T-6363

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN ECONOMIC INCENTIVE AGREEMENT BETWEEN THE CITY OF STREETSBORO AND STAINLESS WORKS, INC. AND DECLARING AN EMERGENCY TO EXPEDITE THE AGREEMENT.

Clerk read by title as directed for second reading.

Announcements

There will be a Special Finance Committee and a Special Council Meeting on Monday, August 7, 2017 starting at 7:00 p.m. in Council Chambers.

There will be a Service Committee, a Safety Committee and a Regular Council Meeting on Monday, August 14, 2017 starting at 7:00 p.m. in Council Chambers.

There being no further business to come before this Special Meeting of Council, and upon motion by Mr. Allen, seconded by Mrs. Pavlick, this meeting adjourned at 8:49 p.m.

ATTEST:

Caroline L. Kremer, Clerk of Council

Stephen A. Michniak, President of Council

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