

# City of Willoughby Hills

## Special Council Meeting Minutes of August 25, 2015

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*All Council Meetings shall be recorded by audio recording device and will be held in perpetuity and shall be part of the official records and minutes. Written minutes of Council shall be shortened whenever possible.*

**Meeting Called to Order at 7:01 p.m. by President Raymond C. Somich**

### ***Pledge of Allegiance***

### **Roll Call of Council**

**Members Present:** Councilman Christopher Hallum, Councilman John Plecnik, President Raymond C. Somich, Councilman Christopher L. Biro, Vice President Nancy E. Fellows, Councilman David M. Fiebig, Councilwoman Jennifer Sommers Greer

**Absent:**

**Also Present:** Mayor Robert M. Weger, Law Director Thomas G. Lobe (arrived at 7:25pm) Chair of the Charter Review Commission Andy Gardner, Road Superintendent Mark Grubiss, Clerk of Council Victoria Ann Savage

**President Somich:** Thank you, all Members of Council are with us here this evening. And I want to thank everyone for making a special effort to be here for this Special Meeting and welcome everyone here this evening. Before we get into the important items that we will be covering this is our first formal meeting since we received word that Jim Brown a prominent business member in our community, a gentleman who invested in our community and put a beautiful building up, a couple of beautiful buildings up and was true to our City on many occasions supporting us with donations and generosity as well as helping to build our City. So we certainly are all affected by his loss and we would like to express our sympathies to his family and friends who especially are saddened by his sudden loss and I would like to ask if we could have a moment of silence in honor of Mr. Jim Brown. Thank you very much.

**President Somich:** The Agenda has been in front of us, it has been printed with the Public Portion at the end and if no one objects I would like to move that up before the legislation just in case anyone from the public does have any comments to make regarding the legislation that is going to be up for passage this evening. So if no one any objections to that we would like to open Public Portion at this time. And if you could please confine your comments to three minutes and begin with your name and address and as always if you have questions we will answer them immediately afterwards if we are able to, if not we will get back to you with the answers at a later date.

**We will open Public Portion at 7:04pm. Is there anyone that would like to come forth this evening? All right Public Portion is closed at 7:04pm.**

### **LEGISLATION**

#### **ORDINANCE NO. 2015-36**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ACCEPT THE BID OF HENDERSON TRUCK EQUIPMENT-OHIO FOR A NEW HENDERSON MUNIBODY FULL SNOW AND ICE CONTROL SINGLE AXLE PACKAGE AND DECLARING AN EMERGENCY.**

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**MOTION MADE BY COUNCILMAN BIRO**, seconded by Councilman Hallum to suspend the Three Reading Rule for Ordinance No. 2015-36.

**Roll Call: 7 AYES – unanimous**

**MOTION PASSES**

**President Somich declared that the Three Reading Rule for Ordinance No. 2015-36 has been suspended.**

**MOTION MADE BY COUNCILMAN BIRO**, seconded by Councilman Hallum to adopt Ordinance No. 2015-36.

**Councilwoman Fellows:** I have a couple points that I would like to make about this entire process for the service vehicle. So at the end of 2014 we had a 1.1 million dollar carryover into this year; began the end with a deficit of a half million dollars; in March we borrowed a \$150,000 for this service vehicle; early summer we bid for the cab and chassis which was awarded to Sidley Truck and Equipment of Painesville for a Mack Truck, I think it was for about \$107,000, this truck by the way is being built in Allen Town, Pennsylvania. The bid time for the chassis and the cab was for only six days then we bid out for the salt spreader and plow which was for five days; we rebid this because the City was not in compliance with the Ohio Revised Code, bids need to be advertised for two consecutive weeks; then added to the rebid specs was a Liability Clause to deliver the completed vehicle within a 120 days from the time that the company that would be awarded this signed the contract and it also had a \$200 a day monetary penalty imposed after those 120 days. Jones Company was initially awarded the bid even though they did not meet one of the material specs; they said that they could provide galvanized-coated instead of stainless steel which was a preference from the Road Supervisor. We did not have a majority to vote on this at the August 10<sup>th</sup> Special Council Meeting so Administration took the opportunity to review the two bids Jones and Henderson and determined that Henderson should be awarded this contract as they could meet the preferred material specs. Henderson has said that they will not comply with the Liability Clause of delivering the completed service within 100 days of signing the contract or pay a \$200 fee beyond that. Rebidding placed the City in compliance with the bid process prior to the Ohio Revised Code but the City did not follow the law for the cab and chassis; we did not stay within our budget for the vehicle; what was preferred exceeded the amount of money borrowed for the vehicle; monies that were planned to be used that were identified to help decrease the deficit budget for the overall purchase. This is an example, in my opinion, of preferences exceeding what we can afford. My no vote is not because I don't want a service truck for the City it is because of the budget deficit, going over what we borrowed, and the lawlessness in the bid process.

**Councilman Fiebig:** To expound on what Councilwoman Fellows brought up was the contract for this provision of 120 days waived for Henderson?

**President Somich:** Is that a question?

**Councilman Fiebig:** Yes. As I understand, and as she said, as I understand it the provision that was put in the second time was waived for this company yet that provision caused one of the potential bidders not to bid on the project. Therefore, we did not put this out to bid using the specs that were called for. So I'm going to vote no on this as well; not because I don't want a plow truck because we need one, but it is because the process has to be legal. If we were to put that out and make special treatment for this one company and say that they were not going to honor this provision of it, that the company that didn't bid could very well sue the City, putting us at risk. So I think that the bid process has to be re-examined and we have to put it back out to bid; if you want to have that 120 day in there great, leave it in there but you have to enforce it then if it is in there. If you want to eliminate the 120 day penalty then we should the way that the first bid was put out and put it out for the required amount of time.

**Councilwoman Fellows:** Mr. President...

**President Somich:** Before we have further...I guess I would like to turn it over to Mark since he is here and he can respond to that....Mrs. Fellows you can add to the...

**Road Superintendent:** The first bid was a 120 days.

**Councilwoman Fellows:** I don't believe that....that was added to re-bid specifications. There was no Liability Clause in the first bid for the spreader and the plow that was added when we re-bid.

**Road Superintendent:** But not the 120 days....the 120 days was on the first one because Henderson did it the first time for a 120 days.

**Councilwoman Fellows:** I don't know why we would ever put out specifications for a vendor to bid on something when they don't even know when they are going to receive the cab and chassis. What would happen if they received it after the 120 days...

**Road Superintendent:** They won't, it's a 120 days from when they receive the...

**Councilwoman Fellows:** That's not what the contract says...this paperwork, unless I'm misreading it, says your 120 days begins ticking the day you sign the contract it does not even tell the bidder when an estimated date would be when they would receive the cab and chassis to put these things on.

**Resident Cihula:** There are six more words that you didn't read in the exhibit until the completed unit is delivered...**Councilman Fiebig:** He is out of order? **President Somich:** Excuse Me....**Resident Cihula:** I'm out of order....**President Somich:** Yes, yes, thank you.

**Road Superintendent:** It says estimated lead time 90 to 120 days after receiving the chassis and all related equipment.

**Councilwoman Fellows:** But that was on the second....it's when we re-bid out, that was added?

**Road Superintendent:** This was from 5/11/2015 from the first time they bid.

**Councilwoman Fellows:** Then how come Concord sent a letter that they would not bid on this because they did not have an estimated date when they would receive the cab and chassis when their 120 not even 120 days would start to tick?

**Road Superintendent:** Because Concorde has 35 vehicles from the City of Cleveland and our truck would not be done for 15 months.

**Councilwoman Fellows:** Henderson Truck is also building 30 trucks for the State of Indiana.

**Road Superintendent:** They have 450 employees, Concorde has 35

**Councilwoman Fellows:** When is the estimated date of the truck to be completed from assembly?

**Road Superintendent:** It is suppose to be either on October 8<sup>th</sup> or one week after.

**Councilwoman Fellows:** Thank you I appreciate that answer because I called them myself as well. I don't think that we're in compliance with this Ordinance, the specifications and the whole process has been a debacle from the beginning. We did not follow the law for the bid for the chassis and the cab; it was only 5 days, not fourteen. This is not the first time that this City has not followed the Ohio Revised Code for bids and this needs to stop. I cannot vote for something that has not been complied by the law. I'm not doing it anymore. I didn't know in the past, I know where to look and find the answers now to my questions and I can't support this kind of process, it's just terrible business, in my opinion.

**Councilman Plecnik:** If I could say since I joined Council almost two years ago one of my goals is that we start to follow the law and I've seen time and time again when the Administration, followed by Council has ignored the Ohio Revised Code or our own City Charter which brings us into really the reason that the Mayor called a Charter Review Commission in the second item for tonight and I would just say again as with the first couple of meetings its time that this Council and this City take seriously the laws of Ohio, the laws of our Charter and follows it; it's better to do it by the book then to put our City at risk for law suits; to misuse the funds of the City and to operate inefficiently. These rules are in place for good reason, I agree with what everything that Councilwoman Nancy

Fellows and Councilman Dave Fiebig has said I can't vote for a bidding process that is so flawed. I voted to waive the Three Reading Rule because I believed that we need to vote this down tonight and immediately put it back out to bid with the same set of specs for everyone. So Henderson says that they estimate that they will do it within 120 days, great. We put out bid specs that there is a penalty if you go over the 120 but we waive it for only one company? We have to be fair. We have to put the bid out for the required two weeks, we have to have the same specs for every company and then we need to make the choice and I can understand that it can be frustrating because we want to get a plow truck faster and get the process finished. I personally think that one is not enough, I think that we need considerably more than one truck, but we have to do it right. The law is there for a reason and dang it I'm a Law Professor; I'm going to follow the law.

**Councilwoman Fellows:** Mr. President can I just read the "Whereas", please.

**President Somich:** There's been a lot of comment....

**Councilwoman Fellows:** But the "Whereas" disputes what Mr. Grubiss says. And this is what is on our Ordinance to vote on. It states: a ***Liquidated Damages Clause*** was added to the Bid Specifications stating that in the case of the vendor's failure to deliver the said equipment within 120 days of contract award date; that's what our Ordinance says.

**Road Superintendent:** The day that we give them the truck is the date that they will be awarded...

**Councilwoman Fellows:** So they are not going to sign this contract until they get....how do we know that in this Ordinance, that's not what it says. And then in theirs they say...it says different in here it says estimated lead time 90 to 120 days after receiving chassis. After receiving chassis; this says contract. That is two different things.

**Councilman Fiebig:** Mr. President, if I may. A suggestion to...as you know where my thoughts are on this, my suggestion would be that we immediately turn around and direct the Mayor to put this out to bid using the original bid spec without a Liquidated Damages Clause.

**Councilwoman Greer:** Mr. President. I would like to know if they were different; it seems like there is a lot of emotion here and I would like to know, were they truly different that would make a difference to me. I do believe that we do need this plow truck and we need it quickly but I do feel that I need to know were different from what Councilwoman Fellows said and I'm not clear on that and is there any way that we can get an answer on that?

**President Somich:** Mayor, do we have the answer on that?

**Mayor Weger:** No

**President Somich:** Definite answer.

**President Somich:** This Chair will entertain a Motion to Table this Ordinance...

**Mr. Plecnik:** So moved.

**President Somich:** I believe we need to have further information on this so this Council body can feel comfortable with the vote this evening and it's obvious that we're not. Because there is an Emergency Clause it will take a majority here to get this passed here this evening. We have waived the Three Reading Rule but I don't suspect that we will be comfortable voting for this so we have a **Motion for Table by Mr. Plecnik and seconded by Councilwoman Fellows, any discussion on that Motion?**

**Roll Call:** Hallum – no, Plecnik – yes, Somich – yes, Biro – yes, Fellows – yes, Fiebig – yes, Greer – yes

**President Somich:** Declared that Ordinance No. 2015-36 has been Tabled.

**Councilwoman Fellows:** I appreciate everybody listening to my comments thank you.

**President Somich:** I do believe that it is important to distinguish this particular Ordinance from the original activities on the original truck because they are all being blended together and where they were so problems with the original ordinance and the process and buying a better truck than we had originally intended all of that is its own issue and it can be discussed and talked about but at the same time it is a different issue than Ordinance No. 2015-36. We need to get the answers on this particular ordinance so that we can present this again and either have this passed if everything is in line or if not do whatever it takes to get this plow in here very quickly. Hopefully Administration will move on that promptly effective tomorrow.

**President Somich:** Next item for consideration is Ordinance No. 2015-37. We do have the Chairman Andy Gardner with us; we want to thank him for being here this evening and for the good work of the Charter Review Commission; a lot of meetings, a lot of time. Mr. Walsh is here as well with us here tonight and there are also a lot of Members who are with us here tonight Mrs. Joyce Grady thank you very much as well and of course the secretary there who is also with us here this evening, we thank you very much as well.

#### **ORDINANCE NO. 2015-37**

#### **AN ORDINANCE PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF THE CITY OF WILLOUGHBY HILLS TWELVE (12) PROPOSED AMENDMENTS TO THE CHARTER AND DECLARING AN EMERGENCY.**

**MOTION MADE BY COUNCILMAN BIRO**, seconded by **Councilwoman Greer**....actually before I do that may I ask Mr. President, I might not be the one to do that, may I ask...**President Somich:** Because you were...**Councilwoman Greer:** Is this something that I should abstain on since I was a Member of this Commission?

**Councilman Hallum:** You don't have a conflict of interest, do you?

**Councilwoman Fellows:** Yes, she voted no on the ninth section at the last Commission Meeting...to abstain, to abstain.

**Councilman Hallum:** What is her conflict? What is the conflict of interest, how does she benefit from voting on this if she voted on this? That's when you abstain when you have a conflict or if you are going to have or gain something potentially by voting. That's my understanding of abstaining.

**Councilwoman Fellows:** That's one reason to abstain, there are others. I don't have the answer to the question, I'm just making, I'm making a statement Mrs. Greer abstained on the vote for the 9.2 to be part of the ballot issues at the meeting, her meeting. That's all I'm saying.

**Councilman Hallum:** But you also said that there are other reasons to abstain. I would just like to know what those are...

**Councilwoman Fellows:** I'm talking about Robert's Rules of Order, not this particular issue. Talking about what abstaining means in the broad picture.

**Councilman Hallum:** Okay, so what are the others reasons then within Robert's Rules that you are saying are other reasons for abstain. I'd like to know, if there are other things what are they?

**Councilwoman Fellows:** Why don't you read Robert's Rules of Order.

**Councilman Hallum:** You're saying that you don't know but you saying that you do know?

**Councilwoman Fellows:** It's not in terms of this topic, it's in other things. You can abstain because you don't feel that you have enough information, not because you feel that it is a conflict of interest.

**President Somich:** Technically not.

**Councilman Hallum:** That's not my understanding.

**President Somich:** Technically not, it's not for a lack of information, that's never a valid rule to abstain.

**President Somich:** It's in the opinion of the Chair that what we are trying to do is to move this forward to a vote of the people. We are not proving anything here this evening we're not voting on any changes to the Charter we are simply approving the process to get this on the ballot. So to me I don't see a conflict of interest with that movement because we do...it's a technicality but we do have a job here to get this on to the ballot for the community to properly vote on it and at that point they can vote yes or they can vote no on any of the changes that have been proposed. So I don't...unfortunately, our Law Director is not here for a final say on this but it would be my opinion as a Chair that would not be a conflict to move it forward so that the people can vote on it.

**Councilman Hallum:** Mr. President, I just want to say I have read Robert's Rules...that's what my concern was because maybe I misread something because I never saw anything...

**Councilwoman Fellows:** And then maybe I may have misinterpreted something...Thank you.

**President Somich:** So we have a Motion to waive the Three Reading Rule from Councilman Biro, would you like to make that second Mrs. Greer, second that motion? **Councilwoman Greer:** Yes.

**So we have a Motion from Councilman Biro and a second from Councilwoman Greer to waive the Three Reading Rule on Ordinance No. 2015-37. Is there any further discussion on the motion to Waive the Three Reading Rule?**

**Councilman Plecnik:** I intend to vote no on the Motion to Waive the Three Reading Rule because I don't believe that the Amendments in front of us are right for our discussion and consideration. The Charter provides that we are supposed to submit to the people for vote without change what the Charter Review Commission submits to Council. And even the small issue of adding 6 years or changing a typo and I'm aware of from talking with our Clerk that we have amended more than one typographical error; at least according to the individual members of the Commission in this draft. So I think for that reason alone it would be a violation of the Charter for me to vote affirmatively to put these on the ballot but have far more serious concerns than just the changes which I don't Council has the authority to make without the vote of the Charter Review Commission and prior to us. I'm also concerned that the descriptors or the questions introducing the Amendments to the voters are misleading and opaque particularly the one with respect to purposed Amendment No. 9 that states the question as essentially shall the Charter be...now I'm quoting "amended to make the Charter's Standards for the conduct of City Officers and Employees consistent with the Standards for Conduct required by Ohio Law and I don't know what voter wouldn't want to make our Standards consistent with the Law but what this particular Amendment accomplishes is actually to delete our substantially higher standard for nepotism and conflicts of interest and simply replace it with the bare minimum State Law Standard. This was not submitted to us by the Charter Review Commission, I'm not entirely clearly on who authored it because these questions have gone through the Clerk, the Law Director, the Chair of the Charter Review Commission; I'm aware that comments were given by individual members and while those are certainly interpretations of what the Charter Review Commissions actions are, I'm one Member of Council and I can't pass an Ordinance by myself and on one Member of the Charter Review Commission and no Member of the City Administration can either. I also think that's it is open to debate as to whether or not the Charter Review Commission has sole authority on the questions themselves in which case it maybe Council's determination as to what questions to submit and if that's the case I certainly don't support these questions and we're all grouping it together in this one vote so I'm going to vote no on Waiving the Three Reading Rule because I think that the Charter Review Commission needs to call another meeting and clarify both the exact text of the Amendments, discuss these questions to determine if they find them to be honest interpretations of what they've done and beyond that we've had the number of Amendments changed, time and time again. The Charter Review Commission and I was at that final meeting, voted on seven different issues but it didn't say we'll have more than seven Amendments, it's gone up, it's gone down and now I think that we've at twelve Amendments. And once again, I don't know who other than the Charter Review Commission can make a substantive change to what they voted on at that meeting, they certainly didn't approve twelve individual Amendments as we see here. So I don't think that this is right for a vote, I think

that we need to with the Chairman of the Commission here commend him to call a meeting as soon as possible to deal with these issues so that we can do our councilmatic duty and pass exactly what the Charter Review Commission submits to us and not something that we've amended and others have amended. I don't believe that it is within our power to vote yes on this tonight.

**President Somich:** Thank you for your comments Mr. Plecnik. Our Law Director is with us (arrived at 7:25pm) do you have a response to that?

**Law Director Lobe:** I didn't hear everything that he said, just caught the tail end but everybody is concerned about the questions, you've got to understand the big picture on this thing. Questions will be reviewed by the Lake County Board of Elections. And if they don't like the way the questions are proposed as a matter of law, they will change the questions. And after the Lake County Board of Elections has it the ultimate authority on the questions is the Ohio Secretary of State that then reviews it on how the questions are formed. But as I talked with the Clerk the other day, it's my understanding that the substantive aspects of it, not the questions, are exactly what were voted on by the Charter Review Commission. And the questions are just that, those are just the questions and that's why we even have a catch-all, there is a provisional catch-all here that the Clerk is even, not all cities have, under 8.33 where the Clerk sends out to the voters a match-up of what currently exists and what will exist. And that will be the other educational point for the voters. So don't get hung-up on the question, okay, it's the substance behind it and we at the end, if the Lake County Board of Election says we don't like the question as purposed and it has happened in the past in Willoughby Hills and other jurisdictions in Cuyahoga County, etc., they will send a thing and say do you oppose this and even if I say no they're going to change the questions the way they think that it should be done and they will even take...they will even be trumped by the Ohio Secretary of State. So, let's not get caught up too much on the question, okay or the formation of the question, okay. So that aspect of theirs is oversight by the Lake County Board of Elections and the Ohio Secretary of State that routinely does these things. So, I felt comfortable with this and you know, you also have to remember you do have a Charter mandate under 5.6 not tell the Charter Review Commission what to do or how to do it. Even if they do a wrong job and I'm not saying that they did, okay. Basically, it says "upon receipt of such amendments Council shall forthwith submit them without alterations to the electors at the next succeeding November election", okay, that's all it says. Doesn't say start questioning them, or doing this, or telling them how to do their job, so that's where I disagree with that and as long as the substantive matters and I was present at some of the last meetings and I apologize because I was on vacation; it's my understanding that the substantive the part, the quote...from the quotes to the end quotes, those were in fact voted upon and I saw the meetings and I think Mr. Gardner and the Commission did a very good job on handling of the meetings and this thing so don't get caught on the question itself.

**President Somich:** Before we have any other comments from Council there were some comments made and I would refer to them as actually accusations that there have been changes that this isn't representative of what the Commission said. We do have the Chairman of the Commission with us here and I would like to ask him to come forward at this time. Mr. Gardner, if you would please obliged us and tell us if you feel and I know that you have been involved within the last ten days with these questions and with this review. Do you feel that this is representative of the work of your Commission over this last many months?

**Chair of the Charter Review Commission Andy Gardner:** I want to clarify that there are two things at work here. The language that was approved by the Commission which is a straight up revision to the exiting text of the Charter and is not the legislation. The legislation we are going to call the "oranges". The changes to the Charter we are going to call the "apples". So, we were required to present and asked to present the changes to the Charter to the Council's Clerk and at that point the legislation would take over. It's my understanding when at our last meeting one of the open issues for discussion was the length of the term of the elector member of the record of the purposed, the Records Commission and in that we determined and voted and agreed to a six year term. When that one was initially forwarded to Vicki it was sent with the word six and when that word was inserted the word years dropped. Our secretary clerk caught the error and before even the 10<sup>th</sup> meeting sent an email to Council saying that the word "years" dropped please insert it. So, our minutes will reflect that we approved a six year term, there are four members of the Commission here who will say that we approved a six year term. That's the only language change that I'm aware of from the "apples" that were submitted. As far as the legislation I'm sorry that you feel that it is opaque and misleading, I did my best. If you want to criticize a volunteer, I'm right here but you know we just tried

to do our best. If Council wants to legislate the language, that's Council's job to legislate, we just tried to help frame the questions. As to why there are twelve issues now and not six, seven, whatever, when after Council tried to meet on the 10<sup>th</sup> and wasn't able to the Mayor contacted me, President Somich contacted me said can you break this up, make these into distinct ballot issues. So, I tried my best. If someone doesn't agree as to how I tried to divide up the ballot issues, find by me, you are welcome to divide it up, the Board of Elections is welcome to divide it up, the Secretary of State can divide it up. But you know, as far as the "apples" as to what was submitted, I believe those are correct. I believe that Gloria sent you the correct language before the 10<sup>th</sup> meeting. I believe what is here is what we voted on. The fact that we voted on it in different chunks is just how our group processed it. The fact that there is a different number of ballot issues, we were just trying to be helpful to the voters. Be happy to answer any questions.

**President Somich:** Thank you again, Mr. Gardner. Again, we do appreciate the tremendous amount of time.

**Councilman Fiebig:** I have one, just to clarify....**President Somich:** I was going to acknowledge first Mrs. Greer. **Councilman Fiebig:** I did have one. **Charter Review Commission Chair Gardner:** What question did you have? **President Somich:** We're going to hold off on that...I'm in sequence here, I apologize but Mrs. Greer was next up and I'm coming back to the Board here, Mrs. Greer, comments, questions.

**Councilwoman Greer:** I want to iterate that it is not Council's job to go through and say how we would vote as residents on that. We will have that opportunity on November 3<sup>rd</sup>. Each of us will be able to go to the ballot and vote on this. Our job as a Council body is to certify and submit what the Charter Review Commission has worked on for two years and we were....it's just a body of citizens appointed and charged to do this job by our Charter. If there are Members of this Council who believe that there should be changes to the Charter, there is a provision that allows you to do that. It is not here. So, if you have an issue with Article IX as Mr. Plecnik spoke of before, there is a way that Council can submit alternate language to that. And I would suggest that if Council feels strongly about that, they should propose that and we should vote on that, but that is not what we are doing here.

**Councilman Fiebig:** And I agree with the sediment that our role here is to simply to put the information on the ballot for the voters and the electors. But there is a question that I have in the process of doing this and concerns that I have. As I read the minutes of the last meeting, Andy it seemed that the body produced seven amendments to the Charter. Yet and I believe that's what was given to our Clerk, was seven. And somewhere in the process it turned to twelve. So what I'm tasked with as a Council Representative is to simply vote to follow the law and what it tells me is I have to pass what the Commission submitted so the Commission did seven but I'm given twelve, so help me out with that, I've got a problem with that.

**Chair of the Charter Review Commission Gardner:** Again, this goes back to the apples and the oranges to follow my analogy. We didn't vote on ballot issues we voted on changes. There is a distinct set of language that we didn't write to try to fit it into ballot questions we just took the task on of saying this is what the provision said or this is what we thought it should say. So, when we approved it we weren't being mindful of whether or not it...there were different issues for the ballot or we weren't asked to consider how it should be framed for the ballot we just approved, and this was my decision and I believe that is how we did it in 2008 and Councilman Biro was on that Commission and the Chair of that Commission is here. We didn't approve the ballot we just went through and said okay we approve this. And to make it easier for the Commission we just did it in chunks so if it was Section 9 you know, it was the piece of Article IX that we voted on. Now there were a number of different issues within that and when we took the language and approved the whole thing. There are probably three separate, distinguishing questions so after the last, and I guess I would call it an attempted Council Meeting it was returned to me and I was asked to break into distinct issues so that is why there are twelve now. As to why it was initially seven, I think that our instructions were to have our Clerk pass along the language from the changes to your Clerk. Vick formatted them into seven and should we change the language to say this and that is what happened. So I can assure you the language we passed on is what we approved. The fact that is in different issues I think makes is easier bit size portions for the voters and again that's not my job. I just tried to be helpful.

**Councilman Fiebig:** And I appreciate your helpfulness, I mean what comes from the same place as that is that we want to give the voter the right idea of what your body was attempting to do and what your suggested changes are,

but that's where I have the ...you know if you read one of those you almost have to pass the ballot issue before it for the second one to be in effect. So....

**Chair of the Charter Review Commission Gardner:** However you want to do it....you guys are legislators, legislate. If you don't think that the ballot issues are right, that's for you...we just submit the language.

**Councilman Fiebig:** The only thing on this Andy here is the difference here is that we're mandated with what we have to do what the Commission give us without...

**Chair of the Charter Review Commission Gardner:** We've given you the apples, how you chose to pass it on to the Board of Election is the oranges. If you want to take it from twelve to seven, legislate. We've given you the apples, that was our charge, we've passed it along to you. How the Council Clerk, the Law Director and the Members of Council choose to format it for the Board of Elections, the Secretary of State, it's up to you. What you are saying is did we give you the apples, did we give you the changes, you have them. How you want to frame that is entirely your business. Again, we offered to help, the Mayor and Ray asked me to try to break it down, I've done it, if you don't like it, its fine with me. We're given you...we've passed along the language; it's now your job to take it from there.

**Councilman Fiebig:** Thanks Andy.

**Chair of the Charter Review Commission Gardner:** And again, I'm happy to help in any way I can but if you are concerned about the number or how they are broken up, I am fine with however you want to present it to the voters. But trust me what we gave you is what you need to work with.

**President Somich:** It would seem in the opinion of the Chair that there would be cause for concern if we consolidated seven down into fewer number because that could present a situation to the voter where you know, things could be slid together that weren't intended to be slid together. But to break them down further seems to give the voters even more opportunities than to choose that they could vote for some items and not for some others. So it actually gives more control to the voter not less, as long as we have been assured all of the oranges are exactly there, exactly the way that they have been voted on by the Charter, this Chair believes that this shouldn't be any concern for the fact that we are actually giving the voter a little more control here in terms of their process.

**Councilwoman Fellows:** Is it....Andy referred to the fact that the Commission provides the body of words but does not put into legislative issue verbiage. Whose responsibility is that once that comes from the Commission then; to make the legislative verbiage for the issue, the ballot issues?

**Law Director Lobe:** It's mine and the Clerks probably to assist to help write them and I agreed and conferred yesterday with the Clerk and we went through it and even when I was away, on email I concurred that it was probably the better way to do it. Okay, Vicki took the first stab at it, I get that, and she did it and that's what it was, it was a first good stab at it and she even told me that this was just her first stab at it and then when we looked at it even when I was away, and Andy decided to make it more questions so that it would be that way. And we think that it is the more clearer way to go and I think that the questions are more organized but again, the apples are, so that everybody is understanding, what the Commission voted on quote to quote is exactly that and again I think that it's almost better to have more questions because I think it's more fluid this way, okay, and oh by the way, we will have a flyer that this City sends out that will show and match the changes so the voters, gather that is required and Vick will do that and then if there is a problem the Board of Elections will oversee it and the Secretary of State will oversee it just as it always does for any and all cities. But I don't think that you should do it, you have a mandatory Charter duty to submit it forthwith and you are hopefully going to submit it forthwith with the recommended changes to the Charter as provided by the Charter Review Commission. So I'm a little surprised that we're in this debate, we've never had this debate, I think that there are people who didn't like certain things in there and they voiced their opinion at these meetings and things of that nature. I understand that. And like Ms. Sommers Greer said you will have the right to even to go around and say this is terrible, don't vote for four, five and six, I get that. Everybody will have that absolute right and all you are doing is passing it along to the voters so I think that it is

much more fluid and much more correct at this time. And we'll see if the Board of Elections and the Ohio Secretary of State agrees with us.

**Councilman Plecnik:** Mr. President, I'm still concerned with the change in the number of amendments. And while I'll agree that typically more amendments and more opportunities to dice up the language and is usually a better thing. It's not about whether we think it is a good thing or a bad thing I don't find the fruit analogy is convincing to be honest, I think that it is a substantive alteration and we're support to submit without alteration what the Charter Review Commission gives to us. And frankly, I think if they have not had a vote and that's what I understand the Chairman to have said on what issues to put on the ballot I question whether they even submitted it to us. Now if they have submitted seven amendments then we are required to submit seven but if they haven't submitted any amendments and they are agnostic as to whether there are seven, ten or a hundred I'm not sure if they even had the substantive vote. Without alteration everyone's been taking it pretty literally up to this point and now we're saying we can dice it up any which way we want and it's irrelevant. It relevant rather or not Issue 1 and 2 are grouped together or separate, that's a big substantive change. And I don't see how without alteration gives us the authority to do that. Which is why I'll repeat and I'm grateful for our volunteers' efforts and I've been to many of those Charter Review Meetings over the past two years and myself I think that it is time for a Charter Review Meeting to actually vote on what issues, what amendments they want to be on the ballot. And I don't think that is right for us to vote on this issue so I will vote no on Waiving the Three Reading Rule. I think that we need to have the issues submitted to Council.

**Councilwoman Greer:** Mr. President, I have a response. I urge my colleagues tonight that we vote yes on this and we submit it to the Board of Elections. This is our job and I urge all of you to vote yes send it to the Board of Elections and do not take this away from the vote of the people. This is going to a vote of the residents of this City, let them decide.

**Councilman Fiebig:** Mr. Chair....

**President Somich:** At this time, I would like to Call for the Question, I think that there has been adequate discussion.

**Councilman Fiebig:** I do have a very important question that I would like to ask this body, my colleagues, may I?

**President Somich:** As I said this Chair has made every effort to comply with the wishes of Council over the last ten days or so; I tried to call a meeting much earlier than this so that there would be more time to be able to have the vote, make any changes that need to be made so additional votes could be taken if necessary before we are at deadline which we truly are at, at this point. Some of the comments that were made by some of the Council Members were make sure that we do bring Mr. Gardner back in and ask him to compare the questions and to make that they are truly representative of all of the work that was done over the last, almost two years. Other people said make sure that Mr. Lobe is involved in the process and he was out of town and so we gave him time to come back and secure that everything was done properly. We have tried to comply with the wishes of Council, right now the arguments that have been stated we have heard from the Chairman of the Commission and he has assured us that these are exactly what we are suppose to be voting on, indicative representative of their work; we've heard that from our Law Director. I don't know why this is becoming a political football here today, I don't understand that because there is nothing political about this. We have a job to do to take what these volunteers have done over the last almost two years and to put that on the ballot for the vote of the people. We have been assured that that is what this is. If you are concerned about the verbiage on the questions, we've been assured that they are going to be scrutinized by two other independent bodies to make sure that they truly are indicative of the work of that's going to be...the questions that are going to be asked of the people. We are obligated by law to send to all of our residents, make available to them a comparison of the verbiage far beyond the question but in detail of what the changes are. This is a process that has been done over and over and over again over the years and at this point to politicize this I think is absurd and I believe that we need to Call for the Vote.

**We have a Motion from Councilman Biro to Waive the Three Reading Rule, seconded by Councilwoman Greer at this time Madame Clerk please call the Roll.**

**Roll Call: Hallum-yes, Plecnik-no, Somich-yes, Biro-yes, Fellows-yes, Fiebig-yes, Greer-yes**

**MOTION PASSES: 6-AYES/1-NAY**

**President Somich declared that the Three Reading Rule for Ordinance No. 2015-37 has been suspended.**

**MOTION MADE BY COUNCILMAN BIRO, seconded by Councilman Hallum to adopt Ordinance No. 2015-37.**

**Councilman Fiebig:** I don't know why you brought up somebody politicizing the issue; I don't think that anyone is politicizing the issue that was your opinion. And by the way, I don't think that the Chair can do what you just did which was close discussion and Call for the Vote, I think the Members have to Call for the Vote. But we'll that for another day. The questions that I had....**President Somich:** Only have four more months to kick me around and then you don't have to worry about me. **Councilman Fiebig:** All right. The question that I had, you know the concerns that I think Councilman Plecnik brought up are legitimate concerns about the question. Now we're not going to change any of the substantive issues in that, I mean we're tasked with just put it forth. What about the question? You know, can we as a body look at those questions and make sure that they're reflective of what we are asking the voter. Is that part of what this body would wish to do. To make it a cooperative process; to make it a process that everybody would agree and be comfortable with. That we're not trying to hide something from the voter, we're not trying to skewed something, we're just simply want to reflect, you know, what are we trying to do with Issue No. 10. So can we talk about that for a few minutes; can we make an amendment to the question. I'd entertain anybody jumping in on that.

**Councilman Hallum:** Mr. President. It's my opinion that Mr. Gardner and the Board have, the Commission has looked at these questions and I've not heard any objection from them that these are not representative of their intent and so I don't see a need for us to try and change what their intent is; that they've seen these, they agree with these, they have not argued these at all. For us to now say maybe they are not good enough or maybe they're not correct or they're not clear, maybe they don't really represent what the Board or the Commission has put out there I think is ludicrous because they have looked at it. I have not heard one of them stand up here say hay, I don't agree with what is written here in these questions, not one has done that. These are all residents who live in the City. They all love living in the City or otherwise they wouldn't have spent time doing this. So again, I've said this when we initially brought this Commission on, I don't think that anybody has ill will that's on that Commission. I don't think that anybody on that Commission would allow a question to be put on the ballot that they think is not representative of all the hard work that they did. That's it.

**Councilman Fiebig:** Well Mr. Hallum, the Commission didn't vote on the questions they just simply came from Andy. **Councilman Hallum:** I understand that, they've looked at them.

**Councilman Biro:** You know, as Andy alluded to, I was part of this process as well as Dale and it is a long and arduous process, I mean, you know it's an attempt to make our Charter stronger and to delete questions that are out there about how we run things. As I recall, our focus was to present these things which is what they've done. And for Council to pass them on to the Board just like Mr. Lobe says let them look at them, make sure that the questioning is correct and...but I don't, personally and it's interesting how this is exactly, these changes are exactly what Mr. Plecnik is wanting. I mean to have...for Council to have the ability to go and make changes to the Charter. So I think, you know to sit here and debate about you know not liking this question or that, they've presented this document to us and our focus now is to present this to the Board and let them amend it out.

**Councilman Plecnik:** Mr. President. There are only two bodies that can pass the questions theoretically, the Charter Review Commission and our Council. And we've been told by the Chairman of the Charter Review Commission right here tonight that they have not passed these questions, we've all agreed they have not passed these questions which means that the responsibility falls on us and I forget which Member of the Charter Review Commission was off the top of my head, so I hesitate to say a name, but if you look in our emails you'll see that there was some suggestions made by one member of the Commission to at the last minute to change the question, so I think shows...**President Somich:** Which were changed. **Councilman Plecnik:** Which were changed but I think that shows that the Commission itself was still individually Members saying that this should change or that should change. There has been no vote of the Charter Review Commission so I believe that Council is responsible for these questions and I don't intent to vote yes on a question that I think, in my own honest belief does not honestly

represent that was made to the Charter. And this is our highest document; this is a very important task that we are all engaged in here today, even the somewhat tedious task of forwarding it to the Board of Elections with questions, this is what is going to be on the ballot and yes the voters will receive a full break down of the changes but how many people, short of the people here, are actually going to read through each amendment, see the beginning, see the end. I'm sure that some residents will, but many will count on us to honestly represent the change and the question and I take that duty very seriously which is why I don't think we should be voting on this tonight and I voted against waiving the Three Reading Rule. And given that we melted the questions in with the vote on the substantive changes to the Charter I think that it's impossible to vote affirmatively on this because it includes not only what the Charter Review Commission has submitted to us but also something that is our responsibility and I don't think that Council has taken its responsibility seriously enough to ensure that these questions are fair. I would also say once again that this is not emphasis on the word not about politics and I don't know why anyone would go there at this point. This is about honestly representing what was stated in these very significant changes to our Charter and I want the people to have a chance to vote on them. But how we can substantively change, one last point, how we can substantively change what the Charter Review Commission has given to us, to change the number of amendments, I don't understand. If we are supposed to submit it without alteration, even if we improve it, even if we have more amendments so now there are more choices for the voter which I applaud, I think that it is better than fewer choices, that's irrelevant. There are a lot of other things that I would like to change to improve these amendments as well but it's not my place to change what the Charter Review Commission has submitted so even if they submitted seven amendments to us which we are required to put forth or the Chairman is correct and they haven't submitted any amendments to us, just their block thoughts on what should be changes in the Charter, in which case, we need another vote from the Charter Review Commission. I don't see how without violating the Charter, we can vote affirmatively for this without alteration, means without alteration; doesn't mean that we can cut the pie differently.

**President Somich:** This Chair is so confused at this point because as I am hearing this conversation we are saying that we want to make more changes to the questions, we want to amend this ordinance to change the verbiage of the questions and yet, I'm also hearing that we are being criticized for the prior changes that have already been made to the questions because we should've simply, we should have seven questions because there were seven items that were originally approved. So, once again, that's why I'm saying its being politicized ladies and gentlemen because we can't have it both ways. We can't say do it exactly the way that they gave it to us but don't do it exactly the way that they gave it to us because it isn't good enough. You can't have it both ways. So we have been assured that the twelve amendments that are being proposed are what the Charter Review Commission wanted. The Charter Review Commission Members have seen the changes; they have seen the current copy. Anybody that wanted to make a change and there was one that did make a change, I don't see how we can talk out of both sides of our mouth and say we're already made some changes, that's wrong, we shouldn't have done that but by the way, we want to make more changes because we don't think that it is good. That doesn't make sense to me.

**Councilman Plecnik:** Mr. President, then if I pose a question to you, which way would you have it, we can't have it both ways, do we vote on the seven issues that the Charter Review Commission voted on as it was with no questions attached to it or do we vote on this extremely altered document. So which way will you have it? I agree we can't have it both ways, so which way do you think is better?

**President Somich:** I'll answer the question but I will not call this an extremely altered document because we have been assured by the Members that are with us here this evening and I'm sure that Mrs. Greer will weigh in on this. This is truly representative of the work that they've did. So, to call it, and I can't remember the word that you said.... severely altered document is not, I do not believe is the accurate terminology to use.

**Councilwoman Greer:** I agree with that and I disagree that we could vote on this without questions; how would the voters possibly know what they are voting on if you don't pose a question. That's what they are voting for, should we make the change. So if we did this as Mr. Plecnik proposes the voters wouldn't know what they are voting for, so it must have questions attached and I say it's time and we could go back and forth on this and go back and spend more time and there are a lot things that we could do with this and stonewall so that the voters never get to vote on this because November 3<sup>rd</sup> is seventy days away. And as we know, that's

very close we need to get these certified and that's our job, certified not the merits of it, we have to certified it, send it on.

**Councilwoman Fellows:** Councilman Biro, I wanted to....your statement was that the intent of the Commission in your opinion was to make our Charter stronger, so Number 9 is asking the voters to minimally follow the State Standards. In my mind that doesn't make our Charter stronger...Just a statement.

**President Somich:** And once again, it's not our charge whatsoever as a body to question what the Charter Review Commission came up with. Our job this evening is to pass this on to the County who will scrutinize this at the Board of Elections and then it will go to the Secretary of State to be further scrutinized so that it can go on the ballot.

And at this time we have all weighed in on the conversation, we have a Motion from Councilman Biro, seconded by Council Hallum to adopt Ordinance No. 2015-37, Madame Clerk please call the roll.

Roll Call: Hallum-yes, Plecnik-no, Somich-yes, Biro-yes, Fellows-yes, Fiebig-yes, Greer-yes  
President Somich declared that Ordinance No. 2015-37 has been adopted.

### ADJOURNMENT

**MOTION WAS MADE BY COUNCILMAN BIRO**, seconded by Councilman Hallum to adjourn the Special Council Meeting of August 25, 2015.

Roll Call: 7 AYES - unanimous

**MOTION PASSES**

President Somich declared the Special Council Meeting of August 25, 2015 to be adjourned at 8:00pm.

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_

Raymond C. Somich  
President of Council

ATTEST: \_\_\_\_\_

Victoria Ann Savage, CMC  
Clerk of Council