

City of Willoughby Hills

Organizational & Special Meeting of Council Minutes of January 8, 2018

Policy No. 2: 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. Council minutes shall be written, and approved by Council.

The Organizational & Special Meeting of Council was held on Monday, December 8, 2018 at 7:00pm in the Willoughby Hills Council Chamber.

Pledge of Allegiance

Roll Call of Members Present: Councilwoman Nancy E. Fellows, Councilman David M. Fiebig, Councilwoman Pat Grebenc, Councilman Christopher Hallum, Councilwoman Janet R. Majka, Councilman John Plecnik, Councilwoman Laura Pizmoht

Others Present: Mayor Robert M. Weger, Acting Law Director Stephen L. Byron

ORGANIZATION OF COUNCIL

President of Council

In accordance with Section 3.22 of the City Charter, nominations for President of Council were accepted.

Councilman Plecnik nominated Councilwoman Fellows for the position of President of Council. Councilwoman Majka seconded.

Acting Law Director asked three additional times if there were any other nominations, there being none, the Acting Law Director entertained a motion to close the nominations and cast the unanimous ballot for Nancy Fellows to be the President of Council.

Councilman Plecnik: So moved.

Councilwoman Majka: Second.

Acting Law Director: Any discussion?

Roll Call taken for the nomination of Councilwoman Fellows to serve as Council President:

Roll Call: YEAS: Fellows, Fiebig, Grebenc, Hallum, Majka, Plecnik, Pizmoht
Motion PASSED.

President Fellows: Thank you, thank you everybody. I sincerely appreciate you having faith in me to consider the leadership in this role. I've learned a lot in the last two years, and I will carry that with me as I continue to gain more knowledge as well. So, I really appreciate this.

Vice President of Council

So, the next order of business would be the nomination of the Vice President of Council.

Councilman Fiebig moved to nominate Councilman John Plecnik for the position of Vice President of Council. Councilwoman Pizmoht seconded.

President Fellows asked three additional times if there were any other nominations, there being none, President Fellows closed nominations and stated that there was no need to have a vote on this as long as Councilman Plecnik accepts the nomination.

Councilman Plecnik: Still it's probably best to have a vote just to be safe.

President Fellows: I have a motion from Councilman Fiebig and a second from Councilwoman Pizmoht. Is there a discussion on the motion?

Roll Call taken for Councilman Plecnik to serve as Vice President of Council:

Roll Call: YEAS: Fellows, Fiebig, Grebenc, Hallum, Majka, Plecnik, Pizmoht
Motion PASSED

President Fellows: John, you will carry on the Vice Presidency of the Council.

Councilman Plecnik: Thank you Madame President, if I could just share, I'm very grateful for the confidence of my colleagues in me so that I can continue to serve as Vice President and assisting our Council President Nancy Fellows to move Willoughby Hills forward in a positive direction. And I'm also grateful to all of my neighbors in Willoughby Hills whose given us all the chance to serve them here today. Thank you.

Appointment of Clerk of Council

President Fellows: The next order of business is a motion to appoint our Clerk of Council.

Vice President Plecnik: Madame President, I would move to appoint Vicki Savage our Clerk of Council.

Councilman Fiebig: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilman Fiebig to appoint Victoria Savage as our Clerk of Council. Is there any discussion on the motion?

Councilman Hallum: Madame President. Do we need to waive residency before we vote or not?

Acting Law Director: You can.

President Fellows: We can.

Councilman Hallum: I don't care, I just couldn't remember how we did it in the past.

President Fellows: We've done it both ways.

Councilman Hallum: Okay, just wanted to make sure that we did it right; if we needed to do it before hand.

Vice President Plecnik: Madame President, then I would withdraw my motion and restate it to appoint Vicki Savage Clerk of Council and waive the residency requirement for said position.

Councilman Fiebig: I'll second as amended.

President Fellows: Thank you. So, I have a motion from Vice President Plecnik and a second from Councilman Fiebig to appoint Victoria Savage as Clerk of Council and waive her residency. Is there any discussion on the motion?

Vice President Plecnik: Madame President. If I could just say that in my four years on Council, I could not have accomplished one-tenth of my work without the help of our Council Clerk Vicki Savage. She has put in an enormous amount of time and effort to facilitate the legislation of every member of Council and I've never seen anyone more dedicated to the City of Willoughby Hills.

President Fellows: Anyone else?

Roll Call: YEAS: Fellows, Fiebig, Grebenc, Hallum, Majka, Plecnik, Pizmoht
Motion PASSED

President Fellows: Vicki, you are our Clerk of Council. Thank you.

COMMITTEES OF COUNCIL

President Fellows: Our next order of business is to elect Chairman for these standing Committees of Council (Finance, Planning & Zoning, Recreation, Rules & Legislation, Safe, Service, Utilities). So, the first one would be for the Finance Committee.

Councilwoman Pizmoht: Madame President, I'd like to nominate Councilman Plecnik to be Chair of the Finance Committee.

Councilwoman Majka: Second.

President Fellows: I have a motion from Councilwoman Pizmoht and a second from Councilwoman Majka to nominate Vice President Plecnik for the Chairman of the Finance Committee. Is there any discussion on the motion?

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: So, Vice President Plecnik will be the Chairman of the Finance Committee.

Vice President Plecnik: Thank you Madame President and as we all know, we will be continuing our hard work in balancing the next year's budget. So, expect several Finance Committee meetings in the near future to continue that task.

President Fellows: The next would be the Planning & Zoning Committee.

Councilman Plecnik moved to appoint Councilwoman Pat Grebenc to serve as Chair of the Planning and Zoning Committee. Councilwoman Pizmoht seconded.

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: So, Pat you will be the Chairwoman for the Planning and Zoning Committee and in that position, you actually have a vote on the Planning and Zoning Commission. Councilman Hallum did this for that last two years, he would be a great resource for you on that as well as the Mayor too.

President Fellows: We also have an alternate that we should probably select for P&Z.

Councilman Plecnik: And I believe that's scheduled later under "Council Representatives" on the agenda.

President Fellows: You could do it any place, really. All right, then we'll wait.

President Fellows: The next one would be the Recreation Committee of Council.

Vice President Plecnik: Madame President. Motion to appoint Councilman Chris Hallum Chair of the Recreation Committee of Council.

Councilwoman Majka: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to appoint Councilman Hallum as the Chairman for the Recreation Committee. Is there any discussion on the motion?

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: Councilman Hallum, you'll represent the Recreation Committee of Council. Thank you. The next one is Rules and Legislation.

Vice President Plecnik: Madame President. Motion to appoint our Council President, yourself, Nancy Fellows, as Chair of the Rules and Legislation Committee of Council.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Vice President Plecnik and second from Councilwoman Pizmoht to appoint Nancy Fellows as the Chair of the Rules and Legislation Committee. Is there any discussion on the motion?

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: I will serve as the Chair of the Rules and Legislation Committee. The next one is the Safety Committee.

Vice President Plecnik: Motion to appoint Councilman David Fiebig as Chairman of the Safety Committee of Council.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to appoint Councilman David Fiebig as the Chair of the Safety Committee. Any discussion on the motion?

Roll Call: YEAS: Unanimous.

Motion PASSED.

President Fellows: Dave you will chair the Safety Committee of Council.

Councilman Fiebig: Gladly.

President Fellows: The next one is the Service Committee.

Vice President Plecnik: Madame President. Motion to appoint Councilman David Fiebig as Chairman of the Service Committee of Council.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to appoint Councilman Fiebig for the Chair of the Service Committee. Is there any discussion on the motion?

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: Dave, you will also serve as the Chair of the Service Committee. Thank you. The next one is Utilities.

Vice President Plecnik: Madame President. Motion to appoint Councilwoman Janet Majka as Chairwoman of the Utilities Committee of Council.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to appoint Councilwoman Jan Majka to Chair the Utilities Committee. Any discussion on the motion?

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: Jan, you will continue to serve as Chairwoman of Utilities. The next one is the Personnel Relations Committee.

Vice President Plecnik: Madame President. Motion to appoint Councilwoman Laura Pizmoht Chairwoman of the Personnel Relations Committee of Council.

Councilwoman Majka: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Majka to appoint Laura Pizmoht, Councilwoman Pizmoht as the Chairwoman of the Personnel Relations Committee. Is there any discussion on the motion?

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: Councilwoman Pizmoht, you will be the Chairwoman of the Personnel Relations Committee.

Councilwoman Pizmoht: Madame President. May I appoint my members to the Personnel Relations Committee this evening?

President Fellows: You may.

Councilwoman Pizmoht: Okay, I would like to appoint member Chris du Laney, member Greg McCarthy, Laura Lenz and John Plecnik.

Vice President Plecnik: Could you make that into a motion?

Councilwoman Pizmoht: I'd like a motion to appoint Chris du Laney, Greg McCarthy, Laura Lenz, and John Plecnik.

Vice President Plecnik: Second.

President Fellows: I have a motion from Councilwoman Pizmoht and a second from Vice President Plecnik to appoint the following members to the Personnel Relations Committee: Chris du Laney, Greg McCarthy, Laura Lenz, and John Plecnik. Is there any discussion on the motion?

Roll Call: **YEAS:** **Fellows, Fiebig, Hallum, Majka, Plecnik, Pizmoht**
 NAYS: **Grebenc**

Motion PASSED.

President Fellows: The motion passes. Chris du Laney, Greg McCarthy, Laura Lenz and John Plecnik are members of the Personnel Relations Committee.

COUNCIL REPRESENTATIVES

President Fellows: The next order of business is Council Representatives. The first one is for the Chagrin River Watershed Partners Trustee.

Councilman Fiebig: Madame President. Move that Councilwoman Jan Majka continue in that role.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Councilman Fiebig and a second from Councilwoman Pizmoht to appoint Councilwoman Jan Majka to continue as the Chagrin River Watershed Partner Trustee. Any discussion on the motion?

Roll Call: **YEAS:** **Unanimous.**
Motion PASSED.

President Fellows: Jan, we're delighted that you are going to continue to serve. Thank you. We do need to appoint an alternative.

Councilwoman Majka: Madame President. I'd like to appoint Councilman David Fiebig as the alternate Trustee.

Vice President Plecnik: Second.

President Fellows: I have a motion from Councilwoman Majka and a second from Vice President Plecnik to appoint Councilman Dave Fiebig as an Alternate Trustee to the Chagrin River Watershed Partners. Any discussion on the motion?

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: Councilman Fiebig will be the Alternative Trustee to the Chagrin River Watershed Partners. The next would be the Alternate Member of the Planning & Zoning Commission.

Vice President Plecnik: Madame President. Motion to appoint Councilman Dave Fiebig the Alternate Member of the Planning & Zoning Commission.

Councilwoman Majka: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Majka to appoint Councilman Dave Fiebig as the Alternate Member of the Planning & Zoning Commission. Is there any discussion on the motion?

President Fellows: Just for history Pat, Dave has also served in the past on the Planning & Zoning Commission.

Councilman Fiebig: Six years, I believe.

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: Councilman Fiebig has been appointed the Alternate Member of the Planning & Zoning Commission.

POLICIES OF COUNCIL

President Fellows: The next order is the Policies of Council. And I think that you all have a copy of them. There's not too many of them, so I would like to at least, go through them, to see if there are any questions or concerns. So, the last time that these were adopted, and I think that we had adopted them all as one instead of each one and that was on January 4, 2016.

Policy No. 1. **Roll of Council will be by rotating alphabetically each Council Meeting. (1/2/80)**

Policy No. 2. **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 wherever possible. (Revised 1/1/02); (Revised 1/3/08)**

Councilman Fiebig: Madame President. Should we discuss each one as you kind of go through here.

President Fellows: Sure. We can discuss it now.

Councilman Fiebig: Regarding the first one, I just think that it makes common sense so that the same person isn't always voting first. So, that obviously seems like a good policy and I see no objection to that. The second one that covers the issue of how our meetings are recorded and what is the public record, I would like to see our Council Clerk be part of the Public Records Commission so that she can get advice and offer insight into that.

The only thing that would be is the written minutes shall be shorten wherever possible, I think that is certainly subjective. I know that in the last few years, she has done an outstanding job of verbatim recording the minutes accurately, but it does take more time to do that. So, just a little history on that. It said that it was revised in '08. I don't know any reason to change this because it is subjective, but I'd open the floor to any other comments on that, you know, if that should that should still continue to do it in that manner or not. My feeling is that yes, we could leave this the way it is.

Councilwoman Majka: I actually, I'm not too comfortable with "the written minutes shall be shortened whenever possible" because on the occasion when one of us may miss a meeting then we rely on both the audio and the written minutes to catchup on everything. It's actually, I think it's faster to go through written minutes than it is to sit and listen to the audio. So, really, that's something that I've liked all along, is that we have an accurate written record of the minutes should there be any question or any need to go back and look.

President Fellows: Would you want to entertain a motion to delete that sentence? Or would the Acting Law Director otherwise advise?

Acting Law Director: Well, I don't know where shorten wherever possible means. It's been my view that they've been fairly comprehensive in their scope and if it doesn't, the stated policy of the Council doesn't jive with what your practice is, I would recommend that you change the policy. And, the question came out about putting the Clerk on the Records Commission. I'm not seeing in your code where you have established a separate composition from what the state provides for the Records Commission. Under state code, the Mayor is on the Records Commission, the Chief Financial Officer is on the Records Commission and the Chief Legal Officer is on the Records Commission. And then there is, I believe there is a citizen that is appointed by the Mayor that should be on the Records Commission. If you wanted, and usually the Clerk serves as the secretary of the Commission, that's not uncommon as she has significant knowledge in the area. But, I don't know if you're holding meetings semi-annually as provided by the code. You have Home Rule authority which you could compose your Records Commission however you wish. However, since the Clerk is the one who keeps the records, she is subject to review by the Records Commission as to how long to keep records and so you would be in the position of the oversight body retaining somebody who is being watched by the overseeing body. So, you can do what you want, but it's not usual to see a Clerk on the Records Commission.

Councilman Fiebig: Madame President. Thank you for the explanation on that. That's a good point. Perhaps if she would be invited to attend the meetings that she could offer some helpful insight and then have that one-on-one because I don't believe that she's been included in even the meeting. So, I see your point about not having her on the Commission but perhaps she could at least be invited. And your point is also well taken about, as I had said, it's a subjective sentence "written minutes shall be shortened wherever possible". What does that mean? And if it's vague, how do you enforce a policy that's vague? Who decides wherever possible is? So, I would make the motion to delete that sentence then if I have a majority of people who agree with that.

Councilwoman Majka: All right. I would second that.

Councilman Hallum: A quick question, sorry. Do we still need to have it in there to be written or is that automatic if that sentence isn't there? Will the minutes still be written? Or is that required, that's my question.

Acting Law Director: I would recommend that you have it in writing.

Councilman Hallum: Yeah. So, we just need to change the sentence, maybe, that they will also be written.

Acting Law Director: Yeah.

Councilman Hallum: And leave it at that.

Vice President Plecnik: I would advise simply replacing the sentence that Councilman Fiebig suggested deleting with Council minutes shall be written. So, I would move to replace the last sentence in Policy 2 with “Council minutes shall be written”.

Acting Law Director: I would also, I mean it’s implicit that you have minutes that are approved by Council. You might want to consider expressly saying a draft of minutes shall be prepared for the approval of Council. Something along those lines. Or subject to the approval of Council.

Vice President Plecnik: Council minutes shall be written and approved by Council. How about that? Okay, I move to replace the second sentence in Policy 2 with “Council minutes shall be written and approved by Council”.

Councilman Hallum: Second.

Councilman Fiebig: Could I just throw out one thing before, well, we’ve already seconded it. Let’s put it in discussion then.

President Fellows: Right.

Councilman Fiebig: I’ll throw out another, “written minutes of Council shall be available and approved by Council”. Written minutes of Council shall be available?

Vice President Plecnik: I think that it’s implied that they would have to be available for Council to approve them. And if they were written, they would be available. So, I think that the shorter language encompasses the meaning that you seek.

Councilman Fiebig: Say it again.

Vice President Plecnik: Council minutes shall be written and approved by Council.

Councilman Fiebig: Are they written by Council?

Councilman Hallum: That was exactly what I was thinking.

Councilman Fiebig: Yeah.

Vice President Plecnik: “Council minutes shall be written, and approved by Council.” Are we happy now? Okay, so I would withdraw my motion and make the motion that the second sentence in Policy 2 be replaced with “Council minutes shall be written, and approved by Council”. Do I have a second?

Councilwoman Pizmoht: Second.

President Fellows: Okay, so the last rendition was by Vice President Plecnik and seconded by Councilwoman Pizmoht. So, the policy shall read or will read: “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. Council minutes shall be written, and approved by Council.”

Councilman Fiebig: It’s good.

President Fellows: Everybody’s good?

Councilman Fiebig: I think that's more concise.

President Fellows: Okay.

Councilman Fiebig: Better than shortened whenever possible.

President Fellows: So, Vicki, let's vote on this one independently then since we've amended it.

Vice President Plecnik: Well, this is just a motion to amend.

President Fellows: Right, Right. But, I want to pull this one out if the other ones don't have anything we can do, because this one now has a definite amendment to it. So, let's do this one by itself. I think that's a good idea to do that independently.

Vice President Plecnik: But, we would have to make a motion after this just to be clear. This is a motion to amend.

Acting Law Director: Correct. Motion to amend Policy 2.

President Fellows: So, we need to vote on that one first? Okay.

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: The motion to amend Policy 2 has passed. And then we will use the verbiage that we just did with the motion by Vice President Plecnik and a second by Councilwoman Pizmoht.

Vice President Plecnik: Madame President. I would move to adopt Policy 2 as amended.

Councilman Fiebig: Second.

President Fellows: Any discussion, any further discussion?

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: So, Policy 2 has been amended and then I know, Vicki, you will then put revised with today's date. Thank you. The next one is Policy 3.

Policy No. 3. No legislation can be considered unless it is presented 48 hours in advance, except when such legislation meets the criteria as emergency legislation. This Rule has no provision for suspension. (9/8/84)

Councilman Hallum: I just have a quick question. Do we actually have language that says that this is the criteria for emergency?

Acting Law Director: Yes. In your code, you track state law that talks about, hang on, let me try to pull it up here. It's in your Charter.

Councilman Hallum: I just know that we've waived 48 hours a few times in the...

Acting Law Director: I think that last sentence is problematic because in your ordinances you have a waiver provision. And so, what appears has happen is that you have by policy taken, changed what the ordinance provides which is highly unusual and may not even be permitted because legislation has a certain process and overrides just Policies of Council. So, you know, your ordinances, any such legislation which has not been submitted at least two days prior to the meeting as herein provided, shall only be acted upon by Council at the meeting upon the affirmative vote of five members waving this rule and consenting to consider such legislation. This requirement is 48 hours unless you have an emergency clause provided. That's not in your, stated...what I would recommend is either adopt the policy in your ordinance that says what the policy says which would require the drafting of legislation or adopt as your policy what the ordinance provides.

Councilman Hallum: So, right now our policy is actually more strict than our ordinance.

Acting Law Director: It's different.

Councilman Hallum: It doesn't seem to say emergency, it just says period, right?

Acting Law Director: Well, if the legislation meets criteria as emergency legislation, it sounds like you're waving the rule for emergency legislation and then you say this rule has no provision for suspension. So, it's nonemergency, and you introduce it, it gets introduced less than 48 hours before the meeting, you can't suspend the rule if it's not an emergency. If it is an emergency, the rule doesn't apply and that just doesn't make any sense.

President Fellows: So, as I recall, every two years we've talked about this and there's this long discussion about it and everybody goes, well let's just leave it because we can't figure it out. Well, I'm I, kind of true on that?

Acting Law Director: Well, what I would recommend is to identify the policy that you want. If the general rule should be 48 hours in advance, as it says in your ordinances; what, all I would recommend is, change your policy to reflect what the ordinance already provides.

Councilwoman Pizmoht: Madame President. I just wonder if we already have an ordinance that deals with this issue would it make sense to strike this and then deal with it in the ordinance if we don't like what the ordinance says. Would that make more sense?

President Fellows: I don't think that right, it's in our Charter.

Acting Law Director: No, it's in the ordinances, it's in 121...

Councilwoman Pizmoht: Why do we need a Policy of Council if we have an ordinance? Maybe we should just strike this and if we don't like it, the policy, or the ordinance, change the ordinance.

Acting Law Director: I would say, certainly do that and my point is, you would want to have your policy and your ordinance that sync up. If you feel that you don't need the policy because the ordinance is sufficient that's...

President Fellows: I think the reason that it's in the policy is that these are the things that sort of jump out at us that we are dealing with and experiencing at Council meetings. So, that's why it's kind of pulled forward.

Vice President Plecnik: Madame President. Nonetheless, I think it would be simpler to simply strike Policy 3 rather than trying to make it mirror an ordinance that would supersede it anyway. So, while I don't disagree that it's important for us to be mindful of the 48-hour rule, a Council rule can't modify an ordinance in the first

place. So, I would be in favor of simply not adopting Policy 3 as Councilwoman Pizmoht suggests and then we can revisit the ordinance to see if we agree with it but, I would leave the ordinance in its place and I would just delete Policy 3.

President Fellows: Is that a motion?

Vice President Plecnik: I don't think, do we have to make a motion for simply not adopting it?

Councilman Hallum: Or why can't we just vote it down, right?

Acting Law Director: Well, you could make a motion to delete Police 3 in its entirety.

Vice President Plecnik: Then I shall move to delete Policy 3 in its entirety.

Councilwoman Pizmoht: Second.

President Fellows: So, I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to delete Police 3 in its entirety. Any further discussion on that?

Councilman Fiebig: Madame President. What was the Section, 121, Steve do you have that up there?

Acting Law Director: It is 121.01.

Councilman Fiebig: Okay. I just want to review it real quick.

Acting Law Director: D. And it's at the bottom of the, there's a list of 1 through 18 which is your ordinary agenda items and there's a paragraph at the end, it's the last sentence of that paragraph.

President Fellows: Any other discussion? Ready to vote?

Councilman Fiebig: 121.01

President Fellows: D.

Councilman Fiebig: Pretty extensive section and you know, dealing with all of these. These are the rules of Council that are in place. So, going back to 1994 when this was put in place I suspect that it was because legislation was being offered that wasn't given 48 hours' notice. So, since that time, Vicki can you correct me if I'm wrong, since that time they passed legislation. I see an ordinance in 1990 that was passed.

Acting Law Director: It looks like your ordinance came in April of '84. This version of it was revised in 2016 but there's some inconsistency between the policy and what the ordinance says. It looks like the ordinance put in the waiver provision as a matter of ordinance. So, again, the policy choices you wish to bind yourself to you can do it by rule and we'll get into #4, I have a different issue. But, you can bind yourself by your own rules or you can bind yourself by legislation. But, what I don't recommend is having contradictory regulations in two different places. So, it should be synced up. And if you're comfortable with the policy that is an ordinance that's fine. If you want to get rid of Policy #3 or incorporate it as the rule in the ordinance, that's fine. It's up to you as to how you slice and dice your procedures.

President Fellows: Right now there's a motion on the floor; a motion and a second to delete it.

Councilman Fiebig: So, to delete it may I just read the quick paragraph as to what is for the benefit of those listening.

President Fellows: Yes.

Councilman Fiebig: The failure to follow the above schedule of procedure shall not affect the validity of any legislation adopted by Council. Council shall not be required to consider any legislation presented to it for passage at any meeting of Council unless such legislation has been submitted to each member of Council at least two days prior to the date of the meeting at which it is posed to be considered. Any such legislation which has not been submitted at last two days prior to the meeting as herein provided shall only be acted upon by Council at a meeting upon the affirmative vote of five members of Council waiving this rule and consenting to consider such legislation. That's more exacting.

Acting Law Director: And as I recall from that time period, there was a time when you elected your top vote getter in the At-Large race was automatically the Council President. And I think that there was some dissent by the majority of Council which was having things brought to them by the Council President at the time. And this was a protection by the minority requiring a supermajority to approve legislation so that it doesn't get sprung upon Council at the last second. Obviously, when you got rid of the selection by the electorate, direct election of your Council President, I think that this issue goes away as a practical matter.

Vice President Plecnik: Councilman George Kraincic.

Acting Law Director: Could be, could very well be.

President Fellows: Any further discussion?

Councilman Fiebig: In that case, I'd be in favor of dropping this rule since there is a concise section in our code for it.

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: Policy #3 has been deleted under the Policies of Council.

Policy No. 4. Notification of all new City Employees is to be made in writing to the Clerk of Council's Office within 72 hours of hiring. (1/11/96); (Revised 1/3/06); (Revised 1/4/10).

Acting Law Director: I have an issue with this one from a legal standpoint. If you are going to impose an obligation on the Administration, it should be done by ordinance, not by Council policy. Council policies are for the regulation of Council only. And if you are saying that the Administration needs to notify you of hirings that needs to be passed as a piece of legislation.

Vice President Plecnik: Madame President. I agree with our Acting Law Director Steve Byron. Council rules cannot bind Administration. I think that it's wise to have this notification and I would ask that the Mayor continue to grant it and that Council should probably employ our Clerk to draft an ordinance to replace it. But, I would move to delete Policy #4 in its entirety given that I agree that we can't bind Administration through a Council policy and it's surplusage to have it in this place.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to delete Policy #4 in its entirety. Discussion on this?

Councilman Fiebig: Madame President. Just to add also, though, I think that Council should be notified when someone is terminated or has resigned or let go for any other reason too. So, that should be in the legislation.

President Fellows: I agree. Any other discussion?

**Roll Call: YEAS: Unanimous.
Motion PASSED.**

President Fellows: Policy #4 has been deleted from the Policies of Council in its entirety.

Policy No. 5. Council shall not expend City funds for any charitable or philanthropic purpose. (4/11/96); (4/11/96); (Revised 1/3/08)

President Fellows: I will say that occasionally over the years, individuals have come to Council as a body and has asked if we would donate to the cause, whatever it may be and we cannot. As individuals, we can but not as Councilmembers. Any other thoughts on that?

Councilman Fiebig: Madame President. I think that it could also include any City resources as well as City funds. So, it's clear that it's something that gets to the heart of, Council cannot be involved with a charitable or philanthropic purpose using City funds or City resources.

Acting Law Director: Again, you've run into an issue you have the authority to control, the appropriation progress and you can say it's your policy not to do that. Again, if you are going to be attempting to control Administrative activity, you need to pass legislation. You can't say City resources can't be used for a purpose. It's the Administration's determination how resources are used.

Councilman Fiebig: All right, so it is simply that Council cannot expend City funds for...

Acting Law Director: You're making the commitment, you could waive the policy and enact legislation that did it by following the process to enact legislation. These are statements of intention and I think you would have a practice of not expending funds for that purpose. But, it's something that you could point to and say when somebody is asking if you can fund the after prom or whatever, you could say we're not permitted to do that by our rule, but here's my personal donation.

President Fellows: I'm thinking that maybe we should because we didn't adopt 1 and now we're down to 5; 2 was amended, 3 and 4 were deleted. So, why don't we continue to...

Acting Law Director: Maybe at the end you just adopt all of them with a motion.

President Fellows: All right.

Policy No. 6. A "reasonable opportunity to hear the public portion" set forth in Chapter 107.08(a) shall be a one-time period of three (3) minutes per person, per meeting. (1/1/02)

President Fellows: Any discussion? So, Pat, just historically, before you, many years ago, Public Portion, individuals would come up and stand at the microphone for an hour or more. Council meetings were going until midnight. People would have notebooks that they'd prepare in between the two weeks so that they could speak. It became lengthy, disruptive, and often not really providing any good outcomes to it. So, back in 2008,

Council decided or back in 2002, Council decided, and we have to have a Public Portion but that we would put some parameters around it.

Acting Law Director: Yeah. There was an initiative petition that was passed in 2001 to require a Public Portion.

Vice President Plecnik: Madame President. I certainly support the current policy but I also support the discretion that you always show to give residents the opportunity to speak when they're speaking in good faith and sometimes they need a little extra time. This is a minimum guarantee, but sometimes a resident comes for the first and only time to share their unique problem. And I admire the fact that you give them the additional time and I trust that you will continue to do so.

President Fellows: I think that's important. It is, because sometimes individuals come and they've never been to a Council meeting, they have a concern, they don't know how the process works and so, yes, we've given residents consideration. Thank you.

Policy No. 7. If any member of Council in attendance at a Council Meeting or Committee Meeting fails to obey and/or abide by the Chair's ruling when one is ruled out of order more than twice at any given meeting, that disruptive behavior shall be grounds for expulsion from the meeting for the remainder of the meeting. The Chair shall advise the member of the violation of this rule and the potential consequences after the second violation. A vote of Council without debate for expulsion shall be in order after the third violation is declared by the Chair. (3/3/97); (Del. 1/1/00); (Reinstated 1/1/02); (Revised 1/4/10)

Vice President Plecnik: Madame President. I certainly support the policy as it's stated. It's necessary for running orderly meetings but I would note that there has been a bit of misconception that members of the public or staff or administration have the "three strikes you're out rule" and in reality, the Chair of a Council meeting could remove someone other than a member of Council on their first violation. That's in the discretion of the Chair. So, the Council members are given the special consideration of 1, 2, 3 to ensure that a lively debate is enabled, but there's a stricter standard for everyone other than the Council members. We've had issues with former Law Directors, what have you, and sometimes we've had a member of the public who was very disruptive. And typically, the Council President has been very kind in giving them "three strikes", but I do want to state that's actually a privilege preserved for Council members and a chair of a committee meeting or a Council meeting could remove a staff member or a member of the public for being disruptive on their first being ruled out of order.

President Fellows: Thank you.

Councilman Fiebig: That's true.

President Fellows: Any other thoughts or comments?

Policy No. 8. To adopt the Council Seating Arrangement identified "CITY OF WILLOUGHBY HILLS COUNCIL SEATING ARRANGEMENT, Revised: January 4, 2010" to serve as the seating arrangement for Regular and Special Meetings of Council and Working Committee of Council. (1/1/02); (Revised 1/4/10)

President Fellows: I would like to pass these out for consideration for our seating arrangement. Some suggestions that have come through over the last month or so was to bring Council members closer together and have the administration individuals sit at the end of the table; that we didn't have the members of Council segregated also to alternate so that we would have At-Large/District/At-Large/District. So, these are some of

the thoughts that came forward in terms of the seating arrangement. After you've had a moment to review them, if you would like to have any kind of discussion or thoughts shared.

Vice President Plecnik: Madame President. I will say that I've been at Council meetings in many other cities and it is more typical to group the Administration together and the Council together, at least in my experience, than to have them separated. Because there is a definite distinction between the two. I recognize the need to have the Clerk and the Law Director on either side of the President because they work directly with the Council President. I think that it's a logical arrangement and I would make a motion to adopt it.

Councilwoman Pizmoht: Second.

President Fellows: So, I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to adopt the Seating Arrangement as distributed. Any discussion on this?

Acting Law Director: I would just indicate that you are talking about the arrangement that indicates "revised January 8, 2018. There's a note in the bottom left-hand corner, so that everybody knows which one you are talking about.

President Fellows: Right. And it will be reflected in the policies as well. Discussion.

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: The Council Seating Arrangement present will be adopted then January 8, 2018.

Policy No. 9. The Law Director shall serve as Council's advisor as to the procedural rules for the conducting of Council Meetings and any other necessary procedures. (1/1/02)

Vice President Plecnik: So, Madame President, this would leave Policy #1, Policy...

President Fellows: 5, 6, 7...

Vice President Plecnik: 5, 6, 7 and 9...

President Fellows: Correct.

Vice President Plecnik: So, I would make a motion to adopt Policy #1, Policy #5, #6, #7 and #9 as a group, unchanged.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to adopt policies 1,5,6,7, and 9 as they are identified here. Any discussion?

Roll Call: YEAS: Unanimous.
Motion PASSED.

President Fellows: Policies 1, 5, 6,7 and 9 have been adopted.

Acting Law Director: If you're going to clean it up, you might want to take a motion to number these consecutively.

Councilman Fiebig: It's just common sense, isn't it?

Vice President Plecnik: I move to renumber the policies consecutively given the deletions that we've made.

Councilwoman Majka: Second.

President Fellows: I have a motion from Vice President Plecnik, a second from Councilwoman Majka to number the Policies of Council consecutively. Any discussion on the motion?

Roll Call: YEAS: Unanimous.
Motion PASSED.

PUBLIC PORTION

Section 107.08 – Public Meetings of Municipal Bodies

(a) All meetings of any municipal body are declared to be public meetings open to the public at all times.

All meetings shall provide a reasonable opportunity to hear public opinion.

President Fellows: The next order of business is Public Portion. This is an opportunity for the public to come forth. If you come forward, please state your name and your address and you have three minutes. I will open Public Portion at 7:49pm.

Linda Fulton – 2990 Marcum Boulevard. I was talking with Chief Collins today in regards to the investigation of the property on Chardon Road that was for Reflexology. And while he said there was not investigation criminally but they did do an investigation. And upon investigating, the Police Department found that several of our codes actually should not have permitted this business in the City. And so that brings up a question in my mind is that they found that there are several codes that are pretty well outdated. So, who is responsibility is it to investigate the codes that City has and determine whether or not they're out dated, they need to be changed. Is it this body here in Council? Is it Administration? Is it both? But, I would like to see that happen because if our codes are outdated even if we have Home Rule, it might not matter. So, I would like to see that happen here in Council. Thank you.

President Fellows: Thank you Linda. Anyone else here tonight for Public Portion this evening? I will close Public Portion at 7:50pm. I don't know the answer to your question, Linda. We would have find that out.

Acting Law Director: Obviously, the Administration can introduce legislation and Council has the ability to purpose legislation to change code previsions. I'm not familiar with any community that just goes through and looks at everything from the ground up. I mean, you have a prevision in your code, like everybody else, that prohibits the dying of chickens because that what's in the Ohio Revised Code and it's prohibited by code as well. I don't know that there's ever been an enforcement action brought by the City of Willoughby Hills because somebody dyed some chickens, but it's in there. And whether Council or the Administration believes there needs to be changes that's usually how they are addressed. And as you encounter issues within the administration of your code or as a new problem develops, that's when Council focuses its attention on that. So, I don't know, if that helps or not.

President Fellows: I guess, what I think is that Council would need to ask Chief Collins in reference to the codes that were violated and then we can work with the Administration to review them and see if they need to be updated.

Resident Fulton: Can I ask if when a new business comes into the City, is the code reviewed to see whether or not there should be a permit?

President Fellows: I would think that the Mayor would have to answer that.

Mayor: Yes, it is and the term “reflexology massage” are used independently and maybe we just have to add words to our existing ordinance to take care of it.

LEGISLATION

ORDINANCE NO. 2017-88 – SECOND READING

1st Reading: December 19, 2017

AN ORDINANCE AUTHORIZING AND DIRECTING THE ACTING MAYOR AND FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH JOSEPH N. GROSS AND BENESCH, FRIEDLANDER, COPLAN AND ARONOFF, LLP, AS SPECIAL COUNSEL FOR THE CITY OF WILLOUGHBY HILLS, FOR THE PURPOSE OF REPRESENTING THE CITY IN MATTERS RELATED TO THE FORMATION OF AND NEGOTIATION WITH A CERTAIN COLLECTIVE BARGAINING UNIT, AND TO TAKE SUCH ACTIONS AS ARE NECESSARY TO SET ASIDE THAT COLLECTIVE BARGAINING AGREEMENT IF IT IS DETERMINED THAT MUNICIPAL OFFICIALS COLLUDED WITH UNION REPRESENTATIVES, AND/OR TO PURSUE A CLAIM OF LEGAL MALPRACTICE AGAINST THE CITY’S FORMER LAW DIRECTOR, AUTHORIZING THE COUNCIL PRESIDENT TO SERVE AS ACTING MAYOR IN ORDER TO ADMINISTER THE PROVISIONS OF THIS ORDINANCE, AND DECLARING AN EMERGENCY.

Councilman Hallum: Madame President. I have a question about this ordinance. For instance, it said in there on “Whereas” number three, it says the Council finds and determines that it was not properly advised by the former Law Director for the City relative to the representation and the negotiation aspects of the CBA and I’m just trying to remember, I couldn’t find anything, but I don’t have attendance at every single Council meeting, where we actually have a public meeting where we discussed any kind of facts or issues and certainly

Acting Law Director: If you want me to answer for the drafting of the legislation I will do that. This contains a finding in it based upon issues that I have heard from the Council President and I believe other members of Council can provide their own experience on this issue. This legislation would have the finding and obviously you can vote no on it, if you don’t agree with either the action that it’s taken or the preamble, and it’s subject to amendment. So, this is as initially drafted based upon Council President, my discussion with Council President in terms of achieving a result that is perceived necessary in order to protect the fiscal interests of the City.

Vice President Plecnik: Madame President. If I could share, our former Law Director never stated to me and to my knowledge, he never stated to any member of Council that if we did not vote no on the union contract within thirty days that there would be a legal argument that the contract was adopted. And I think that was a critical point that needed to be made to Council. And in my personal view sitting here as a Councilperson, I view that as malpractice per say. It’s such a serious issue, that a union contract with terms that a supermajority, six members of Council voted no on. In fact, every member that is still here voted no on that contract should have been advised by the Law Director that if you don’t vote no within thirty days there’s an argument that this contract is adopted against the will of Council and what Council perceives to be the best interest of the City. I’m still flabbergasted that was never shared with this body. I don’t know of whether the former Law Director simply didn’t know and was trying to advise us on issues that he wasn’t competent in or whether he affirmatively chose not to share, but he certainly never told me and it’s not in the records of any public meeting that he shared with Council that there would be that consequence in not acting within thirty days. I’m also very concerned that the Law Director never advised me or to the best of my knowledge, never advised any of us that

there was a fifteen-day deadline to object to various members of the union. And I personally believe that he should have volunteered that several members of the union were probably not viable under Ohio Public Labor Law, the Ohio Revised Code, given that we had employees who answer directly to the Executive. We had part-time employees who work had worked very few hours. We had employees with significant supervisory responsibilities; at the very least, those issues should have been flagged. And at the very least, that fifteen-day deadline should have been highlighted, I frankly think, repeatedly. But, to my knowledge, that was never stated to me not once. And I'm not aware of any Councilmember who received that advice. I did not. So, those two issues alone on those deadlines, I view, as necessitating that whereas clause as we determined that we were not properly advised because I think Council needed that information to act accordingly. And given the vote of Council to reject the union contract, six to one, it's fairly clear what Council would have done if it had been properly advised, it would have rejected the contract even sooner. Thank you.

Councilman Hallum: Madame President. May I respond? First, of all, I guess I'd like, I remember, Mr. Mayor, wasn't there, there was something you sent in an email, as I recall, something about thirty days. I don't remember the exactly the words. Do you have it with you?

Mayor: Yes.

Councilman Hallum: Would you read that to me and then I have one other response or one other comment. While you're looking that up...you go it? Okay, while you're looking that up, my other comment is that, as I interpreted or read from our ordinances or Charter, was that while it would be nice if perhaps we know that there's a fifteen-day period to reject certain members, my understanding is that it's the sole discretion of the Mayor and not Council to do that. I'm I mistaken on how I understood that?

Acting Law Director: Yeah. I would say that the Mayor cannot take an action which is not in accordance with the Ohio Revised Code. And if Council later learns that such an action was taken, the proper remediation would be for Council to enact an ordinance, such as this one, to force compliance with the Ohio Revised Code. The City should comply with the Ohio Revised Code.

Councilman Hallum: Sure. And my, I did actually contact Mr. Lobe because I had a few questions about some of the things that we are talking about and one of the things that he told me is that he, with regards to at least two of the employees, Gloria Majeski and our Clerk of Courts, that he had mentioned to the Mayor that those two could be argued to not be included in the union. So, I guess I would kind of push that to you too, Mr. Mayor as well as to is that accurate?

Mayor: On July 7th, I sent an email to Vicki telling her I would bring the ordinance, or the contract down and I specifically said, please prepare legislation for the July 13th meeting. We have a thirty-day time table to vote on this ordinance and I quoted the ORC. Now, I emailed it to Council Office, I cc'd me and the Law Director. So, you were given the notice.

Vice President Plecnik: So, Mr. Mayor, two questions. Number one, is anything in that email a statement of the consequence of not acting within thirty days?

Mayor: It has the ORC...

Vice President Plecnik: Does the, the Ohio Revised Code is not legal advice from our Law Director, is it? You just cited a section without giving any quotes or statements?

Mayor: I was very short, concise, I said that you have thirty days to act.

Vice President: And the Law Director give us no advice on your email?

Mayor: I wouldn't know.

Acting Law Director: What code section did you identify? What code section did you identify?

Mayor: 4117-11.

Acting Law Director: Yeah, and that section is the section on, excuse me I hit the wrong button...

Vice President Plecnik: Unfair Labor Practices.

Acting Law Director: Unfair Labor Practices. It does not contain a time limit restriction. So, if a person looked at 4117-11, they would not get a thirty-day restriction by looking at that code section that you had identified and you're not the Law Director. So, this is a piece of legislation that is saying we don't know if there is an actionable malpractice action; we don't know if there was collusion in the enactment of that. This is an ordinance that authorizes the engagement of an attorney to investigate these issues and make a determination on whether or not the law has been followed. And whether or not the City got competent legal advice. It does not ultimately, this ordinance does not bring the action. There would be a separate determination after an appropriate investigation as there should always be. You should have an appropriate investigation before you engage in litigation.

Vice President Plecnik: Mr. Bryon. It's my understanding that the secretary's union of which Gloria Majeski is a member, has yet brought another action trying to get the contract forced upon the City? Is that correct, there's a motion for reconsideration of some kind?

Acting Law Director: Yes, sir.

Vice President Plecnik: That's why I think that this is a very time-sensitive ordinance. We need to hire a labor attorney who can advise Council, who can address these issues professionally, to defend the City's interest. I sincerely wish that the secretary's union was not suing the City of Willoughby Hills and requiring the expenditure of additional funds. It's a shame that this waste occurred. But since the City is in this position and we must defend its interests. I think it's our fiduciary duty as Council people. So, I would move to waive the Three Reading Rule on 2017-88 because I think we need to hire counsel immediately so that we no longer have this void of legal advice that we've had.

President Fellows: I have a motion on the floor. I need a second for discussion.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to waive the Three Reading Rule on Ordinance No. 2017-88. Discussion on the motion.

Councilwoman Grebenc: Madame President. I know that I'm a little late to the party on this. But, I guess I feel that the conversations that we're having up here right now leave me to be even more confused about this ordinance. And while I understand that there's an urgency for us to get the right counsel to do this, I think that there are a lot of components and whereas clauses here that don't speak to what you just stated about, you know, this potential new consideration. So, I don't know if it's possible, when you and I spoke earlier, about procedure and how everything would work, but could we take this to a committee meeting of the Council of the Whole to discuss this further so that I can have the proper understanding of what we're talking about. And so there might be an opportunity for us to do with more time to review things. I candidly would share after receiving a letter from Mr. Germano, I was not really clear on who our Acting Law Director was tonight. And

that letter came on January 5th. So, I really do feel that there are so many moving parts here and in fairness to myself, and to the public, I think that it would be really helpful for us to do that.

President Fellows: Any other discussion?

Vice President Plecnik: Madame President.

Acting Law Director: The proper procedural motion would be a motion to refer it to committee and you could make that motion.

Councilwoman Grebenc: Okay. I would like to make a motion to refer this to committee.

Acting Law Director: Okay, and you would need a second and direct which committee it would go to. Probably, Rules and Legislation.

Councilwoman Grebenc: No. Council of the Whole.

Acting Law Director: You could do that. Council of the Whole. I think that would make me more comfortable.

Councilman Hallum: I would second that. I have a lot of questions still on this as well. I'm not comfortable...this seems very frivolous

Acting Law Director: This takes precedence over, well, I'm not sure that it's an order to refer to committee until you suspend the Three Reading Rule. Because the idea is that you are going to be taking an action on the legislation. If the Three Reading Rule is in effect, you're just supposed to read it. So, your motion would come after a motion to suspend the rules. It would be adopted, if it were to be adopted. So, you have to hold that thought.

President Fellows: So, I have a motion on the floor from Vice President Plecnik and a second from Councilman Pizmoht to waive the Three Reading Rule on Ordinance No. 2017-88. Let me step back on this. So, we're starting a new year, and we have a new Councilmember. We really need to try to focus on what the motion is because many times, over the last couple years, when we make a motion to suspend the Three Reading Rule we end up in a discussion about the ordinance. That is not when we have the discussion about the ordinance. The discussion about the ordinance comes when there's a motion to adopt it. So, this motion is to just suspend the Three Reading Rule so that we can move forward to vote whether we would adopt it or not. Any discussion on suspending the Three Reading Rule?

Councilman Hallum: Yes. Mr. Byron, why would we need to waive the Three Reading Rule before deciding whether it might be, it seems to me that we would want to put it into committee before you even waive the Three Reading Rule because...shouldn't you discuss it before you consider putting it to a vote to make sure everybody gets comfortable with it before. That's when you should have all the lively debate that Mr. Plecnik said earlier, in the Council of the Whole or some other meeting prior to coming here for a vote.

Acting Law Director: You would be taking an action relative to the ordinance. When you have a Three Reading Rule that, the sole purpose of the Three Readings is to have a reading. It is not an order for Council to take action on just a mere reading.

Councilman Hallum: Right.

Acting Law Director: So, if you suspend the Three Reading Rule, it would then be in order for a member of Council to say, I think that it needs to go to committee. And that would be a disposition by this body to send it off to the committee.

Councilman Fiebig: Madame President and Acting Law Director Byron, there's been a development. You said in regard to, regard to litigation that this would give us legal counsel for.

Acting Law Director: Well, yes, assuming that it ultimately gets enacted. You have pending litigation, a motion for reconsideration. If the motion were to be granted, you would need to have counsel in place as

Councilman Fiebig: Right. And there's been a development in that recently. That would, in your opinion, for example, this is the Second Reading, the Third being Thursday, does that give us the ability whether or not if somebody agrees with the whereases or not, or the particular language. You would talk about the language whereas, but that's not essentially what we're passing and what we're essentially doing in section one through five which is engaging the services of a competent legal team to represent the best interests of our residents in this particular matter. So, does this three or four days here, does that help us and put us in a better situation?

Acting Law Director: Ultimately, Council makes that determination. I believe that it does. I would recommend that you do it. Ultimately, you make the determination and remember the emergency clause is the thing that makes the ordinance effective immediately. The Three Reading Rule just allows you to move forward with it before the Three Reading.

Councilman Fiebig: Correct. And the Mayor has to sign this. And he does have the ability to veto it and we have the ability to override it. That's the way Council and the Administration, that's the way City government works. So, based on your advice, I would be in favor of suspending Three Readings and to move this forward because it sounds like we do need competent legal, professional opinion and counsel for this for the best interests of our residents.

Roll Call: **YEAS:** **Fellows, Fiebig, Majka, Plecnik, Pizmoht**
 NAYS: **Grebenc, Hallum**

Motion PASSED.

President Fellows: The motion passes with five votes to waive the Three Reading Rule.

Councilman Fiebig: Madame President.

Councilwoman Grebenc: Madame President.

President Fellows: Councilwoman Grebenc has a motion that she wants to move forward at this time.

Councilwoman Grebenc: And I need help with that. I make a motion to...

Acting Law Director: A motion to refer Ordinance No. 2017-88 to the Council Committee of the Whole.

President Fellows: And Councilman Hallum you had seconded it, correct?

Councilman Hallum: Yes.

President Fellows: Any discussion on the motion?

Vice President Plecnik: Madame President. Councilwoman Grebenc expressed some concern as to who the Acting Law Director is and I just wanted to state for the record that Ordinance No. 2017-70 was adopted by Council, veto overridden by the Mayor. It is the law of the City of Willoughby Hills unless or until a Court or Council sets it aside. And not only are we all bound to uphold the law of Willoughby Hills, lawyers take a special oath to uphold the laws of the State of Ohio and lawyers who work for the City of Willoughby Hills take an added oath to uphold our laws here. And I want the record to reflect that out of grave concern for City Prosecutor Mike Germano, I put him on notice that 2017-70 was validly adopted By Council; it has yet to be put to the side by a Court or by Council and I advise him seriously to consult with our Acting Law Director Steve Byron for his own legal protection because I'm concern about the ethical implications as well as the issues of malfeasance under the Charter from an attorney who fails to keep his oath of office to uphold the law of Willoughby Hills. It's very clear, that unless or until Council or a Court chooses to set aside that ordinance, Steve Byron is the Acting Law Director. It that's not clear, not of the law of Willoughby Hills are valid and we're wasting our time sitting at this dais working together here. But, I think that it's fairly clear that since this was a municipality under Home Rule, the ordinance of Council is the law, per Ohio law, per our Charter and our employees are bound to uphold it. So, I would once again appeal to former Councilman Mike Germano to follow the laws of the City and to consult with our Acting Law Director Steve Byron if he has any concerns. Thank you.

President Fellows: Any other discussion on this motion?

Councilwoman Pizmoht: I would just like to agree with that. We adopted 2017-70, the Mayor vetoed it, we overrode the veto which we are allowed to do; therefore, it is on the books as a law of, as an ordinance of the City of Willoughby Hills. And that is on the books, it is enforceable until or unless a court overrides it or this Council decides to change it or repeal it.

Councilman Hallum: Again, I'm going to go back to this whereas statement because it does make a difference, Mr. Fiebig. In my opinion, we are stating that these are the reasons why the rest of, we want to implement these sections 1 through 5, and as I don't think, in my opinion, saying that we found and determined something when it's according to Mr. Byron, if I understood him correctly, it's basically, just what people felt like or said to him that doesn't, to me, that doesn't sound like to me that there was any real investigation on our part or any putting this together because I still don't understand what people think that we weren't properly advised. There was a statement that said we had thirty days to vote on it if there were questions as to what would happen if we didn't, then I think that someone would ask our Law Director what happens if we don't.

Councilwoman Pizmoht: Madame President. The Ohio Rules of Professional Responsibility require attorneys to advise their clients of pertinent dates that are very important to whatever they are looking for legal counsel for.

Councilman Hallum: They did, thirty days.

Councilwoman Pizmoht: That's not telling us why and he didn't remind us. In fact, I was appointed on August 14th, and it was twenty-four days before the Mayor or the Law Director discussed this issue with me. So, that's twenty-four days. Now, it was the first time that either one of them told me anything about it.

Vice President Plecnik: I would also add that the statement of thirty days was given to Council by the Mayor, not by the Law Director so no one could imply that his statement was legal advice on the part of the former Law Director.

Councilwoman Pizmoht: And I would like to know if the former Law Director attended any Council meetings between the time of the thirty days started ticking and when the thirty days ended.

Councilman Hallum: He wasn't invited to any. From what I saw.

Vice President Plecnik: Actually, he was.

Councilman Hallum: We had Special meetings. Correct me if I'm wrong, we had Special meetings, two or three Special meetings in August and I looked at those invitations and our Law Director was not invited to any of those.

President Fellows: So, the purpose of a Special meeting was because Councilwoman Greer resigned. And Council had thirty days to appoint a replacement and we had numerous applications for that position and we split them up into two meetings so that we could interview and have an Executive Session to determine who would replace that position. That was what the two Special Council meetings were for in August.

Councilman Hallum: Wasn't there also a discussion about one of the ordinances, if I remember right, from reading the notes. I think it was discussed, 2017...

President Fellows: I would have to go back, it's now January. I can't remember what I did yesterday.

Councilman Hallum: I understand. I believe there was an ordinance also discussed, at one, at least one of the meetings.

President Fellows: So, we have a motion on the floor from Councilwoman Grebenc and a second from Councilman Hallum to refer Ordinance No. 2017-88 to the Council Committee of the Whole.

Roll Call: YEAS: Grebenc, Hallum
NAYS: Fellows, Fiebig, Majka, Plecnik, Pizmoht
Motion FAILED.

President Fellows: The motion fails to have this put into the Council Committee of the Whole. So, we are back now to Ordinance No. 2017-88. I need a motion to adopt.

Councilman Fiebig: Madame President. Motion to adopt Ordinance No. 2017-88.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Councilman Fiebig and a second from Councilwoman Pizmoht to adopt Ordinance No. 2017-88. Is there any further discussion?

Vice President Plecnik: I would just repeat that at no time was I advised by the former Law Director that there was a fifteen-day deadline to object to employees who should not be part of the union, as under the Ohio Revised Code. And at no time was I advised by the Law Director about the thirty-day deadline or the impact of not acting within thirty days and it's my concern that disadvantaged our residents severely given that this relates to the infamous union contract with a nine percent (9%) raises, tenure like public school teachers, cash uniform allowances, longevity pay, bonuses and the alike. It was just well beyond. We've already seen some employees suggest three percent (3%) raises, the equivalent to nine percent (9%) over three years. I'm concern what the other unions and nonunion employees will be asking for going forward given this remarkable attempt at making a precedence that this City can't afford and I'm looking forward to having competent legal advice to protect our resident's interests so that this contract never sees the light of day. Thank you.

Councilman Hallum: Madame President. Councilman Plecnik, what do you think they are going to think about the raise we gave our Council Clerk, that we gave Debbie Semik, that we gave our Acting Law Director.

You don't think that those are going to play any part in what these other unions are going to say? Of course, it is. Of course, it is. So, why this? Why is this so specifically interesting and has an issue with you and these other things, spending money for attorneys for things that probably could be resolved if we would have just sat down at the table with the Administration and tried to collaborate and work together instead of getting litigious.

Councilman Fiebig: We never had that opportunity, Mr. Hallum.

Councilman Hallum: You never tried. You never tried, Mr. Fiebig.

Councilman Fiebig: No we didn't.

Councilwoman Pizmoht: Did you try to get the Council together to do that, Mr. Hallum?

Councilman Hallum: I'm not the one that has a problem with it.

Councilwoman Pizmoht: You voted against it.

Councilman Hallum: I didn't like it, correct. But, I'm not the one that's trying to push all this other stuff through now.

Councilwoman Pizmoht: So, you think it's okay to bankrupt the City, potentially?

Councilman Hallum: Well, that's what it seems like we're working towards with all this legal stuff.

Councilwoman Grebenc: Madame President. I just want to say, it sounds like there are so many whereas clauses here again that don't necessarily apply to what I'm hearing the conservation pertain to. And with this idea that we don't know whether this contract is in play right now, or if there is going to be something, I think that we're speculating here and I would just say that I can't in good conscience and representing our residents of our City, say that I think that it's a good idea to hire another legal team before we really know what the consequences are. I am sure that the State can look at this six months from now, and still reverse it, if we need to, but I feel like there's this urgency that, again is running away.

Councilwoman Pizmoht: Madame President. Protecting our City from bankruptcy is urgent. I think that's very important and we have three separate attorneys tell us that is the potential outcome if we should have this contract in place. That is a grave concern of mine and hopefully all of ours. We don't want that to happen. I don't.

Councilwoman Grebenc: No, I understand that. And clearly what I'm asking, Madame President, is just for a little bit more time for us to have some much-needed dialogue.

Vice President Plecnik: Madame President. Two things, I think that we would have all the time we need if the secretary's union would do the right thing and stop suing the City of Willoughby Hills. Unfortunately, they have chosen not to do that, they've taken an active to take a litigation stance that's against the City of Willoughby Hills which I'm certainly saddened by. It's impossible to give a raise to someone who you have just hired, so I want to say for the record, our Acting Law Director Steve Byron has never received a raise. Our Council Clerk as well as our Police Chief's Administrative Assistant Debbie Semik received the exact same raises as other employees had received in the nonunion group. They are not part of a union and they were simply receiving catchups. Our Council Clerk did not receive any raise when every other nonunion employee received them in the previous round when the Mayor had unilaterally granted them. And the legislation that gave Vicki Savage her raise, simply caught her up to what the other employees had already received. So, I want that stated for the record. Thank you.

Councilman Hallum: One last thing, Mr. Byron, I hate to put you on the spot but I've asked and I think this is the third time that I've asked, about what did it mean when the ruling came through and said that after thirty days the contract was active? Is it that the, have you been able to discern, is it the temporary or it is the permanent?

Acting Law Director: SERB did not order the implementation of the contract. They identified the statutory section which is 4117.10 which says after thirty days the agreement is deemed effective as a matter of law. They did not implement, they did not order anything, they did not require a hearing of the unfair labor practice. So, there is no answer to your question. It's in limbo.

Councilman Hallum: So, so, that does not mean that, when it says that it is in effect, we don't know what's in effect?

Acting Law Director: It wasn't ordered by SERB that it's in effect.

Councilman Hallum: So, the law does, but SERB also has to?

Acting Law Director: There was a proceeding brought against the City saying that it was not following law.

Councilman Hallum: Right.

Acting Law Director: SERB found no probable cause. So, as we sit here right now, there is not an order from SERB saying that the contract is in effect. They are the final arbiter of the effectiveness of a contract.

Councilman Hallum: Okay, so there isn't either the temporary nor the permanent is in effect to our understanding.

Acting Law Director: Right.

Councilman Hallum: Thank you.

Councilwoman Majka: I just wanted to say, just the confusion and the questions that are arising right now, make it all the more clear to me that we need somebody to weed through this mess and straighten it out. Mr. Lobe, our former Law Director had conveyed to us a number of times that he was the main negotiator between the union and the contract. He, I agreed with the others that I was individually or as a group, advised of either the fifteen days or the thirty days; the consequences of waiting more than thirty days until after that had passed. And then my recollection is over, and over and repeatedly, almost to the point where I felt that I was being threatened, we started hearing unfair labor practice, unfair labor practice. And this was a threat towards Council that we would be hit with this unfair labor practice, and we were. And it's gone on, Mr. Byron just reported as to the status which is limbo. Okay, so we may need the services of the other lawyers. All the lawyers that are here at the table, correct me if I'm wrong, Mr. Byron, but I believe that it was recommended by all the lawyers, we need somebody very specific in labor relations, an attorney to look at this situation because it is so complicated. And just as doctors specialize, so do lawyers. We need somebody very versed in this type of law to take a look at this to make determination, recommendations and rulings.

Acting Law Director: That's correct.

Councilwoman Pizmoht: I would just like to add, it is so complicated and convoluted right now because of the lack of action on the part of the negotiators for the employer in this case.

Mayor: Madame President. All I can say is that you just had to act and say no to it within thirty days. You didn't. All you had to do was to say no, we don't accept the contract. It would have been that easy. And we'd go back and negotiate with them again.

Vice President Plecnik: Madame President. If I could share, at the Personnel Relations Committee Meeting of Council which was within the thirty-day deadline, we asked the Mayor, directed him by unanimous vote of the Personnel Relations Committee to go back and renegotiate and instead of telling us that if we didn't act within thirty days the contract would be adopted. Instead of receiving legal advice from our Law Director who never spoke on the issue, he told us that he would go back and renegotiate and he did not touch base with us until after the thirty days had passed. I can't help but think, as the Chair of the Personnel Relations for two years, as a member for four, that Mr. Mayor, you knew about that deadline, you knew the consequences. I suspect that our Law Director knew too and you chose not to tell us.

Mayor: I told you, you had to answer within thirty days.

Councilwoman Pizmoht: I just want to know, so when it was first introduced, when the contract was first introduced, when was the thirty days? What meetings would have to had taken place? When would the 3rd Reading have happened? And if we went through Three Readings, starting from the first meeting after the contract was put before Council.

President Fellows: I believe it would have been the first meeting in September. Because the other part of this convolution is that we were ready to leave for our August break that we've always done, it wasn't something that we decided to do, we have always done August breaks. Sixteen years I've been on Council, yes, we have had meetings in August because we've needed them, but we don't meet in August, we don't have meetings in August, so I could stand to be corrected, but I believe the 3rd Reading would have been the first Council meeting in September.

Councilwoman Pizmoht: And I just want to ask, also, so if we know this Council did not want the terms of this contract, why wouldn't they have acted in thirty days, why wouldn't they? Just because...

Mayor: Because you didn't want to.

Councilwoman Pizmoht: Because we didn't know about it?

Mayor: No, you knew about it.

Councilwoman Pizmoht: Do we know the consequences of this thirty days that you, you, said in passing?

Mayor: You knew the consequences of not appointing you to the Council in thirty days. It would mean that I have the right to appoint.

Councilwoman Pizmoht: But the ordinance that you referenced, does not have a thirty-day requirement to act on a purposed contract. So, it, the consequences were not clear to anyone on Council until the September 8th email. That was the first time you had spoke to me at all about this contract and the thirty-day requirement.

Councilman Hallum: That's easy to say, but the Personnel Relations Committee had already said they absolutely thought that we should go back. Why didn't we just vote on it? Vote no, be done with it. It could have all been handled, right? I mean, if we would have just come back and said, you know what, John comes back and says that the Personnel Relations Committee says that this is out of line, this is, we should not accept this. We vote no and all of this would have been gone.

Councilwoman Pizmoht: Don't you think if he knew, if Councilman Plecnik, the Chair of the Personnel Relations Committee, knew that there's a thirty-day deadline that if it wasn't met, that this would be adopted automatically. That of course, they would have waived the Three Reading Rule and would have voted no.

Councilman Hallum: Well, he did know that there was a thirty-day point, period that we needed to vote within.

Councilwoman Pizmoht: And did you?

Councilman Hallum: Yes. I did know. You saw it, everybody saw it...

Councilwoman Pizmoht: Then why didn't you motion to waive it, to waive the Three Reading Rule then? Because I would really like to know.

Councilman Hallum: Because I wasn't at the August meetings, the Special August meetings, I wasn't there.

Councilwoman Pizmoht: Why didn't you say....

Councilman Hallum: I didn't know that they were going to be held.

Councilwoman Pizmoht: Why didn't you say something at the 17th meeting or whatever day it was on the contract?

President Fellows: This wasn't August, this was July. This wasn't August, this was July, Chris.

Councilman Hallum: I know, but August was, we left right after receiving it. And then meetings were held in August.

President Fellows: No, we had another meeting.

Councilman Hallum: No, we didn't.

Acting Law Director: Madame President, if I may. The issue that's in front of Council is the ordinance. The purpose of the ordinance is to engage legal counsel to do the investigation, to find out what the facts are, to find out if there was collusion between the Administration and the union and to establish whether there's a factual predicate for a legal malpractice action against the former Law Director. It's pretty clear, of where the Council is on this. I don't think that you are going to establish facts tonight. The record from the time period will be the bases for that, so having a discussion on who did what to whom, when doesn't address the issue that's in front of you which is whether or not to vote on it.

President Fellows: Thank you. Thank you.

Councilman Hallum: Fair enough. Mr. Byron, I want to ask you this question, so you, if I hear you correctly, SERB has basically said, has not said that the contract is even in place. Is what I think I understand you to say, there's no, they have not officially said that the contract is in place.

Acting Law Director: They identified the statute that has the thirty-day requirement and they identified a prior ULP ruling, an Unfair Labor Practice ruling where they found an unfair labor practice. They did not find probable cause and they did not order further proceedings under the unfair labor practice.

Councilman Hallum: So, what are we, this caption says two things; one is, this caption says it's to set aside a collective bargaining agreement which doesn't sound like there's anything to set aside, and two, it sounds like, if they haven't officially, SERB, as you say, has not officially said this is in place, why aren't we, why aren't we just go back and negotiate it and see if we can get it to where we want it to be and be done with this?

Acting Law Director: I think that if you do that you're going to be in position where you need to take action to negotiate and this would engage somebody to engage, to do that activity. It is entirely possible that may be the outcome of passing this legislation, is that there is an agreement to go back to the negotiating table and to get an agreement that Council would fine...

Councilman Hallum: Why don't we just save ourselves all this money...

Acting Law Director: Because, because the purpose of this legislation is to identify all of the possible contingencies.

Councilman Hallum: It seems like a witch hunt. Instead of just getting down to...

Vice President Plecnik: A witch hunt?

Acting Law Director: I would say that it is...

Councilman Hallum: It's a frivolous lawsuit, it's senseless, let's just go to work...

Acting Law Director: It's not authorizing the lawsuit and certainly it would be a preferable outcome to avoid litigation, there's no question.

Councilman Hallum: Absolutely. Let's just go to work.

Acting Law Director: But it takes two to tango and as you recall, the union has requested reconsideration of the SERB ruling. If SERB were to grant that motion, you would be in a position of having to defend the Unfair Labor Practice and this would put Council in place for that purpose. It would allow this legal counsel, who is competent in the field, to deal with this type of issue.

Councilwoman Majka: Madame President. May I just ask, Mr. Byron, do I recall correctly that in some of our discussions about this whole thing that it was suggested that possibly, or other cities do retain somebody in this capacity to do their union negotiations for them so that it does go smoothly, flawlessly and correctly? And then I think we talked around the idea that this would be something, irregardless of the ULP that this might be something going forward that we might like to do. We would like to retain a labor relations specialist. An attorney of this type to do our negotiating within the City for the unions. Am I recalling this correctly?

Acting Law Director: It is not uncommon for special counsel to be hired for labor relations activities for a variety of reasons. One, is the specialty of the area, the other is, the Law Director often has to interact with the member of the union and it's sometimes awkward to have a negotiation where you're giving legal advice to somebody on one hand and then interacting with someone in a union capacity in another. So, it's not uncommon, it's a policy choice as to whether or not you engage special council for that purpose. And I understand that it's not been the practice here.

President Fellows: Over the years, it's been shared with Council by the Mayor and the Law Director that they could be the negotiators and save money by not hiring a special counsel that had labor expertise.

Mayor: Yes, in the past, twelve, thirteen years ago, we chose not to hire Gary Johnson to do our negotiations. We said that we could come up with a fair contract and we can split the money because we spent fifty to seventy-five thousand dollars on those contracts, on that negotiation every year. So, we said, hey, union, we'll negotiate with you in good faith, but you have to be in good faith and accept what we offer. We've done that. We've saved a lot of money over the years and that's why we have a 1.24 million in the general fund. Things like that we did because when we started my administration in 2008 we had twenty thousand dollars (\$20,000)...

President Fellows: We're getting off topic. We're getting off topic. We do have a motion on floor to adopt Ordinance No. 2018-88.

Councilman Hallum: I'm sorry, just one more question. The cost of having this, sorry may I just ask one more question. I promise I won't ask another one. What is the typical, is the typical cost for a person, a legal person to handle this negotiation in this fifteen, twenty, thirty thousand, I don't know, fifty-thousand-dollar range because my concern is and the reason that I'm asking the question is that according to Mr. Brichacek, our Finance Director, this contract with the "as is", with the raises that are in there, not negotiated down at all, and everything that's in there, is about fifty-thousand, is going to cost us about fifty thousand dollars above what they would get without the union. So, for, over the three-year period. So, I'm just curious, are we going to net better doing, having these guys do that? I mean...

Acting Law Director: It really depends. You could envision that there could be, if there were actionable malpractice, there could be a revenue source that offsets all costs. So, that's certainly a consideration in all of this. So, I can't give you an answer. It really depends upon what the factors are; how can the union contract be negotiated lower...

Councilman Hallum: I meant as opposed to hiring someone to have done the negotiations in the beginning would it have been that pricing, is that, because I have no idea. You're an attorney, I would assume you know or at least have a ballpark...

Acting Law Director: And it's, you know, each situation is unique. This is the formation of a new contract. I had a community that just negotiated a contract, it was not a new contract but it was done for twelve thousand dollars.

Councilman Fiebig: Call the question Madame Chair.

President Fellows: Question has been called, please take roll call.

Councilman Hallum: Somebody has to second that and we have to vote on it.

President Fellows: The question has been called, there's no more discussion.

Councilman Hallum: Right. Someone has to second it and we have to vote on it. That's the rule.

Councilwoman Pizmoht: We did. We already seconded it.

Councilman Hallum: The call for the question, it has to be voted on.

President Fellows: No. To call the question means...

Acting Law Director: The President calls for the question and there was a motion and a second, and so the motion has been properly in front of you, the Chair has the ability to terminate the...

