

City of Milloughby Hills

Special Council Meeting Minutes of September 4, 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 Regular Council Meeting was called to order on Monday, September 4, 2018 at 8:35am in Council Chambers. President Fellows presided.

Members Present: Councilwoman Laura Pizmoht, Vice President John Plecnik, President Nancy E. Fellows, Councilman Fiebig, Councilman Christopher Hallum, Councilwoman Laura Lenz, Councilwoman Janet R. Majka

Others Present: Clerk of Council Victoria Ann Savage

Absent: Mayor Robert M. Weger

President Fellows: We need to change the agenda a little bit because people need to get to work and so, we will do our Correspondence first to address the Mayor vetoing Ordinance No. 2018-41. And then certainly we will have every opportunity for people to speak during Public Portion after that, so Councilmembers can get to work.

Vice President Plecnik: Madam President. After due consideration, I make a motion to override the Mayor's veto of Ordinance No. 2018-41.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to override the Mayor's veto of Ordinance No. 2018-41. Is there any discussion on this motion?

Councilman Fiebig: Madam President. Thank you, I hadn't had the opportunity to weigh in on this since Council was in recess, technically still is in recess. The Mayor in his words, brought up some points that I do happen to agree with, that the process is important and I've always been an advocate of open government, of slow deliberate processes, and putting this on the agenda, putting this on the ballot prior to that process, in the manner in which it was done, just goes too far. Bad government closes processes, benefits few and it's exclusive. Good government is open, it's transparent, it has buy-in from the stakeholders, it has much discussion, much debate, and these nine amendments had none of that. So, for that reason, I will not be in favor of overriding the veto. In my opinion, our Council is bounded to let the citizens know that we've done our work and we've done it in a good fashion and we've done it following the law, we done it deliberately, we done it slowly, we've done it carefully. We have followed not only the laws but the intent of those laws and putting something on the ballot in a haphazard way, jeopardizes the reputation of our City which has a serious effect to our duty as fiduciary agents of this City.

President Fellows: Thank you Mr. Fiebig.

Councilman Fiebig: Madam President. I'd like...

President Fellows: Councilman Hallum. Councilman Hallum.

Councilman Fiebig: I have one other point and I move to extend my comments for thirty more seconds. In my opinion, the use of this would be for, Council amendments would be for things like internal things, like we need to expedite the hiring process for part-time firefighters, for example, like Willowick did. And that was a good use and they put an amendment on the ballot after full thorough discussion, but to change the power structure of our City without a full deliberated debate, in my opinion, is a haphazard way to do this. We should slow, thoughtful, deliberate, and inclusive. So, I will not be in favor of moving forward with this. Thank you for your understanding.

President Fellows: Thank you. Councilman Hallum.

Councilman Hallum: Thank you. I just, I echo Councilman Fiebig's concerns. As everyone, I'm sure knows that my concerns are, this as I read through the amendments, and I've had some time to do that now, it just seems that the changes were an attempt to make some of the things that were judged illegal by a court earlier this year to be legal. That's just my perspective on it. It also seems to along those lines, eliminate the legal recourse that the Mayor and anybody that might have with regard to, you know, maybe Council doing something that is viewed as illegal or against our Charter, to let the judge, let the court decide whether in fact it is or not as opposed to public opinion. And there's been some implications within the language of the Charter Amendments indicating that it's for, to improve the balance of government, but as I read these things, it's anything but balancing power, it's quite the opposite. In fact, it's making it so that Administration can basically do nothing without the approval of Council which hampers the Administration from doing their job. And the amendments effectively are changing our form of government which is no small thing and that kind of goes along with what Councilman Fiebig said which is that I think that our residents have a right to understand, before these are brought to a ballot, before these are created as amendments, how this came to be, why these are truly necessary, not after the fact, not after we already put these on the ballot, not after we created these things but before that. And, quite frankly, this type of change, these types of changes, I do believe should have been put into a Charter Review Commission where it's a group of our residents who are reviewing this and making these determinations that are going to govern them as a people and not coming from Council who is certainly not going to have necessarily the same perspective as a group of residents might have as well as the public hearings, public portion, I know that the last Charter Review they held public portion in the beginning, and the end of the meetings so people have an ample amount of opportunity to speak their minds, give their impressions, give their opinions on how we might improve our Charter and their concerns also with however the Charter currently read.

President Fellows: Thank you, Mr. Hallum. We need to move on, we can discuss further. People need to get to work. I'd asked that from the beginning. I would appreciate it if you could give that consideration to them. We can continue the discussion.

Councilman Hallum: Well, I would appreciate it if this Council would give everybody the consideration to have proper meetings ahead of time, ahead of time.

President Fellows: We can discuss that as well.

Councilman Hallum: After you push this through.

Councilwoman Pizmoht: Point of Order, Madam President.

President Fellows: I've asked for consideration so that people could get to work and we would have all the time we need to discuss it.

Councilman Hallum: So, you're not going to take a vote today.

President Fellows: Yes, we will take a vote today.

Councilman Hallum: So, you're not...

President Fellows: As long as there is motion, we'll take a vote.

Councilman Hallum: I'm sure...

President Fellows: There is a motion and a second.

Councilman Fiebig: Well, Madam President. If I may, I mean, you called this meeting with 24 hours' notice at 8:30 in the morning knowing full well that people had work to do.

Councilman Hallum: Granted.

President Fellows: Well, don't be considerate of your fellow Council members, that's fine by me.

Councilwoman Pizmoht: Madam President.

Councilman Hallum: I'm going to be considerate of the residents.

Councilwoman Pizmoht: Madam President. The Charter has three ways for amendments to go on the ballot. One of them is approval of five members of Council. If that, in and of itself, is a problem which what seems to be the argument, that its an indication of some sort of bad intent on the part of Council, why is it in the Charter? At what point is it okay to exercise Council's legislative authority without it being seen as some sort of, you know, a nefarious intent? This was considered in a committee. Everyone has the opportunity to discuss it at that time.

Councilman Fiebig: Not true.

Councilman Hallum: Not true.

Councilwoman Pizmoht: Yes, it was true. You could have come, you didn't want to come...

Vice President Plecnik: Point of order, Madam President.

President Fellows: Stop speaking out of order, please.

Councilwoman Pizmoht: You had the opportunity to be there and to weigh in, yes you did. You also had the opportunity to come to the Special Council meeting which was called in the legal, the legally necessary notice. You could have called your fellow Council members to voice your concerns if you couldn't make it. These are, it's just about putting these on the ballot. There's going to be, as far as I'm aware, I believe this is true, four Town Hall meetings between now and election day to discuss these. And if every resident, every single one, every single resident, including everyone of us, has the opportunity to vote at that time too. And if we don't approve of them we have the right to vote no on them at that time. So, there is absolutely nothing, there is no bad intent in doing this. Everyone of these amendments is responsible and commonsensical and it's in response to the two lawsuits brought by our Mayor, the Chief Executive of our City against the City which is related to the ambiguities that are in the Charter. And especially with some of these provisions and other ones, like the appointment of family members to positions in the City, is just something that is, it makes sense to anyone. I mean, who thinks that it should be okay for city officials to be able to appoint their family members to jobs and offices in this City, I mean, that's just commonsense. So, I take issue with this idea that this was done in anyway other than in good faith and I think that it's about giving the voters a right to decide. And as our

Council President has said, we need to move on and we need to take this vote so that one of our members in particular can get to work.

So, Madam President, I make a motion to call the question.

Vice President Plecnik: Madam President. You have the authority to just call it yourself.

Councilman Hallum: I don't see how leadership does all that.

Vice President Plecnik: I'm just saying, it might be faster.

Councilwoman Majka: Madam President. I have a brief comment, if you would allow it. I would just like to say that this is about a timeline. If we had a timeline of events that happened in this Council over the past year and a half, two years, it would be very obvious and I may do that for our Town Hall, create a timeline that would explain how some of these amendments are in response to things that have happened and they are a housecleaning type of thing. Councilman Hallum, with all due respect, you had the opportunity at our last Council meeting to have a very robust discussion about these and if I had something that I was very passionate about and I wanted everybody's attention, I would self-control myself and I would be a good girl and I would not speak out of order, I would follow all the rules, but, you have not done that. And your snarky attitude right now is part of this whole thing why you feel you're persecuted and cutoff because you just need to simmer down and be respectful and conduct yourself in a mature discussion. I did not want the question called, I was disappointed that it was called at our last Council meeting because I had a lot to say too and I'm sure others did too. But, response, to make the record clear, when you go about complaining about how you were shutdown it was because you were out of order. And if you hadn't gotten out of order, we would have had a much longer discussion and you're wanting to do that again right now and you're passionate about it and you have a different opinion and that's fine, but do it in the right way. Just discuss things and make your point and then you'll be heard.

Councilman Hallum: Well, I would like to respond to that because if you listen to the tape again...

Councilwoman Majka: Which I did.

Councilman Hallum: Good. Then you'll see that I was asking questions that were not getting answers. And because no one liked the questions that were being asked, they were had questions to answer, then I was shutdown and then yes, I felt that it was necessary for me to speak out of order, if necessary, to get the points out that I needed to get out. So, it's sad, that this Council decided that it was not good for me to voice opinions and to ask questions with regard to such major change to our Charter and decided to shut me down. So, I think if you, if anybody who has an ear for this and listens to the audio, can see that I was just asking questions and there was no disrespect at that time. There was no out of order, I was asking questions and people were not giving straightforward answers. I was getting around beating, beating around the brush, I was getting answers that did not answer my question, I was getting answers from people who I did not ask questions to, and finally, that after I was told that this was the place to voice my concerns and bring my recommendations, immediately after those comments were made, the question was called.

Councilwoman Majka: Right.

Councilman Hallum: That's right.

Councilwoman Majka: That was in response to some ruckus that was going on. There was a little bit of ruckus going on your part. And once again, this is why we have Robert's Rules to guide us through meetings when everybody knows full well there's going to be personality differences and tempers may get hot and that's why we have Robert's Rules. That's what I know.

Councilman Hallum: They're not meant to squish good debate.

President Fellows: There's a difference between debate and disruptiveness. And there is...I want to call the question and take the vote and we can continue discussion.

Roll call: **YEAS:** **Pizmoht, Plecnik, Fellows, Lenz, Majka**
 NAYS: Fiebig, Hallum

Motion PASSED.

President Fellows: The motion to override the Mayor's veto on Ordinance No. 2018-41 has passed.

Councilwoman Lenz: Madam President. May I please be excused?

President Fellows: Yes, you may. Thank you, Laura. (Councilwoman Lenz was excused at 8:52am)

Vice President Plecnik: Madam President. Now that Councilwoman Lenz can continue on to work, thank you so much for sacrificing a big part of your day, I do want to express a few thoughts as well. Out of deference to my colleague, I waited till this point. But, first and foremost, seconding what Councilwoman Pizmoht said, the timeline here and seconding what Councilwoman Majka said, the timeline here is clear. These amendments are in response to serious issues that Council has been forced to deal with because of, frankly in large part, difficulties on the part of the Administration. And to say that, to say that we should wait to clarify the Charter, to make it absolutely obvious to anyone reading it that Council has the authority to hire attorneys to represent the City is ludicrous. We've been in situations where the Mayor has fired attorneys that Council has hired leaving the City unrepresented by legal counsel. Where the City is on the hook for hundreds of thousands, potentially millions of dollars talking about the issues before the State Employees Representative Board (SERB) where the Mayor's own secretary and her union are suing the City to take back 9% raised jobs with backpay, this is enormous amounts of money. Now, there are people on both sides of that issue on how they think it should be resolved, obviously the secretaries want the money and the City is trying to defend its interest so that we can continue to repave roads and employee our Police and Fire Departments and balance our budget. So, there are differences of opinion there and people are entitled to them. But, the City is entitled to a defense. The taxpayer is entitled to a lawyer. And the fact that we even have the issue of Willoughby Hills potentially going into Court without an attorney representing it, that's unacceptable, that is an emergency and it needs to be resolved. And by the way, to Councilman Hallum's point, the Judge rules on the Charter. He said as I interpret your Charter, you can not hire an attorney for this purpose. Or you can not as Mayor or Council by yourself, hire an Acting Law Director. Far enough, but it's not illegal to amend and clarify the Charter. To say actually no, this is how you would hire an attorney to represent the City. This is how you would hire an Acting Law Director. It's perfectly legal, and if the same judge were to get the same case again with a different Charter which spelled it out in those terms, that judge would say that's absolutely fine, because he rules based on the Charter. The problem was, the Charter is ambiguous. The Mayor said that I can appoint an Acting Law Director and any lawyers I want and no one else. Council said we can appoint an Acting Law Director. The judge came back and said no, I've got a third opinion. When you have three different sides, with three different opinions, that's your first show that there is a serious ambiguity. I don't think any of us if we sat back and thought about it objectively would say, the City of Willoughby Hills should ever be in a position where it is in Court unrepresented by an attorney, that is unacceptable, that needs to be resolved. And residents have a right to vote on that. Do we want to be sued over and over again by our Mayor while he refuses to hire attorneys to respond to those lawsuits? Is that what we want as a City? And if people say, yes, then they can vote that Charter amendment down if they want to be sued without lawyers representing them. On the other hand, if they want attorneys defending them so that they won't have default judgments, potentially the millions of dollars against the City, which means higher taxes and less services, then they would vote yes, I want to make it clear that my City will always be represented. And as to the process, the only reason we're working on this timeline is because of the Board of Elections and the necessity to get these to the

Board of Elections in time so that the voters will have a choice. We could debate this for months and then put it on the ballot the day before the election, well guess what, it won't be on the ballot and then the voters don't have a choice. That's not fair to them to say let's wait an entire year to hire an attorney to defend you as the City in Court. As to other amendments, anyone who says we should not prohibit elected officials at this dais from hiring their friends and family, they're appointing them to City Commissions, I don't even know how you begin to defend that. But, I will tell you, it's evidently concerning to me, that the last time we had a Charter Review Commission and had this process, the Chair of it just so happened, you know, that the Mayor had appointed, just so happened to be his next-door neighbor and one of the members of the Commission just so happened to be related to one of the Council people who was involved in a scandal because his brother was the City Prosecutor and their parents' company was taking city contracts and projects.. I mean, that is nepotism squared, when you call a Charter Review Commission chaired by your next-door neighbor with a cousin of a Council person to talk about nepotism, that's not fair. Now, most residents didn't know that was the case, may be the people in the crowd didn't know that was the case, but that wasn't right, it wasn't an open process and it wasn't fair. There were three public hearings last time, there will be four this time. This will be a more open process. This will have a more open opportunity for residents to weigh in on the important issue whether we vote for the amendment or not. Changing one or two words in an amendment is not as important as the fundamental ability to vote yes or no. Should elected officials be able to hire family members? You might be sitting back saying, well, no one was seriously defending nepotism. Well, yes, they were. You can go back in the minutes of a Council meeting where one person talking about the Charter issues said nepotism is not a dirty word anymore. Nepotism is a good thing. When you hire strangers, you don't know if they'll will do a good job, if you hire family, they'll do the job better and cheaper. And by the way, this person was an officer of the City, he was a Commission member, his sister was hired as an employee and his nephew was hired and he sold items to the City. I'm not stating this person's name because I don't want to attack anyone. I'm not trying to criticize someone and I'm sure that person didn't believe what they were doing was wrong. I'll take them at their word, they thought nepotism and hiring family members was fair and right and just and good. Well, respectfully, I disagree. So, does the majority of American law and jurisprudence. And I suspect that most residents when they're given the question on the ballot, should we prohibit elected officials from hiring family, I just strongly suspect their answer will be yes. And I look forward to talking about each and everyone of these amendments in depth and detail, but to say that we didn't go through a process, simply means that you skipped the meeting or you didn't pay attention. The reality is that the Charter of Willoughby Hills does provide for three ways to amend itself. And although the Mayor's appointed many Charter Review Commissions, himself, I believe he's appointed commissions three times and ultimately put forth ballot amendments twice, they never proposed amending that section. If the Mayor believe that it was inappropriate for Council to propose ballot amendments, Charter amendments then his Charter Review Commission should have discussed issue. Should have proposed an amendment themselves, they didn't. So, we can only take it to mean that they believed that it was appropriate to leave that power in the Charter for instances just as this. Where we at a public committee meeting introduced and discussed the amendments. No one proposed any changes to them, but the opportunity was certainly there. And now we're in our third public meeting discussing these amendments on the heels of four Town Hall meetings where everyone will have a chance to weigh in. I understand that it's difficult for some people to take time out of their summer vacation and come to meetings and do the job, but that's the job that we signed up for. And I'm proud of the people that took the time to come out and do the work so that our City would be represented. So, that we wouldn't have default judgments against us. You know, for those who don't do the work it's easy to criticize. But, for those who do, we recognize having lived through this, the need to having attorneys representing the City. The need to explicitly say no, you can not hire your cousin, your relative, your family member. The need to say to the Mayor, you need to give us the budget early so that we can have a serious, three reading discussion on the most important legislation that we vote on every year where the Council spends fourteen million dollars, those things need to be done. But, ultimately as residents, each of us get one vote and I hope that the people who haven't paid attention to this point on Council will start paying attention now because each of us as a resident will have one vote, and one opportunity to express ourselves. And I, for one, want to reform our Charter to make it harder for the Mayor to sue us, to ensure that the City is defended, but if someone wants the Mayor to sue the City, over and over again, and the City to be helpless,

then they can vote the other way. I think that it's a pretty clear case and I think that's why the Mayor is so concerned. I think he knows that the people of Willoughby Hills are tired of his lawsuits. Thank you.

Councilwoman Pizmoht: Madam President. I just want to follow up on Councilwoman Majka's point about dissent and what happened at the last Council meeting had nothing to do with dissent but everything to do with the lack of order and the lack of following the rules of Council and lack of respect for our colleagues here. And that it's very important that we have dissent. I value dissent highly, personally. If I was the only person who felt the way that I do about the issues that we face, I would also be thinking of having a debate with my colleagues and even if it was difficult, but we have the responsibility to respect each other. We have the responsibility to follow the rules. We have a responsibility to keep our emotions in check enough that we can have a discussion, a special discussion. But, what happened last time was really tragic in a way because it prevented us from having the substantive discussion. The whole discussion was about the intent of Council as a body, whether Council was doing something wrong because they proposed, that someone proposed these Charter amendments. That someone wrote them, that the timeline was short. That's all we focused on and we never got to each amendment. We never got to the value of the amendments and what they could do for our City and whether those are right or wrong. And so, I'm excited about the Town Hall meetings and we'll have that opportunity and really hope from this point forward we can discuss this, the substance of these amendments and whether we agree with them or disagree with them rather than the intent of anyone in putting them forward because anyone can attack anyone's intent. There's no, you don't say my intent was to do something wrong. I mean, anybody could look at any fact, anyone can look at anything and if you don't like that person, you can find something to hate about them. You could find some reason to think what they're trying to do is wrong because it's not crystal clear what someone's intent is. So, just because you don't like it doesn't mean that there was something wrong in its presentation. Doesn't mean that there was something wrong, it just might mean that you disagree and that's perfectly fine. Perfectly acceptable. Each of us has a duty to explain what our issues are with the substance of the matters in front of us.

Councilman Fiebig: Madam President. The discussion, we never got to discuss each of the amendments in the last Council meeting where I was asked, by the way, what would be my availability the week of the 13th and I had said that I would be taking my son to college, so it was hardly a summer vacation. But, that is why I was not present for that meeting. But, we didn't get to discuss each of those amendments on their merits. That's distributing that would be brought up right now because that should be the process. As I had stated and I want to reiterate again, that the process should be slow, deliberative, and it should be discussing the merits of each of these amendments.

President Fellows: Councilman Fiebig, I'm not cutting you off, but I do want to say, each one of the amendments was highlighted. Just to say that we didn't go through them at all, is not totally true. We did go through each one and highlight was it was, so...

Councilman Fiebig: I'm just highlighting what Councilwoman Pizmoht just said a moment ago. And I'll be brief because yes, I know everyone has to get to work, but just a couple of points that were brought up. Nepotism is not your next-door neighbor, nepotism is your family. Serious discussion about doing, doing 3-Readings on the budget, I mean that's one of the most important things, yet we did not do this as a Council. We did not do 3-Readings on this which changes the fabric of our Charter. So that is where, so that's the problem and I think that it's a legitimate problem, that in your own words, Councilman Plecnik, you said that we should have 3-Readings on the budget. We did not have 3-Readings on this, on these nine recess amendments to the Charter, so I do believe it goes too far. Thank you.

Vice President Plecnik: Madam President.

Councilman Fiebig: Madam President. May I? One more point, there was mention of default judgment and if there's been some information regarding something that has not been distributed, I'd like to know what that is.

Vice President Plecnik: Madam President. To Councilman Fiebig's last question about default judgments, he should know better than anyone that the Mayor shortly after firing Attorney Joe Gross, the incoming President of the Cleveland Metropolitan Bar Associations, as the attorney representing the City in the labor dispute, where the secretaries' union is suing the City for their positions and backpay, that the Mayor said that he would handle the case going forward and as of the deadline, for the responsive of the City to the Unfair Labor Practice, the Mayor didn't respond. And to Councilman Fiebig's credit, he called the State Employee Relations Board, he had found that the Mayor was derelict in his duty and he asked for an extension so that the City would not be in a default judgment because the policy and the procedure of SERB is if the employer doesn't respond, then all allegations in the Unfair Labor Practice is taken as true which of course means the City loses in default. So, to Councilman Fiebig's credit, he was able to stop the Mayor, stop the Mayor's derelict of duty and avoided a default decision against the City. But, you know what, to rely on a Councilperson happening to call before the deadline passes as opposed to having an attorney who knows the deadlines, who is representing the City, who is being updated as the City's official representative by SERB, that's a poor substitute. I'm glad that Councilman Fiebig called at that time and that the City did not lose by default. But, the reality is, 99 out of 100 times, the City would have lost at that point. And I can't help but think that was the Mayor's intention, but as Councilwoman Pizmoht said we can't know, maybe he was, as he said, just incompetent. Maybe, he truly just forgot to respond to what might have been a multimillion-dollar judgment. But, whether the Mayor forgot or the Mayor intended to throw the case, is really beside the point. What's important is, we had a great lawyer representing the City who would never have allowed a default judgment in that case and the Mayor fired him. And under the ambiguous state of our Charter right now, we don't know for sure who has the authority to hire attorneys and when, that has to be resolved. That has to be resolved.

Councilman Fiebig: Madam President.

Vice President Plecnik: Madam President, I'm not done. I would also say, as to 3-Readings, 3-Readings can be waived when there is exigency and having a Mayor repeatedly suing your City, having City employees past and present, repeatedly suing the City with an inability to hire Counsel to represent you, is the highest exigency. The City could go bankrupt, frankly, from one lawsuit. It has happened, cities have gone bankrupt from one lawsuit, and the City would be irresponsible to ever be in a position where we're not represented. That's the highest exigency. I'd also note that the last Charter Review Commission which is often noted was also not just Chaired by the Mayor's next-door neighbor, as I've shared before, a cousin of a Councilperson was on that Commission, that is nepotism, that is family. And the fact, that Charter Review Commission was called to look at issues of nepotism when a cousin was appointed to the Commission is just double troubling. I would just also say, that the last Charter Review Commission did not have the Charter amendments go through 3-Readings. Remember that the Charter Review Commission does not actually put amendments on the ballot, by law, Council has to vote to put those amendments on the ballot and the 3-Reading Rule was waived then. And I didn't see the Mayor complain about that. Now the ballot language which is in many ways, if not the most important, one of the most important parts of the legislation is because it is what the voters see the most often. It's what they see in the ballot when they check yes or no. The ballot language was never discussed by the Charter Review Commission. It was never voted on by the Charter Review Commission. One member of the Charter Review Commission, once again, the Mayor's next door-neighbor, wrote the ballot language. And when it was submitted to the Board of Elections, the Director at the time, used a couple of choice words that I can't at this dais, it would violate Robert's Rules, but that's how outraged the Board of Elections was, particularly by the amendment with respect to nepotism that construed deleting all of the restrictions in our Charter on nepotism. Restrictions that had been in place for decades, since the founding of our City when it was still a Village, those had been removed, waving the 3-Reading Rule, with no vote by the Charter Review Commission on the ballot language. The Board of Elections was outraged. That's not the process that we're going to follow. That's not the process that we followed. Council as a public body as voted, not once now, but twice, on the entirety of the Charter amendments. We're not going to have 3 public hearings, we're going to have 4. We've given more consideration to these issues and more open consideration than having our next-door neighbor write up a bunch of language and send it in the middle of the night to the Board of Elections.

This is a completely different process and I agree, it's a better process. Now, would I have liked to have had more time, yes. But, there's not likely to have a primary next year and unless if you want to pay for a Special Election, this is our last chance for a year to get amendments on the ballot. And given that the Mayor has sued us multiple times and past and present employees have sued us multiple times in the past year, I don't see how it's responsible not to address this problem for a year. Do you know how many lawsuits and how many judgments and how many defaults there could be in one year?

Councilman Fiebig: Madam President.

President Fellows: One second, Councilman Fiebig. I want to read this and I know that I had called and discussed this and I turned these minutes over within a day or two; so, this is my Rules meeting of August 13th and one of the order of business was the Charter reform:

An Ordinance providing for the submission to the electors of the City of Willoughby Hills nine (9) proposed amendments to the Charter to give residents and taxpayers the power and choice to reform and clarify their Charter by affirmative vote and avoid future lawsuits against the City due to ambiguities.

Recently there has been interest in clarifying amendments in our Charter. There are three (3) approaches identified in our Charter to address amending:

- 1. Appointment of a Charter Review Commission by the Mayor for review and recommendations*
- 2. An Initiative Petition from a City Resident*
- 3. Council*

Councilman Hallum inquired if a law director should review this? The last time this occurred in the City our Law Director then, Mr. Lobe, was not available, the Chairman of the Charter Review Commission, an attorney, Mr. Gardner's questions for the ballot had to be modified by the Board of Elections and the Council Clerk.

Vice President Plecnik – in thinking about and preparing an amendment, he “spoke to past Charter Review Commission members. Ambiguities were identified. It is critical to have a clear interpretation of the Charter to not have future lawsuits.”

President Fellows – the former Law Director reminded Council that “they could always make changes; at any time.”

Vice President Plecnik – the attempt was to select “low hanging fruit”, so to speak, as house-cleaning:

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President Fellows – the former law director reminded Council that “they could always make changes; at any time.”

And then Vice President – the attempt was to select things that were easy to do as house-cleaning:

- 1. Proposed Charter Amendment - #1. Everyone to be treated the same way when it comes to appointment and confirmation for the selection of department heads.*

2. *Proposed Charter Amendment - #2. Concerning City Boards and Commission that there be a balance between City Districts for representation. As an example, currently all of the members of the Planning and Zoning Commission reside on the east side of the City. And we all know that the westside needs some representation.*
3. *Proposed Charter Amendment - #3. To restore the Charter's standards concerning nepotism, putting our previous language back in. While the most recent change was to take this section out of the Charter and follow Ohio Law, Home Rule language can be more robust.*
4. *Proposed Charter Amendment - #4. Identifies the removal process be the same for all officers and employees of the City.*
5. *Proposed Charter Amendment - #5. Will require the submission of the annual budget by the Mayor 60 (instead of 30) days prior to the time fixed by general law for certification.*
6. *Proposed Charter Amendment - #6. To ensure that critical employment vacancies can be filled; example: when a Department Head resigns or steps-down, then an acting Department Head be placed until a permanent one is appointed and confirmed.*
7. *Proposed Charter Amendment - #7. Provides for consistent standards for placing questions on the ballot; requiring 25% of electors.*
8. *Proposed Charter Amendment - #8. Prohibition of costly special elections; in agreeance with the Mayor and no less than 4 members (majority) of Council.*
9. *Proposed Charter Amendment - #9. Addresses terms of office for Department Heads. Reviewed how other cities manage this. This would provide for a (re)appointment and confirmation of a Department Head at each Mayoral election, not just log-rolling. We should all be accountable.*

Believe the amendments to be modest. Ultimately, what do the residents want, voters think?

Councilwoman Pizmoht – “the focus is on the resident and taxpayer, this is meant for the Mayor and Council to work together on issues and for the amendments to provide clear rules and boundaries”.

Mayor – is this presentation in line with what was presented from the 2015 Charter Review Commission? Response was yes, new language is bold and italicized in the Ordinance for each section.

A couple of other thoughts before I get to Councilman Fiebig. One of the reasons that the Mayor vetoed this was because he said, or whomever, said it or wrote it, said that it was immoral that we didn't have due process. That action was put into the last Charter Review. So, for how many years has the City been in existence? We must have been acting immorally because we were able to have due process and that can be approached in many forms not just as the way it was written last time. The other thing I had, I had another point too, and I forgot. But, I do want to tag on to Vice President Plecnik, the Board of Election has worked with us, none of this is illegal, and I find it disrespectful when people say in texts and social media that it is and the Board of Elections is not happy with this information that is out in the public because it begins to reflect badly on them and they are above the law. So, people are saying that the Board of Elections did something illegal or that we did something illegal with them, I would certainly hope that at this point they would stop because it's false, untrue, disrespectful and unnecessary.

Councilman Fiebig: Madam President. The question came up, who wrote the ballot language and I don't know if that was answered.

President Fellows: So, I don't know how many times I have responded to this question about this and about ordinances and this is what I have been responding to, that all of us at this dais including the Mayor, has the privilege and the authority to bring information to the Council Clerk for ordinances and resolutions to be drafted and debated. And you, yourself, know this Mr. Fiebig because you have done this in the past. I have been attached for using the word “all”. I have been told in social media and in texts that we are violating the Sunshine Law. I do not mean “all” in the sense that we are all together in one room as a body. All means “any”. It doesn't necessarily mean a body of people, it means an individual. To say any and all, is that any

Council member and the Mayor has the privilege to bring this to the Clerk and me. And it's not, in my opinion, it's not the issue of who wrote it or who brought the information, the issue is what is it and where's the value to it and how important is it and what should we act on or not. I don't know why individuals keep coming after us and me to say that I am violating the Sunshine Law. I have been on Council for seventeen years, I know what the Sunshine Laws are, as I believe everybody at this table does. We do not violate Sunshine Laws. I know what they are, we know what they are. We would not do that. That is a violation of what we're suppose to do and Judge Fuhry even said in his Judgment that he did not see any indication that any of us are violating Sunshine Laws. So, I would really appreciate it if people could quit beating that dead horse.

Vice President Plecnik: Madam President. I do want to just...

Councilman Fiebig: Madam President, just to follow up. The question is and you know, it's a reasonable one to ask, and there's, you know...you don't have to answer it, it's okay...

President Fellows: We talked on the telephone, Dave. You and I talked on the telephone. I shared with you because I try to stay in contact with you, that Council members had come to me, one on one, and indicated that they had some thoughts that they'd like to bring forth with Charter amendments. I shared at that time, I think four, I don't recall exactly, you did at the time, as I recall, said that they were okay. But, you were concerned about the timing process.

Councilman Fiebig: Correct. The other important point that was brought up here is about a Law Director. And where are we in that process? I mean, we have a Special Meeting, we have an opportunity to address the Law Director and confirmation at this time.

President Fellows: I have had information brought to me that doesn't substantiate a majority of Council to move forward with a Law Director at this time.

Councilman Fiebig: If you could share that, I would appreciate it. And I also don't have any report about where we are in negotiations with the Union and that. I have not heard anything regarding that. So, if you have any information on that, please share.

Vice President Plecnik: Madam President. If I may, and as our Dean always says, first understand then seek to be understood. First, listen then speak. Mr. Fiebig, the question that you had asked, who wrote the Charter amendments and I know that Mr. Hallum has asked that question as well...

Councilman Fiebig: Actually, it was the ballot language.

Vice President Plecnik: Or ballot language, regardless, has already been answered. Council President Fellows in reading her minutes, explained that I took an initial draft and submitted it to the Clerk. That I had spoke to Charter Review Commission members and I had asked them what ambiguities do you see, what problems could we solve, and I drafted it and sent it to the Clerk who obviously made her changes, and my understanding is that the Council President may have talked with her as well, I'm not sure how every change was made, but we all received the final product that we had a chance to review, debate and talk about at meetings that some of us came to and attended and some of us didn't. But, the bottom line is, if you had listened to our Council President, you would have heard how the Charter amendments were drafted. And I think that is important that at these meetings we not only do the bare minimum of following Robert's Rules, but that we actually listen to our colleagues because a lot of our questions are answered when we come to meetings and when we listen and if we're thoughtful.

Now, as to the issue of the Union, we should have an attorney representing us, that's one of the big reasons behind these Charter amendments because then we would have updates from that attorney. Unfortunately, the

Mayor chose to fire that person. And under the Charter as it's currently drafted, it's unclear as to whether he can or can't and Mr. Gross said that I don't want to deal with this; I don't want to deal with uncertainty. We need unambiguous Charter so that we can hire an attorney and that attorney can have confidence that they are acting in their legal capacity and that they will be paid. And anyone who says that the City shouldn't be represented, so that we all as a public, as a Council can get those updates on a regular fashion professionally. I don't think that they understand the seriousness of litigation and how the City is put at risk. If they don't think that's important and a matter of exigency that needs to be addressed now. We can have all the process in the world, but if we don't respond to a multimillion-dollar claim, there is no City of Willoughby Hills and we can't afford to have that. That's not responsible. If someone says, you know, there's a bear running at you, you say, you know, let's talk about the bear for a while; you run. I always remember when my father and I were cutting Some limbs off a tree...

Councilman Fiebig: Can we limit this?

Vice President Plecnik: A really tall tree, Mr. Fiebig, could you please follow Robert's Rule of Order. My father was cutting down limbs from a tree, a very tall oak tree, civil war era, and he said run. He was in the tree and I was on the ground. I didn't say, father, let's talk about this, I ran. That ladder fell so hard it buried itself in the ground. I wouldn't be here talking to you right now if I didn't respond to an immediate threat. And when someone sues the City over, and over, and over again, when we don't have a clear path to legal representation, that is a clear and immediate threat to our residents, our taxpayers and the public fisc and maybe a nonlawyer doesn't recognize that, but I think that most people do whether they're a lawyer or not. Losing millions of dollars in a default judgment is a serious risk. And we came this close to it, Mr. Fiebig, thankfully, you called in, thankfully, the City didn't lose in default. But, there's no guarantee that we'll catch it next time. You said yourself, we don't know where we are with the union. For all you know, we're approaching another deadline that the Mayor won't respond to. We can't afford to be in that position going forward and the residents have a right to vote on it. Thank you.

President Fellows: And Mr. Fiebig, at the hearing, you were commended for your actions, and they would have liked for you to have been there for you to say that, but, we spelled it out for them. Also, another point, the Board of Elections has indicated that the questions to our amendment changes are excellent and that doesn't usually happen, they usually have to go back and have something changed.

Councilman Hallum: Madam President. Just a few points from some of the things that were said by some of the Council members. First of all, there are a lot of comments about exigency and my concern is that, in my opinion, Council created the exigency by not confirming a Law Director by first removing the previous Law Director, but then, further by turning down one and having two still sitting in limbo. And hiring attorneys, in my opinion, is an Administrative issue and not a legislative function, so to put that in our hands is what is proper, in my opinion and also, you know, there was a comment about, there's going to be four Town Halls to discuss this and there was also a comment about there was no 3-Reading Rule on the previous Charter Review amendments, however, the people on the Charter Review, the Mayor didn't complain about the 3rd Reading last time because there was a proper process. And then there was also a comment about people on the Charter Review being related and nepotism and all this stuff that is unrelated, in my opinion, as to how people vote. They still read the amendment, they still read the ballot language they determined what they felt was right. So, that's it. I just felt there's, as everyone has said, there's different opinions how you can see things and not one, one is not necessarily right over the other.

President Fellows: Mr. Hallum, this Council did not remove Mr. Lobe.

Councilman Hallum: Yes, it did.

President Fellows: This Council did not vote to remove Mr. Lobe.

Councilman Hallum: Let's just keep it an honest...

President Fellows: This Council did not vote to remove Mr. Lobe.

Councilman Hallum: You're right, you didn't have to, you forced him out.

President Fellows: We have a letter of resignation from that gentleman.

Councilman Hallum: Right, because we forced him out. That's my opinion...

President Fellows: That is an opinion and this Council did not vote to remove Mr. Lobe.

Councilman Hallum: It's an informative opinion. But, it is an opinion, you're right.

President Fellows: It's your opinion.

Councilman Hallum: That's right. That's what I said.

President Fellows: Also...

Councilman Hallum: But, it's not my opinion...

President Fellows: Wait, wait, wait, Council is exercising due process by the Charter as they are allowed to submit Charter amendments, per the Charter. Do you disagree with the Charter, Mr. Hallum?

Councilman Hallum: What I disagree with is not engaging our public before we come with a final version and push it through and come to a Rules meeting and expect somebody who just handed this thing to know all the questions and have time to review it and ask legitimate questions and then the following meeting when you actually have an opportunity, then that's too late, because everybody is going to push it through, waive the 2-Day Reading Rule, waive the 3-Reading Rule, we're going to push this through and get it on the ballot because it's important for the people to vote. Yes, I agree, 100% that it's important for the people to vote. But, I also agree that it is important and it is part of our society to allow people to have a voice in changing laws, especially our Charter which is our constitution. To have that done, to have these amendments come out without so much of a real option, opportunity for people to hear in commission meetings, in committee meetings, and understand, to be able to give input before it's created as is normally the process, I just think it's not the right process to follow. I don't think it was a good way of bringing this forward. So, you can disagree with me, that's okay, that's fine. You have an opinion and you feel like what you did was fine, I don't attend to agree with that. I think that we should have allowed the public, way earlier, to have input and understand these things were coming instead of just being slapped in front of us in a meeting and then pushed through four days later.

President Fellows: The public also voted on us to represent them.

Councilman Hallum: Well...

President Fellows: And I've had residents call me as the Council President, sharing their concerns on how you represent them and they're not happy about it. I've asked them to contact you.

Councilman Hallum: None of them have. In fact, more people contact me thanking me.

President Fellows: Well...

Councilman Hallum: No one has contacted me saying otherwise.

President Fellows: I'm just sharing.

Councilman Hallum: That's fine. I'm just sharing too. I've received letters thanking me.

President Fellows: I'd like to see them, if you don't mine.

Councilman Hallum: I'll be happy to, happy to.

Councilwoman Majka: Madam President. I was just going to bring up something along the lines of what you'd just said. Something that I don't think is brought up very often in our meetings is that here we sit and we are all elected officials and our job is to represent our residents. So, if you look on a larger governmental level, say, the state representatives, I'm not in touch with my state representatives all the time and I'm not going to their meetings in Columbus because I voted, I trust them, and I get newsletters and I try to keep up somewhat, but I have given over my vote to them and trusting that they are going to represent me in the affairs of the State, whatever their job is day to day in the state government. So, here we are on a smaller city municipal level, but the idea is the same. We have the privilege of being face to face with our residents and neighbors in a way that maybe they can't on a state and federal level. But, the basic idea is that the residents don't have to be monitoring us day by day and calling us and emailing us because they have a certain degree of trust that we're doing our job. And if they don't, and if I don't like anything that my state rep or another elected official is doing, I fight back with my vote. That is my privilege. I either vote to keep somebody that I like in or I vote no to take them out and choose somebody else. And that is the basics of Government 10, that's why we live in a free country and I assume we all like that system and respect that system. So, in response to these situations that keep happening over, and over and over, since I've been on Council, you know, if this Council chose to respond to those as an emergency, by getting things on the ballot then that is our prerogative and that is our job to do something is response to things that are happening because as Council President read in her Rules' minutes, because of ambiguities in our Charter. For example, that recall issue came to the forefront and you can thank Mr. Miller for bringing it to the forefront because he brought up a recall petition and I'm not sure if I'm saying this correctly, but there were two different versions of a percentage of signatures that were need to put a recall or to fulfill that recall petition. And the two numbers, one was in the Charter, one may have been somewhere else, they didn't lineup. So, why would we have an ambiguity like that in our Charter? It's either 25% of people that voted in the last election or it's 25% of every person that's registered to vote in the City. We did not come up with that number just to be mean and punitive and make the process difficult. We wanted to clarify something that wasn't clear. It was more than unclear, it was two different numbers and two different descriptions in two different places. This happens a lot with a Village that has become a City. Sometimes you need to go back and you need to clarify the language, whether it be the Charter or an ordinance or a street sign. You need to periodically do housecleaning, cleanup and no where has this been more clear to Council then seeing all the little loopholes or ambiguities that have allowed the City to be sued repeatedly over this past year and a half. So, it is an emergency that is not a casual little stroll that we're just choosing to put some Charter amendments on the ballot, it needs exigency. I don't want to wait a year. I don't want to go through another year that we just went through. Thank you.

Vice President Plecnik: Madam President. Given that the topic of today's meeting was overriding the Mayor's veto, I'm disappointed that Mayor Weger wasn't able to join us. Once, again, I understand that everyone has families and job obligations, but if you want to be the Mayor of Willoughby Hills or if you want to be a member of Council, you need to find a way to prioritize coming to these meetings because this is when we come into the sunshine, we discuss with our residents and we make the decisions on their behalf as their representative, so there's really no excuse for not coming. There are always one or two instances in life that may block you, but I think I've missed a grand total of two regular and special meetings since I've took office and I've noted that the Mayor has missed a lot more than two since he took office, particularly when he is the center of attention. This meeting is about him, in fact, I regret that we even had to call this meeting. If the

Mayor had worked cooperatively and had signed on to the Charter amendments and had talked with us, then we wouldn't have to override his veto, but, because he chose to do so, this meeting was called and he didn't even decide to grace us with his presence today. But, I do want to go through his veto memo really briefly because the Mayor's voice should be heard and we should understand his objections and why Council in due consideration, doesn't agree with him, at least why I don't agree with him. The Mayor firstly starts off by saying if Council proceeds to put Charter amendments on the ballot, he will remove us all because he says, under Section 9.31 of the Charter, he has the power of a dictator and has the ability to unilaterally remove, and I'm quoting the Mayor now, "without due process", "without due process every other elected official in the City". That is beyond ridiculous. Even if our Charter has a crazy statement like the Mayor of Willoughby Hills may murder residents with impunity or the Mayor may remove every elected official in the City unilaterally without due process. Now, our Charter doesn't say that, but let's say that it did, it would violate Ohio Law and Federal Law. Dictatorships have never been legal in the United States. In fact, it's kind of why the United States exists. We don't allow a king, a tyrant, a dictator, to control all branches of government. This is basic separation of powers. The Council is the legislative branch, the Mayor is the executive branch of the City of Willoughby Hills. In fact, the Charter says so. Beyond that, the Mayor chose to read one provision of the Charter without reading the very next one. Right after 9.31, is 9.32 and the language in that, the language in that provision was actually passed by the Mayor's Charter Review Commission in 2015, so he should be very familiar with it, where it says, Council shall be the judge of its members and qualifications. The judge, not one of many judges, not one judge sitting next to the Mayor, the judge. And if to the extent 9.32 and 9.31 were to conflict, as the more recent amendment, 9.32 controls. There's really no debate here. It would be ludicrous to suggest that the Mayor could just by fiat, remove Council members, he would be a dictator at that point because he would control all branches of government. It's clearly not legal and I frankly don't think that the Mayor believes it. If he did believe it though, it would be a real question as to his ability to serve, but I think it was more of a threat. I really think that the Mayor is thinking if you really vote for something that I disagree with, that I acknowledge you have the legal right to vote for, but if you disagree with me, I'll remove you. That's a terroristic threat. You call congress members and tell them if you vote for this, I'm going to get you. I'm going to fire you. I'm going to persecute you. I'm going to remove you. See how long it takes for the FBI to knock at your door. You can't do it, you can not threaten legislators of a public body to vote the way you want. Now, you can express your disagreement, you can say that they're terrible people, I hope you don't, I hope instead you focus on the issue, and criticize it as it is, but you can't make terroristic threats to try to bully people into voting the way that you want. That in and of itself, is very likely a crime and very concerning that the Mayor would do so. I put the Mayor formal notice that if he truly believes that he has dictatorial powers, that he has demonstrated lack of capacity and inability to serve and he's not even the Mayor. So, the irony is that if you believe that you can remove every other elected official, officially you've removed yourself from office. But, as I've said, I think this was more along the lines of a threat and I think that it's unfortunate that instead of coming here to debate and talk with us, share his perspective on each amendment and why he thinks residents should vote for one or for another, instead, he chose to threaten Council and I certainly am waiting for the Mayor's apology, I hope in good faith, he will give it. But, let's look at his Charter amendments.

President Fellows: Excuse me. I do need to leave. So, I'm going to give the gavel to Vice President Plecnik to finish the meeting. We do need to have a Public Portion, John.

Vice President Plecnik: Well, Madam President. Given that you're leaving, it would be inconvenient to pass the gavel further, so I will reframe from making further comments. But, **I will immediately, taking the gavel now, open Public Portion at 9:37am so that the public has an opportunity to speak.**

You have three minutes, please state your name and address for the record, if you chose to speak.

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.

Vicki Miller – 2857 Hayes Drive. Wow, I don't even really know where to begin after listening to everybody this morning. But, I do not feel that the Mayor is trying to dictate anything here. Everybody should be looking out for the residents of this community. I just want to speak to the fact that we need to as residents become informed, do our homework, factcheck, and I am one who is doing that. I have been talking to neighbors. I have been talking to community members and I do hope you guys really do realize that there is a great majority of the public who are opening their eyes and seeing things and asking questions of your intent and what is going in in these Council Chambers. And I'm just hoping that people will understand and come out to these meetings for the amendments to really see, in fact, that I just really hope that your motives are pure in this. I can not say, what you are actually thinking in this, but I'm sure hoping that people are becoming educated and make use of these Town Hall meetings. Thank you.

Chris Welsh – 38801 Chardon Road. Somebody on Council said a few months ago, if anybody in the public can do a better job, they are more than welcome to try. The last person that sat over here, lasted about three minutes. It's not as easy as everyone thinks it is. If all seven of you agreed, it wouldn't be a democracy, there's going to be disagreements, but agree to disagree. Thank you.

Vice President Plecnik: Thank you Mr. Welsh. Anyone else for public portion? Seeing none, **I will close Public Portion at 9:40am.**

Councilman Fiebig: Moved to adjourn.

Vice President Plecnik: Do we have a second?

Councilman Hallum: Second.

Vice President Plecnik: We have a motion to adjourn and a second.

Roll call: YEAS: Pizmoht, Plecnik, Fiebig, Hallum, Majka

Motion PASSED.

The Special Council Meeting of September 4, 2018 was adjourned at 9:41pm.

APPROVED: October 25, 2018
Date

Nancy E. Fellows
Nancy E. Fellows
President of Council

ATTEST: Victoria Ann Savage
Victoria Ann Savage, CMC
Clerk of Council