



City of Powell, Ohio
City Council

MEETING MINUTES
FEBRUARY 5, 2013

A regular meeting of the Powell City Council was called to order by Mayor Cline on Tuesday, February 5, 2013 at 7:30 p.m. City Council members present included Jon Bennehoof, Sarah Marie Brenner, Tom Counts, Mike Crites, Jim Hrivnak and Brian Lorenz. Also present were Steve Lutz, City Manager; David Betz, Development Director; Gene Hollins, Law Director; Susie Ross, City Clerk, and interested parties.

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION

Mayor Cline opened the meeting to Citizen Participation for items not on the agenda. Hearing none, he closed the Citizen Participation session.

RESOLUTION 2013-01: A RESOLUTION SPECIFYING THE MUNICIPAL SERVICES TO BE FURNISHED TO 2.75 ACRES, MORE OR LESS, WHICH IS PENDING ANNEXATION TO THE CITY OF POWELL.

Steve Lutz, City Manager, said there is a proposed development plan by Epcon before the Planning & Zoning Commission to develop some condos on the east side of old Sawmill Road. He said the area is south of Grey Oaks Drive.

David Betz, Director of Development, said attached they will find an annexation survey that includes two lots of an old single-family subdivision owned by Geld Properties. He said this property, as well as some Murphy Park property to the north, is in contract by Epcon. He said these properties combined are proposed to be developed as 23 single-family condominium units. Mr. Betz said this proposal is not increasing the number of condo units from the previously approved plan. He said this property is zoned Planned Commercial for office uses. He said this project would be a change from that zoning. Mr. Betz said this proposed development is currently before the Planning & Zoning Commission. He said this resolution of services must be approved so it can go to the County Commissioners for their action.

Councilman Bennehoof said the small inset shows the two parts to be annexed. He asked if the other two (upper part of the page) are in the City. Mr. Betz said the property to the north is in the City and the area marked "Cochran" will stay in the Township and is not a part of this plan. He said the total acreage for the proposal is 5.6 acres. Councilman Lorenz said the preliminary plan from EMH&T shows the municipal boundary running through building 16. Mr. Betz said that and the property to the south are being annexed into the City. He said then all of the development will be in the City of Powell. He said the density is just over 4 dwelling units/acre.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to adopt Resolution 2013-01. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2013-10: AN ORDINANCE TO APPROVE THE 2013 REPLACEMENT PAGES TO THE POWELL CODIFIED ORDINANCES AND DECLARING AN EMERGENCY.

Gene Hollins, Law Director, said on an annual basis they pass an ordinance which is prepared by the codifier, Walter Drane, which keeps the City current with the changes to the Ohio Traffic Code and General Offenses Code. He said that includes traffic regulation and misdemeanor criminal code. He said they have an obligation to keep the City's code in substantially similar form to the Ohio statutes with regard to these things. Mr. Hollins said this ordinance codifies into the City's codified ordinances the recent changes to the similar Ohio statutes.

Councilwoman Brenner asked why this is an emergency measure. Mr. Hollins said this ordinance can go to two readings but the emergency clause allows it to be in effect as soon as it is adopted rather than having to wait 30 day. He said the ordinance tries to catch up all of the 2012 state laws and get the City code as current as possible. Councilwoman Brenner asked if there is a repercussion if they do not take this to two readings. Mayor Cline said whenever an ordinance is voted on, whether at the first or second reading, an emergency clause allows it to go into effect immediately upon passage, rather than the normal 30-day waiting period.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2013-10. He said the only reason why they should not suspend the rules is if there is some feeling that one of the code items should be discussed and/or amended before passage. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts move to adopt Ordinance 2013-10. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2013-11: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2013.

Mr. Lutz reviewed the items on this appropriation:

- Request to appropriate \$20,000.00 from the Sawmill Corridor Commercial Improvement TIF Fund. The Sawmill Corridor TIF was approved by the State and the County and the City will be receiving payments and retro payments. The County Auditor does the accounting and charges the City for collection fees. It is anticipated the fees will be higher due to retroactive payments.
- Request to appropriate \$12,108.00 from the ODNR Grant Fund. This will repay the advance of the 50/50 tree grant received from the State. Those trees have been purchased and planted.
- Request to appropriate \$8,406.20 from the ARRA Grant Fund to transfer to the General Fund. They budgeted \$832,000.00 for the ARRA Grant and actually came in \$8,406.20 under. The remaining money will be transferred back to the General Fund.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2013-11. Councilman Hrivnak seconded the motion.

VOTE: Y 6 N 1 (Bennehoof)

MOTION: Councilman Counts move to adopt Ordinance 2013-11. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2013-12: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2013.

Mr. Lutz reviewed the request in this appropriation:

- Request to appropriate/transfer from contingency the amount of \$10,000. The Ohio Department of Taxation notified the City that requests have been granted for refunds for the various utilities that have rights-of-way throughout the City. This provides funding so they may make the refunds.

Mayor Cline asked if this is the total of the refund applications or can they anticipate more of these. Mr. Lutz said he does not know the answer to that; he asked the Finance Director for specifics and she does not receive that information from the Ohio Department of Taxation. He said she is just given the amount to be refunded. Mayor Cline asked if there is any statute of limitations on the request.

Mr. Hollins said this is for the period from 2003 – forward so there must not be a limit. Mayor Cline said if this is an unfunded liability that could extend into several thousand dollars it might make sense for the City to have input, but they may not have standing to do so. Mr. Lutz said he will speak with Staff and report back at the

next Finance Committee. Mr. Hollins said they will check to see if there are any other pending appeals. Mayor Cline said it will be helpful to know if they can anticipate any future refunds.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Bennehoof moved to suspend the rules in regard to Ordinance 2013-12. Councilman Counts seconded the motion.

VOTE: Y 6 N 1 (Lorenz)

MOTION: Councilman Counts moved to adopt Ordinance 2013-12. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

Mayor Cline said the following items on the agenda are a second reading of the ordinances related to the Charter Amendments. He said they can have a preliminary discussion to see if there is any will of Council to combine any of the ordinances into a single ordinance as opposed to presenting them to the voters as individual ordinances. Councilman Bennehoof said they did a good job of vetting these things at the first reading so they can review each ordinance and vote on them afterwards. The members of Council agreed.

SECOND READING: ORDINANCE 2013-02: AN ORDINANCE TO PROCEED WITH PLACING ON THE BALLOT CERTAIN PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF POWELL TO UPDATE AND REORGANIZE THE CHARTER.

Mayor Cline said this ordinance proposes technical amendments that would correct grammar, spelling, punctuation, gender references or revise archaic language. Mayor Cline said at the first reading they discussed the requirement that at least five members of Council, as currently constituted, are required to pass emergency legislation. He said they are suggesting that throughout the Charter they change "five members" to "two-thirds of all members of Council" for clarity. He said that is now shown in this section. Councilwoman Brenner she is often asked about accounting standards and she would like clarification about why they do not use GAAP. Mayor Cline explained that the State Auditor establishes standards of accounting for governmental bodies and GAAP accounting is generally used for non-governmental bodies. He said that is the distinction. He said since the City's audits are graded by the Auditor, they must keep their books in the manner that will satisfy the Auditor's check list. He said the City uses GASB; it is in a format approved by the State Auditor.

Mayor Cline opened Ordinance 2013-02 to public comment. Hearing none, he closed the public comment session.

Ordinance 2013-02 was laid on the table.

SECOND READING: ORDINANCE 2013-03: AN ORDINANCE TO PROCEED WITH PLACING ON THE BALLOT CERTAIN PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF POWELL REGARDING CONFLICT OF INTEREST.

Councilwoman Brenner said the way this language is written may be sufficient for her concern. She said they have had questions and comments in the past about people who contract with the City to provide services and have conflicts in some way. She asked if when it says "appointed officials" does it include anyone who the City pays for services. Mayor Cline said it would apply to members of Boards and Commissions and elected and appointed officials. Mr. Hollins said this addresses elected and appointed officials and Staff who fit the definition of employee and not independent contractor. He said there are things that do apply to some folks that are contractors such as public records laws. He said he has never heard of ethics being applied to a contractor. Mayor Cline said if they hire an independent contractor to do plan review, potentially that reviewer could have a business relationship with the applicant whose plan he is reviewing. He said that circumstance is not covered under the existing Charter and is not addressed covered in the amendments, however they could require by contract that they disclose any conflict of interest. Mr. Hollins said that happens quite often with engineers and plan reviewers.

Councilwoman Brenner said it seems that if the contractors are working with elected and appointed officials and advising the City, they should all have the same standard. She said the Council needs to know that the people advising them do not have a conflict of interest that would not be allowed for the elected and appointed officials. Mayor Cline said the plan review is the best example he can think of and the best

solution is to include fact-specific ethical standards in the written contracts with contractors so they know what is expected. Councilwoman Brenner said her concern is that they are leaving it up to future Councils to remember to do that instead of requiring it within the Charter. Councilman Counts said the new language ties this directly to the ethics laws of the State of Ohio. He said there are all sorts of opinions that would provide guidance, would be mandatory and would speak to all of those issues. He said the issue she described has probably been vetted before by the Ethics Commission so he feels this language puts them in much better position than where they are in the current Charter. Councilwoman Brenner said they may need to beef it up a little more. Councilman Hrivnak said a plumber may be the City's plumbing inspector but also does work in the City and that is not a conflict. Mayor Cline said it would only be a conflict if the plumber inspects his own work. He said rather than guess, there is a whole body of law on ethics in State contracting that was incorporated into the new language and it gives them the advantage of that history. Councilman Bennehoof said he has been an independent consultant for 16 months and prior to that did consulting with another company. He said he has had to complete paperwork that approached these kinds of things but it was not a part of the ORC. He said the contracts included policies and procedures that applied to independent contractors. He said this wording is fine as it is with the realization that there may be policy documents required. Mayor Cline said it may make sense to explore this further before the next Charter review to see if there is a need for more precise language. Councilwoman Brenner suggested that after the words "such officials, appointees" they add the words "and contractors" because it expands it to the people who are advising the City. She said it is fine if there is not majority support for that suggestion.

Councilman Hrivnak asked if this language was lifted from required language. Councilman Crites said it was drafted after the review of other Charters. He said it is not an uncommon thing to have independent contractors doing business with any public entity to have a clause in their contract that requires them to comply with certain ethics laws. He said they may even be subject to audit under Section 117 of the ORC. He said they can look at this closely at the next Charter review.

Mayor Cline opened Ordinance 2013-03 to public comment. Hearing none, he closed the public comment session.

Mayor Cline asked if there was a motion to insert the wording. Councilwoman Brenner said she will not make a motion for that change unless there is majority support.

Ordinance 2012-03 was placed on the table.

SECOND READING: ORDINANCE 2013-04: AN ORDINANCE TO PROCEED WITH PLACING ON THE BALLOT CERTAIN PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF POWELL REGARDING EXECUTIVE SESSIONS.

Councilman Crites asked Mr. Hollins to review the case law that allows them to change this section. Mr. Hollins said this has become a consideration in many Charter review processes. He said due to home rule authority, a Charter municipality can rely on State law in respect to the grounds to go into Executive Session but the Court has acknowledged that their home rule authority gives them the ability to add to the list of potential basis to go into Executive Session if they require confidentiality. Mr. Hollins said that authority needs to be included in the Charter. He said instead of trying to list all of those specifically, they set up a process whereby Council will be authorized by the Charter to enact additional reasons by ordinance. He said that ordinance will need to be adopted by a two-thirds majority of Council, in open forum, and will be subject to referendum. Mr. Hollins said this change in the Charter will allow that ordinance to set forth additional grounds that require confidentiality that may be discussed in Executive Session. Councilman Crites said the Charter Review Commission discussed whether or not to attempt to specify and delineate specific additional areas or whether to give the legislative authority the flexibility to handle it themselves on a case-by-case basis. Councilman Crites said after a significant discussion the members opted to give the legislative authority the flexibility to be able to make that determination.

Mayor Cline asked that if the voters approve this change exactly as proposed by this ordinance, Council could adopt an ordinance that states that "development opportunities" or other appropriate language about development, are legitimate topics for discussion in Executive Session. He said five members of Council would have to approve that ordinance and thereafter any discussion of development could be held in Executive Session. Councilman Crites said that is correct, assuming that the 30 days have passed, there was no referendum and the ordinance is in full effect. Mayor Cline said if Council did in fact hold those discussions in Executive Session, they would have to meet in open session to vote on a development proposal and engage in debate to explain the rationale behind the vote in order to comply with the current Executive

Session laws. Councilman Crites said that is correct. Councilman Counts said they changed from a majority vote to a two-thirds vote to approve this type of ordinance. He said they thought a super majority could trim any possibility that this could be abused. Councilman Hrivnak said as new causes for Executive Session come forward they can always be repealed. He said they have that authority as well and with the assurance of the two-thirds vote, he is in favor of this ordinance. Councilwoman Brenner asked for an example where they would want to go into Executive Session where they do not already have authority to do so. Mayor Cline said if they have a development plan that will require discussion of confidential financial information from the applicant or may involve the City offering concessions in the form of tax rebates or things like that, and there is going to be give-and-take discussion about those things, and the applicant may not be willing to have that discussion in a public session because it may include trade secrets, business plans and procedures that would give competitors an advantage if disclosed, they would do that in Executive Session. He said they would then come into Open Session to discuss the merits of the proposal. Councilwoman Brenner asked if there has been something discussed in the last three years that should have been done in Executive Session or something they were not able to discuss because they could not take it into Executive Session. Councilman Crites said the CEDA negotiations were only allowed in Executive Session was because there was threatened litigation. He said they got in under Section 121.22 (g) (3) and otherwise they would have had to have those discussions in an open arena. Councilwoman Brenner said she thought a lot of that should have taken place in Open Session but because there was a lawsuit she agrees it should have been in Executive Session. Mr. Lutz said in the past couple of years Council has received recommendations from the PCIC for incentive agreements and Council has not been privileged to see the specific financial information from those firms because it would be a public document. He said going forward there may be opportunities where they may think it is beneficial to review the information before agreeing to an incentive.

Councilman Bennehoof said because they agree to go to Executive Session on one date it does not mean they have to go into Executive Session on a subsequent date. Mayor Cline said as it is now, someone has to make a motion to enter and four members of Council have to agree that it is a topic that needs to be discussed in Executive Session. Councilwoman Brenner said she has a real problem with this and it sounds like she is the only one. She said people want more transparency and want to be able to see what is going on in government and that there is no "back room" dealing. She said she is not implying that this is where this will lead but it gives an additional layer of question. She said she personally has a problem with this amendment; if there is a really big reason for needing this she would be in agreement but it seems to be only "what if's." Councilman Crites said this only puts the mechanism in place. He said he has now been on Council for over a year and he is sure if any issue came up that could be considered for Executive Session there would be very healthy debate. He said all they are saying is that they would like to have a mechanism in place so they can at least consider it. He said they have used the example of development but there are other areas to consider. Mr. Hollins said some have been developed by case law under the existing open meetings law. He said there is a "disconnect" between public records law that allows written client/attorney communications to not be a public record but if he has that same communication orally it cannot take place in Executive Session. He said there is no exception for client/attorney communications so he can send them a memo and they can return an email but he cannot talk to them in a meeting context. He said it is not set forth in the open meetings law. Mr. Hollins said there has been conflicting case law which just invites litigation and there is a similar issue for quasi-judicial deliberations after they hear an appeal. He said if they want to convene in Executive Session to determine how they should draft the written version of the decision, they have to rely on a case law exception to the public meetings law. He said the less clear it is, the more it invites litigation.

Mayor Cline said the tension he identifies clearly exists. He said there is no doubt that when Council goes into Executive Session it invites some members of the public to speculate as to why they are there and what they are doing but that is the nature of the beast. He said he sat on the Committee and their thought process was that they can lessen that suspicion by requiring that there be a publicly-debated ordinance that establishes the categories of topics that may be discussed. Mayor Cline said if issues are put forth so they may be discussed in Executive Session and the public is in opposition to one of them, he has confidence that the members of Council would respond to that and remove that item from the ordinance. He said that same group of the public may approve of discussion in Executive Session about a company that wants to tell Council why they should get an economic incentive to stay in Powell. Councilwoman Brenner asked if they could limit this Charter language so if they pass an ordinance saying they need to go into Executive Session for an item, it only applies only for that particular, specific topic and not the broad category. Mayor Cline said they could do that it but as a policy matter the Charter Review Committee decided it would ill serve the City to do that and they would be better served to create a single ordinance with categories, much like that created by the State, so they will know what the categories are as they move forward. He said ORC 121.22 has several subcategories and they do not ask the General Assembly to enact a new subcategory every week; they simply have to determine if they do or do not fit one of the categories. Mayor Cline said the

Committee's concept is that the City would develop their own version of 121.22 with subcategories and they either meet them or they don't. He said if they found repeatedly that they do not have a category and the same issue recurs over and over, a future Council, by a five member vote, would vote to add that issue to the list. He said they modeled this after the ORC model. Councilman Crites said future Council's can rescind action taken by a previous Council and that, along with referendum, are additional protection. He said if they add it to the list in the Charter they will be stuck with it until they have a Charter Revision. He said this gives them a lower threshold to be able to reverse an unpopular decision. He said he is very sensitive to what Councilwoman Brenner is saying but there are a lot of protections and safeguards in here that allow them to have that discussion to pass or rescind it and make it what the public wants. Councilman Counts asked if there are only a couple of things in the current Charter that require a super majority vote in order to pass and one is a tax ordinance. Mr. Hollins said there is a list of four or five and things like suspending the rules that require the vote of a super majority. Councilman Counts said he viewed that as the means to deal with Councilwoman Brenner's concern; the heightened bar that this group needs to meet in order to do that makes the possibility somewhat small. Mr. Hollins said other local governments have placed on the ballot a Charter amendment to allow Executive Sessions for the purpose of discussing economic development proposals and almost all have passed and passed by large margins, despite the concern for open, transparent government. He said there is a sentiment that each community should be able to compete in the marketplace and the citizens have supported that type of Charter Amendment.

Mayor Cline opened Ordinance 2013-04 to public comment. Hearing none, he closed the public comment session.

Ordinance 2013-04 was laid on the table.

SECOND READING: ORDINANCE 2013-05: AN ORDINANCE TO PROCEED WITH PLACING ON THE BALLOT CERTAIN PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF POWELL REGARDING ADMINISTRATION OF AN OATH AND EXPULSION OF COUNCIL MEMBERS.

Mayor Cline said an email exchange took place last week between him, Steve and Mr. Hollins about Section 4.13 (Expulsion of Members). He said the Charter Review Commission suggested the wording that the Council "punish or expel any member of Council for disorderly conduct or violation of its rules." He said they had vigorous discussions last week about whether they should use the word "punish" and they threw out some alternatives such as "sanction" and "censure." Mayor Cline said he suggested to Gene and Steve his definition of "censure" to be "moral approbation; simply a statement by the body to one of its members that they disapprove of that member's conduct; and it has no legal effect beyond that; the equivalent of a letter of reprimand." He said in his view the term "punishment" includes a much broader array of potential adverse consequences including a censure, forfeiture of pay, forfeiture of office, etc. He said he does not believe it is proper for Council to have the power to punish so he suggested they use the word "censure" instead. He said the current amendment, as well as an alternative amendment, are available for review. Mayor Cline said a question was raised a week ago about attendance and whether or not there should be a concept of excused or unexcused absences. He said there was a split of opinion among the members of Council as to which was the most appropriate concept. He said as reported out of the Review Commission, the concept was that Council members could have an absence that is voted upon by their fellow Council members and therefore excused. He said an excused absence would not be counted in the tally of absences for two consecutive calendar months.

Mayor Cline said he advocates a model that says "We don't care why you aren't here; if you are not here, you are not here." He said the two consecutive month rule is intended to address those eventualities. He said under normal circumstances, one would have to miss four meetings in a row before this power to impose censure would come to light. Mr. Hollins said the current amendment language incorporates the intent of the Charter Commission and makes it even more explicit. He said the alternative language is the approach discussed declaring the seat vacant after a member's absence for two calendar months. He said it is not automatic and still requires the vote of two-thirds of Council to declare the seat vacant. He said they can take circumstances into account.

Councilman Hrivnak said it also states that the Council member has an opportunity to be heard. Councilman Crites said the language they started with was lifted from 731.45 of the ORC. He said the Review Commission used the ORC language as a starting point and the State statute included the word "punish." Councilman Counts said he still supports the alternative wording. Councilman Lorenz said he appreciates the language from the code and is glad they eliminated the word "punish" as it is archaic. He said he approves of the use of "censure" and it says what it needs to say. Councilman Lorenz said he was in favor of less than four consecutive meetings and that requirement is pretty lenient. He asked if that time frame was determined by

the Review Commission. Councilman Crites said it was lifted from the ORC. He said Dublin has three consecutive meetings as the requirement. Councilman Lorenz said he was undecided after the last meeting but now prefers the alternative wording. He said it would be silly for them to have to vote during the each meeting to excuse absences.

Councilman Bennehoof said he is in favor of the alternative wording. He said they also discussed making an effort to participate if there is a need to be absent. He said it could be the reading of materials and sending comments before the meeting.

Mayor Cline said he is in favor of the alternative language. He said he questions whether it is appropriate for Council to be able to expel a member for disorderly conduct or violation of its rules. He said the only reason he raises that question is because that is such a severe sanction that he wonders if they would be better served to let the citizens do that through a recall petition. He asked if that is a concern to the other members. Councilman Counts said he is not concerned about it; the language lifted from State statute has been there and there have been multiple opportunities across the state to abuse this or to deal with it. He said the rules and conduct are just as important as whether a member is present or not. Councilman Lorenz asked about the type of legislation required if they get to the point. Mr. Hollins said he would have to research that issue to see if it requires a motion, resolution or ordinance. He said anytime they would consider this they have to give the member the opportunity to be heard and as things like this have been litigated in the past, a court would end up sorting it out. Councilman Lorenz said it is unlikely to happen but the members are elected by the people and expected to be there to represent them; the Council should have the ability to enforce rules and hold their members accountable. Mayor Cline said that is why the censure is important as it is a way to express that publicly. Councilman Bennehoof asked who they are to say they know better than those who elected a member of Council; he said the public put them here and the public should remove him. He said on the other side they have the ORC as a model, and if they think it is flawed they can modify it. He said they should try to live by the law of the land and the ORC is the law to be modeled. He said he just wanted to bring that up and he is in favor of the alternative wording.

Councilman Hrivnak said he likes the alternative language as it applies to the excused absence. He said as far as the ability to expel a member, would it be better to declare the seat vacant rather than expel. He suggested that Council could censure, up to and including expulsion. Mayor Cline said there is a fundamental difference between disorderly conduct/violation of rules and absence from meetings. He said vigorous challenge to an ordinance could be deemed "disorderly conduct" and that is why he is opposed to the words "or expel" because that is qualitatively different from not being present. He said it does not matter why he is absent; this is a deliberative process and if one cannot be here to take part in the deliberations, they do a disservice to the position. Councilman Hrivnak said "expel" is okay with him, considering they would only use it in extreme cases.

Councilwoman Brenner said she is fine with the alternative language when it comes to the censure language and the two consecutive months of absence. She said the term "expel" poses a few problems. She said this Council has gotten along quite well but she has been on the receiving end of political vendettas during the past Council and it causes a problem for one member to have the ability to drum up two-thirds support for an item that is not subject to referendum. Councilwoman Brenner said she is not sure she would be comfortable if she knew for sure it was referendable. She said in future Councils they may have members who may think that the discussion of others could be deemed "disorderly." She said no one should feel that their minority voice can be squashed. Councilwoman Brenner said she does not think that is the intent here but it could be misused. She said if they want to call for "expulsion" for the two months of absences she is fine with that. She said she is also fine with "censure" as it only means that Council is not happy. She said the expulsion situation is much different. Councilwoman Brenner said she really has a problem that people have elected a member and if they want to remove that member, they have that ability. She said if they are not doing it, two-thirds of Council should not do it.

Councilman Crites said he is fine with the alternative wording. He said he is also fine with the use of "censure" and the use of "expel" with respect to disorderly conduct and the violation of rules. Councilman Counts said he sees "expel" as a short-term remedy where in the case of a heated debate where members are being uncivil to each other, this group at that particular meeting would throw both members out of the meeting. He said they would not declare their seats vacant; they would address the situation at that time. He said it is entirely appropriate. Mayor Cline said he considered "expel" as removal from office. Councilwoman Brenner said in school, if you are expelled you are out of the school. She said she would be fine changing some language to make specific reasons why someone can be tossed out of a meeting; she does not think a heated debate is a reason to be tossed out. She said if they are being physically violent or standing and

swearing they should leave. She said Councilman Counts has an interesting thought process but she is not sure anyone read it that way. Mayor Cline agreed that a one meeting expulsion would be appropriate in that circumstance. Councilman Counts said if it is not a short-term remedy, why would they need to differentiate to declare a seat vacant? He said if expulsion means removal from office, they would not need the vacancy wording because they have a Council rule that deals with absences. He said by having the language declaring a seat vacant means the term "expel" has to mean something different than that. Mayor Cline said he agrees with that from a matter of statutory construction but they go on to require the two-thirds vote and notification/opportunity to be heard. He asked if they would contemplate stopping the meeting to allow for that to take place. Councilman Counts said they would. Councilwoman Brenner said if that is how they want to proceed they need to re-write the wording in the amendment. She said they should not put forth an amendment that can be read two different ways.

Mayor Cline asked if Council would have the authority under either the existing Charter or the modified Charter if they struck the words "or expel" and write a Council rule that said that anyone in the Council Chamber who becomes disorderly and disrupts the meeting may be ordered removed by a vote of five members of Council. Mr. Hollins said the Council has the right to conduct its meetings in an orderly manner and anyone can be removed from the room. He said according to Robert's Rules, if they make a motion to limit debate and it is passed, a person who continues to debate may be removed. Councilwoman Brenner asked if that means they do not need additional wording about this in the Charter. Mr. Hollins said they chose it because it is statutory and it has authority that has been interpreted and applied. He said they are incorporating that body of law into the Powell Charter. He encouraged Council to either maintain this language as-is or not place it on the ballot. Councilwoman Brenner said that does not necessarily answer whether the Council has the authority to kick someone out of a meeting. Mayor Cline asked if they have the authority, to temporarily remove a member of Council from a single meeting if their conduct is so disorderly that it disrupts the business of Council. Mr. Hollins said State law says they have the right, as a body, to be able to conduct their meeting in an orderly manner.

Mayor Cline asked if there is a motion regarding this matter.

MOTION: Councilman Bennehoof moved to adopt the alternative exhibit to Ordinance 2013-05. Councilman Lorenz seconded the motion.

Mayor Cline clarified that an affirmative vote will mean they accept the alternative and reject the existing exhibit A. He said if it is approved they can then entertain amendments to the alternative language. Councilman Lorenz said they are not ratifying the ordinance; they are just taking a vote to use the alternative exhibit.

VOTE: Y 7 N 0

Mayor Cline asked if there is a motion to amend the language within the alternative exhibit.

MOTION: Mayor Cline moved to modify Section 4.13, first line, to strike the words "or expel". Councilwoman Brenner seconded the motion.

A friendly amendment was made to strike the words "expulsion or" from the fourth line of Section 4.13. Councilman Counts said that just leaves Council with censure and a "wag of the finger" does not change conduct that is unbecoming of a Council member. Councilwoman Brenner said it allows the residents to remove that member. She said they still have a problem with the minority voice feeling like they can't be heard or they shouldn't speak up because of how it could be interpreted. Councilman Crites said "disorderly conduct" is defined in the ORC within the case law for 731.45. Councilman Hrivnak said they have had raised voices in a meeting but never disorderly conduct. He said they need the ability to do more than censure; he said he could come in every week and upset the tables and it would not matter if they sent him a censure letter.

Councilman Lorenz asked how this is different than the President becoming impeached and how they decided upon this language. Councilman Crites said it was from the ORC and the Charter Commission recommended it. Councilman Lorenz said they should be matching this. Councilwoman Brenner stated the specific charges for impeachment and said if this listed specifics she would be fine with it. Councilman Counts said this is a deliberative body and that is different than being the Chief Executive. He said this discusses the Council in deliberation and the things that keep them from being able to deliberate. He said he has not investigated, but it seems Congress would have the ability to expel one of its members when they are doing things that disrupt the deliberative nature. Mayor Cline agreed. Councilwoman Brenner said that if

someone is disruptive, like overturning a table, they can already be removed under Robert's Rules. She said "expel" makes it a permanent measure and she has a problem with that. Mayor Cline suggested they vote on the motion. He restated the motion after the friendly amendment:

"To amend Section 4.13, first line, to strike the words 'or expel' and in the fourth line, strike the words 'expulsion or'."

VOTE: Y 2 N 5 (Bennehoof, Counts, Crites, Hrivnak, Lorenz)

Mr. Hollins said this ordinance may need changes to the ballot language. He said the wording does not capture their discussion. Councilman Bennehoof said they should consider pulling this from the ballot because he is now conflicted. Mayor Cline said how they modify the ballot language may help the Council with how they should decide on that issue. Councilman Lorenz suggested they keep moving and come back to this when the vote is taken on the other ordinances. The members of Council agreed.

Ordinance 2013-05 was temporarily laid on the table.

SECOND READING: ORDINANCE 2013-06: AN ORDINANCE TO PROCEED WITH PLACING ON THE BALLOT CERTAIN PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF POWELL REGARDING REFERENDUM AND INITIATIVE.

Councilman Hrivnak asked for clarification because they struck "6.02, 6.03, and 6.05" from the ordinance. Mr. Hollins said those sections were moved to the technical amendment ordinance. He said that leaves Section 6.04 to consider. Mayor Cline asked if the third line from the bottom of what used to be Section 6.08 will become part of Section 6.04. Councilman Crites said the third and fourth lines from the end were stricken at the last meeting. He said they can only repeal the whole ordinance. Mr. Hollins referred to the attachment provided with this ordinance. He said they discussed wording at the last meeting that they felt was redundant. He said the statutory language on the attachments shows that the language is not repetitive and should be left as it is proposed.

Mayor Cline opened Ordinance 2013-06 to public comment. Hearing none, he closed the public comment session.

Mayor Cline opened Ordinance 2013-05 to public comment. Hearing none, he closed the public comment session.

Ordinance 2013-06 was temporarily laid on the table.

SECOND READING: ORDINANCE 2013-07: AN ORDINANCE TO PROCEED WITH PLACING ON THE BALLOT CERTAIN PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF POWELL REGARDING COMPETITIVE BIDDING.

The members of Council had no comments or changes.

Mayor Cline opened Ordinance 2013-07 to public comment. Hearing none, he closed the public comment session.

Ordinance 2013-07 was temporarily laid on the table.

SECOND READING: ORDINANCE 2013-08: AN ORDINANCE TO PROCEED WITH PLACING ON THE BALLOT CERTAIN PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF POWELL REGARDING THE COMPOSITION AND TERMS OF MEMBERS OF BOARDS AND COMMISSIONS.

Councilman Hrivnak said previously they added the words "or not a City Employee" after the words "No elected official" in the first paragraph. He said it was his understanding they were going to add that to the first paragraph of Section 11.02. Councilman Bennehoof said that was his recollection as well. Mayor Cline asked if it would read "No elected official, no City employee, and no member of the Planning and Zoning Commission shall serve on this board." Councilman Hrivnak said that is correct.

Councilman Bennehoof said they discussed having no more than two members of Council on the Commission but he does not see a change in the wording. Mayor Cline said he believes the sense of Council was that allowing two members was acceptable but it could be no more than two members. He said in Section 11.01, fourth paragraph, it refers to the Planning & Zoning Commission keeping a journal. He said they should have updated the word "journal" to "minutes" throughout the rest of the Charter. Mr. Hollins said it would be a non-substantive change.

Councilwoman Brenner said the people on these boards and commissions have no accountability to the people, so why are they not providing for the same censure and expulsion. Mayor Cline said City Council has the right to remove them. Councilwoman Brenner said there are no standards set in place as they are proposing for Council members and at least Council is accountable to the people. She said these people are accountable to no one. Councilman Hrivnak said they are accountable to Council. Councilwoman Brenner said Council would not find out about a two-month absence unless someone tells them. Councilman Lorenz asked if they are covered under the general rules for boards and commissions and Robert's Rules. He said he understands the concern but he does not think anything needs to be added to the Charter.

Mayor Cline asked if it is accurate to say that even though appointed to a term of a certain number of years, these members service at the will of Council. Mr. Hollins said he is not familiar with a situation regarding removal of an appointee. Mayor Cline said he does not think they automatically have the right to remove members of these commissions once they appoint them, absent misconduct. Mr. Hollins said Council's oversight of the commissions is to hear appeals and overturn decisions. Councilwoman Brenner asked what they do if a member of the Planning & Zoning Commission is overturning tables at a meeting. Mr. Hollins said Robert's Rules still apply for disruption of meetings. Councilwoman Brenner asked why they needed the Charter amendment for members of Council. Mr. Hollins said the Charter amendment for Council goes beyond asking the person to leave a meeting. Councilwoman Brenner said that amendment needs to be clarified in the ballot language so the voters know if it is expulsion for one meeting or permanently. She said if they have no right to remove a Board or Commission member, then they are accountable to no one. Mayor Cline said the ability to remove or not remove is not changed by this proposed language. Councilwoman Brenner said if they are saying that Council is the check and balance for the commissions, and the people are the check and balance for the Council, where do they find consistency. Mayor Cline asked if Council wants to make the changes recommended by the Charter Review Commission, address this concern at a later date, or make amendments now. He said this may also be one that does not get enough votes to make it onto the ballot at this time. Councilman Counts said he does not want to make changes because there is a distinct difference in what they have done for Council and what they propose for Boards and Commissions; they are an extension of the legislative authority. He said they could easily not have a Planning & Zoning Commission and all of that stuff would come to Council. He said they act at the discretion of Council and they can remove them. He said that is different than a judicial situation where there is a separation of legislative authority and judicial authority. Councilman Lorenz said the majority of the decisions from Planning & Zoning come to Council so if there is a "wild card" on the Commission the Council still has the final say.

Councilman Bennehoof noted that the exhibit to the ordinance is not complete. He said Section 14.01 was not included. Ms. Ross noted that there was an error and the wording was left off of the back of the page. Mayor Cline confirmed that the members are not interested in modifying Section 11.02 along the lines of the matters put forth in Ordinance 2013-05. Councilwoman Brenner said Mr. Hollins said the Council does not have the right to remove a board or commission member and Councilman Counts said they do, so she would like clarification. Councilman Counts said he has not done any research to support his position or repute his decision. Mayor Cline said this is an open question. He said this lack of clarity is not changed in any way by the proposed amendment. He said he would like to have it clarified at some point. Councilman Counts asked if the language in Section 5 from the State statute applies to simply to elected officials. Councilman Crites said it speaks to executive authority. Councilman Hrivnak asked if they can just add wording that says that the members of Board and Commissions serve at the will of Council. Councilman Bennehoof said that may not model the language in the ORC. Councilman Lorenz said the Boards and Commissions are an extension of this body and if so, they need to be consistent throughout the Charter. Councilman Hrivnak asked if Records Commission and others are listed in the Charter. Mr. Lutz said the Charter says the Council has the authority to create new boards and commissions but does not identify all of them.

Councilwoman Brenner asked if they can create a new section in Article 11 that adds the wording recommended by Councilman Hrivnak. Councilman Crites said he is not in favor of doing that unless they do legal research on this matter. He said that is a separate policy issue that was considered by the Charter Review Commission where they considered starting at January 1st and increasing the size of the BZA. He said these are legitimate concerns but that was not considered by the Commission. He said Council can do the due diligence on this matter and come back to add a separate issue on the ballot in November. He said if they do it at this late date and time they are setting themselves up for a mistake. Councilwoman Brenner said she completely sees his point but this leaves an inconsistent situation open.

Councilman Crites said Section 5 was lifted from ORC 731.45 which specifically refers to Legislative Authority of the Council and does not deal with Boards and Commissions. He said they do not have good research or case law; they have good questions but they should have a good answer before they move forward with the suggested changes.

Mayor Cline asked if there are any motions to amend Ordinance 2013-08.

MOTION: Councilman Hrivnak moved to amend Section 11.01, fourth paragraph, second line, to strike the words "a journal" and insert the word "minutes" and in Section 11.02, first full paragraph, second to the last line, after the words "no elected official" add ", no City employee,". Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

Mayor Cline opened Ordinance 2013-08 to public comment. Hearing none, he closed the public comment session.

Ordinance 2013-08 was laid on the table.

SECOND READING: ORDINANCE 2013-09: AN ORDINANCE TO PROCEED WITH PLACING ON THE BALLOT CERTAIN PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF POWELL REGARDING FUTURE REVIEW OF THE CHARTER.

Mayor Cline opened Ordinance 2013-09 to public comment. Hearing none, he closed the public comment session.

There were no comments on Ordinance 2013-09.

Mayor Cline asked if there are any of the proposed amendments they would like to withdraw from consideration to the ballot. Councilwoman Brenner said she will vote against the amendments to Sections 4 and 5 but they both passed as they are and they will probably be approved by the balance of Council. She said on Ordinance 2013-08 she still believes if they are going to completely reform Council rules they should reform the section on Boards and Commissions. She said they should not do it piece-meal and then comeback in the future with further amendments. She said that is a dangerous tactic.

Mayor Cline asked if there any they wish to combine to reduce the number of questions placed before the voters on the ballot. Councilman Bennehoof suggested they combine Ordinances 2013-03, 2013-04 and 2013-05. The other members did not indicate they wanted to combine the ordinances as suggested.

MOTION: Councilman Counts moved to amend Ordinance 2013-05, Section 2, second line, to strike the word "expulsion of" and insert the word "expelling" and strike the period (.) at the end of the line and insert "and for declaring a Council seat vacant for absences of two consecutive months or more." Councilman Crites seconded the motion.

Councilwoman Brenner asked if they could change it to "permanently expelling." Councilman Counts said that is not his intent. Councilwoman Brenner said it needs to be more specific because there are others who consider expulsion as permanent. Councilman Counts said he does not believe that is necessary. Mayor Cline said she can offer a friendly amendment, which has been rejected, she can move to amend the amendment, or they can vote on the amendment as it is stated. Councilwoman Brenner asked for the method by which they can clarify whether this is permanent or temporary. Councilman Crites said she may move to amend the amendment and see if she can get the affirmative vote of four members. Councilwoman Brenner asked about the will of Council on how it should read. Mayor Cline said the way this is intended to be read is that whether it is a permanent expelling or a temporary expelling is intended to be left open to the will of the Council at the time they act. Councilman Counts agreed. There was no further discussion and no motion to amend.

VOTE: Y 6 N 1 (Brenner)

Mayor Cline asked if there are any proposed amendments to Ordinance 2013-02. Hearing none, he asked for a motion.

MOTION: Councilman Counts move to adopt Ordinance 2013-02. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

Mayor Cline asked if there are any proposed amendments to Ordinance 2013-03. Hearing none, he asked for a motion.

MOTION: Councilman Counts move to adopt Ordinance 2013-03. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

Mayor Cline asked if there are any proposed amendments to Ordinance 2013-04. Hearing none, he asked for a motion.

MOTION: Councilman Counts move to adopt Ordinance 2013-04. Councilman Crites seconded the motion.

VOTE: Y 6 N 1 (Brenner)

Mayor Cline asked if there are any proposed amendments to Ordinance 2013-05, as amended. Hearing none, he asked for a motion. Councilman Hrivnak asked if there were any language changes within this amendment. Mayor Cline said there were none.

MOTION: Councilman Counts move to adopt Ordinance 2013-05. Councilman Crites seconded the motion.

VOTE: Y 6 N 1 (Brenner)

Mayor Cline asked if there are any proposed amendments to Ordinance 2013-06. Hearing none, he asked for a motion.

MOTION: Councilman Counts move to adopt Ordinance 2013-06. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

Mayor Cline asked if there are any proposed amendments to Ordinance 2013-07. Hearing none, he asked for a motion.

MOTION: Councilman Counts move to adopt Ordinance 2013-07. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

Mayor Cline asked if there are any proposed amendments to Ordinance 2013-08. Hearing none, he asked for a motion.

MOTION: Councilman Counts move to adopt Ordinance 2013-08. Councilman Crites seconded the motion.

VOTE: Y 6 N 1 (Brenner)

Mayor Cline asked if there are any proposed amendments to Ordinance 2013-09. Hearing none, he asked for a motion.

MOTION: Councilman Counts move to adopt Ordinance 2013-09. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

COMMITTEE REPORTS

Development Committee: Councilman Hrivnak said they met this evening to discuss Capital Improvement projects. *Next Meeting:* February 19th, 6:30 p.m.

Finance Committee: No report. *Next Meeting:* February 12th, 7:00 p.m.

Operations Committee: Councilman Lorenz said they will move the meeting on February 19th to March 19th so they may address items that are in process. *Next Meeting:* March 19th, 6:30 p.m.

Planning & Zoning Commission: No report. *Next Meeting:* February 13th, 7:00 p.m.

Powell CIC: No report. *Next Meeting:* February 26th, 6:00 p.m.

2012/2013 CITY COUNCIL INITIATIVE UPDATES

No reports.

CITY MANAGER'S REPORT

No report.

OTHER COUNCIL MATTERS

There were none.

EXECUTIVE SESSION: EXECUTIVE SESSION IN ACCORDANCE WITH O.R.C. SECTION 121.22 (G) (3) PENDING LITIGATION.

MOTION: Councilman Counts moved at 9:42 p.m. to adjourn to Executive Session in accordance with ORC Section 121.22 (G) (3), to discuss Pending Litigation. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Crites moved at 10:15 p.m. to adjourn from Executive Session. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to reconvene in Regular Open Session at 10:15 p.m. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adjourn from Regular Open Session at 10:15 p.m. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

DATE MINUTES APPROVED: March 5, 2013

Richard A Cline 3/19/13
Richard Cline Date
Mayor

Sue D. Ross 3/19/2013
Sue D. Ross Date
City Clerk



City Council

Jon Bennehoof

Sara Marie Brenner

Richard Cline, Mayor
Tom Counts

Mike Crites

Jim Hrivnak

Brian Lorenz