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ITEM 1: CALL TO ORDER: Mayor Flaute called the Riverside, Ohio Special City Council Meeting to order at 6:01 p.m. at the Riverside Administrative Offices located at 5200 Springfield Street, Suite 100, Riverside, Ohio, 45431.

ITEM 2: ROLL CALL: Council attendance was as follows: Mr. Curp, present; Mr. Denning, absent; Mr. Fullenkamp, absent; Mrs. Lommatzsch, present; Mrs. Reynolds, present; Deputy Mayor Smith, present; and Mayor Flaute, present.

Staff present was as follows: Mark Carpenter, Interim City Manager and Fire Chief; Chris Lohr, Interim Assistant City Manager and Zoning Administrator; Dalma Grandjean, Law Director; and Brenna Arnold, Clerk of Council.

ITEM 3: EXCUSE ABSENT MEMBERS: A motion was made by Mrs. Reynolds to excuse Mr. Denning and Mr. Fullenkamp. Mr. Curp seconded the motion. There was no discussion on the motion. All were in favor; none were opposed. **Motion carried.**

Mr. Fullenkamp arrived at 6:03 p.m. and Mr. Denning arrived at 6:18 p.m.

ITEM 4: ADDITIONS OR CORRECTIONS TO AGENDA: There were no additions or corrections to the agenda.

ITEM 5: APPROVAL OF AGENDA: A motion was made by Mrs. Reynolds to amend the agenda and to allow for public comments. There was no second on the motion. **Motion failed.**

A motion was made by Deputy Mayor Smith to accept the agenda. Mr. Curp seconded the motion. Four were in favor; Mrs. Reynolds was opposed. **Motion carried.**

ITEM 6: DISCUSSION: Law Director, Dalma Grandjean

Ms. Grandjean: At the request of Council, I conducted an investigation into, initially, a complaint that was filed by Chief Frank Robinson on June 8, 2016 against Councilman Steve Fullenkamp. On June 8th, Chief Robinson submitted a memorandum to the Interim City Manager, Mr. Percival, with a copy to the Mayor and he described an incident that had occurred the previous evening right there in council chambers in the hallway. I describe what had happened that led up to that encounter. What led up to the encounter was a request for public records by Mr. Fullenkamp and a discussion that he had with Chief Robinson on June 3rd. The request for public records had to do with all records relating to the filing of charges against a specific individual, which charges were still pending, meaning it was an active case that had not yet been concluded. Later that same day, Mrs. Reynolds filed a separate request related to that complaint. Chief Robinson maintained that he felt that the department's justification for filing the charges was being challenged and he indicated as much to Mr. Fullenkamp.

The essential elements of Mr. Robinson's and Mr. Fullenkamp's description of the events on June 3rd and June 7th are essentially similar. Mr. Fullenkamp admits to having been agitated. Chief Robinson, I think, used those words as well, but Mr. Fullenkamp indicates that he never intended to intimidate or interfere with an ongoing criminal investigation and that he was essentially triggered, which were his words, by the Chief's insinuation that he was doing that. After Mr. Fullenkamp made the request for the public records relating to the filing of charges, Chief Robinson immediately responded in an email indicating that he would provide those records and he copied in all Members of Council. It's that copying in of all Members of Council that gave rise to the confrontation on June 7th that was the subject of Chief Robinson's complaint and that confrontation was witnessed by a number of staff and council Members.

The uniform theme is that Mr. Fullenkamp was in fact agitated, Mr. Fullenkamp questioned why Chief Robinson had copied all of Council in on the email request, Chief Robinson indicated that he felt it was something that all Council Members

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should be aware of and that if a request is made then other Council Members should be copied in as well. There were heated words exchanged; several staff and Council Members witnessed it. Mr. Curp provided his own statement of what he, himself, witnessed and which I have quoted in my report, which essentially corroborates what the Chief complained of. The Chief did not call his memorandum a complaint, but he did indicate that he felt that his job was being threatened and that he was subject to a hostile work environment as a result of that.

Before that investigation was completed, a second complaint was filed and this time it was filed by Mr. Brock Taylor, again against Mr. Fullenkamp. The confrontation that resulted in Mr. Taylor's complaint occurred on July 21, 2016 and that incident also occurred in the same area of the City building with a number of staff and Council Members observing it. Deputy Mayor Smith submitted a report or a complaint on August 3rd indicating what he observed of that encounter. Deputy Mayor Smith indicates that he felt threatened and felt that the behavior of Mr. Fullenkamp was interference under the Charter.

I have on the fourth page listed the Sections of the Charter and on the fifth page, the Sections of the Code of Ordinances that Council should consider in evaluating these particular events. I would say that the applicable Sections of the Charter are Section 4.01, which lists what the powers are of Council and indicates specifically and expressly, the one express power that is listed there is the legislative power. Section 4.04 indicates that Council shall be the judge of the qualifications of its Members and then provides in Subsection 4 that Council, in conjunction with the previous Section, Council shall declare vacant a seat of any member for one of the following reasons, one of those reasons being one who shall violate any expressed provision of the Charter. Then there is Section 4.01 that indicates that Council, actually I have Section 4.04 is captioned Removal, not Section 4.04, so please make that correction, that Council shall by Ordinance determine and may amend its rules and order of business in conformity with the requirements of this Charter.

Then 6.03 lists the powers and duties of the City Manager and essentially those are summarized as the executive and administrative powers, so the powers and duties of the City Manager are to be the Chief Executive of the City and to administer the laws of the City. Section 6.04, which immediately follows the powers and duties of the City Manager is captioned Interference by Council and it sets forth a provision against two forms of interference; the first being with regard to the appointment or removal of any officers or employees in the administrative services and the second states except for the purpose of inquiry or investigation incident to carrying out their powers and duties and responsibilities as set forth in this Charter, the Mayor, Council and Members shall deal with that part of the administrative service for which the Manager is responsible, solely through the Manager. In case any member shall be found by Council to have violated this Section, Council shall declare his or her seat vacant. In speaking with various Council Members, as part of my investigation, a number of Council Members have raised that particular Section as being a concern as to whether or not it has been violated.

There are also Sections of the Codified Ordinances that are relevant to an evaluation of these complaints. Section 1.11.02 states, again in accordance with the Charter, that the legislative power of the City is vested in Council and that Council may enact Ordinances, Resolutions and other measures necessary to carry its functions and then it states when those powers can be exercised which is only in Council. Section 111.02 also goes on to say that individual Members of Council shall not direct a municipal officer or employee to perform services or take action related to municipal operations, except as provided by this Charter. Now the Charter does not provide that any services or actions be taken, that the individual Council Members be able to direct the services or actions of any officer or employee of the City. Council shall exercise its legislative authority as a body, in accordance with the Charter. Section 111.07 is relevant and it indicates that appointed officials, other than the Law Director and City Manager, may be requested to attend Council meetings for the purposes of investigation incident to Council carrying out its powers, duties and responsibilities, provided that it shall be made through the City Manager, pursuant to a motion passed by a majority of Council Members.

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Now my discussion, my findings, it's clear that the Charter and Administrative Code vest in Council the power to legislate and in the City Manager the power and responsibility to administer and enforce those laws and to direct and supervise the administrative services. This separation of powers is emphasized in Article 6.04 of the Charter, which prescribes removal from office as a sanction for unlawful interference and as I have already stated, it recognized two forms of prohibited interference, one with regard to hiring and firing and the other with regard to directing the work of employees.

The only power expressly granted to Council is the power to legislate, as set forth in Section 4.01. That does not mean that is the only power that Council has, but that is the power that is expressly set forth in the Charter. Again it is a separation of powers issue; you have the legislative body, which is you, and then the executive and administrative body, which is the City Manager and the employees. It's a reasonable interpretation of Section 6.04 that it allows Members of Council to deal directly with the administrative service only for the purposes of investigation or inquiry incident to carrying out that legislative function. There is no indication that Mr. Fullenkamp's exchanges with Chief Robinson were in furtherance of any legislative intent as allowed in Section 6.04. Accordingly, it is my opinion that Mr. Fullenkamp should have directed his concerns and requests for information to the City Manager or to the Clerk of Council if he was making a public records request. The City has adopted a policy for the submission and handling of public records requests. Council's requests for records should not be treated any differently than those of the general public and any request for something other than public records should be made through the City Manager. The Chief asserted in his complaint that he believed Mr. Fullenkamp, and I'm quoting from his complaint, "had interjected himself into a criminal case in which it appears that he is taking sides." Putting aside the provisions of 6.04 and whether that conduct violated 6.04, for an elected official to challenge the Chief of Police about the filing of criminal charges against a specific defendants before the case has been resolved risks creating an appearance of intent to use persuasion or intimidation to affect the outcome and must be considered highly irregular.

With regard to Brock Taylor's complaint, Mr. Taylor reported, and the recording provided by Mr. Fullenkamp corroborates, that Mr. Fullenkamp complained that Mr. Taylor had not tagged to S&S trailers. When Mr. Taylor explained that the City Manager, who was Mr. Percival at the time, had instructed them, meaning him and Chris, to defer the tagging. Mr. Fullenkamp told him he should have disregarded those instructions of the City Manager. Once again, there is no indication that Mr. Fullenkamp's exchange with the Director of Planning and Management was in furtherance of any legislative intent. Quite the contrary, it was in furtherance of his opinion that the zoning ordinance should be enforced or administered in a particular way. This is clearly an area of the administrative services for which the Manager is responsible and to whom any concerns about the enforcement should have been properly directed.

Section 111.02 of the Codified Ordinances, prohibits individual Members of Council from directing a municipal officer or employee to perform services or take action related to municipal operations except as provided by this Charter. As currently worded, the Section may be interpreted to prohibit individual Members of Council from telling employees how to do their jobs and when to do their jobs because that is the role of the City Manager. On the other hand, it could be interpreted to prohibit individual Council Members from asking City employees to perform personal services for them. Clarification of this prohibition should be considered by amendment of this Section to make clear that it prohibits conduct in violation of Section 6.04. It is my opinion that if Council, when it adopted this provision, meant the prohibition of personal services, meaning come over and shovel my snow, then the word personal would be in there. Nonetheless, if Council is going to act I think it would behoove Council to be more clear about exactly what conduct is prohibited under 111.02 and it should be made to expand and clarify Charter provision 6.04.

So, what is Council to do? I do not consider it my role to suggest to you what you should do, but I do suggest that you do something and so I have listed some alternatives. Number one would be the most drastic alternative and it's one that's

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been raised in my discussions with various Council Members, namely invoking Section 6.04 in conjunction with Article 4.04. If Council chooses to do so, I recommend that a separate hearing be scheduled and that special counsel be appointed to prosecute the charges with all due process rights accorded to Mr. Fullenkamp, which would be written notice of the charges, opportunity to call and cross examine witnesses, present evidence, etc., make a record. Significant constitutional rights are at stake when it comes to removal of an elected official and that should not be done lightly or casually and without proven justification. Not only are the rights of the individual Council Member at stake, but the rights of the electorate that voted that person into office. I did indicate that I think if you were to proceed to do that that you have special counsel and I would say that because while I represent as Law Director the abstraction of the City of Riverside, but the City of Riverside is made of human beings and I know each of you and have had one to one and other discussions with each of you and I don't think that I could have the kind of distance that would be required to proceed with such a process and therefore, I think it would behoove you to appoint special counsel, if you were to proceed with that.

Number two, Council could be motion and majority vote take any of the following actions, which I have listed in order of increasing severity. These are actions that I think are inherent in your existence as a body. There's no provision as such in the Charter or in the Ordinance for any of these, but there is some precedent for it. One would be issuance of an admonition serving as a warning or reminder that specified conduct is unacceptable and won't be tolerated. Two, could be a notch up issuing a sanction or sanctions based on a finding that Mr. Fullenkamp's actions constitute a violation of law or policy. Before such a sanction would be issued, Council should consider and give to Mr. Fullenkamp the opportunity to provide a written response to the complaints that have been made, which Council could then evaluate. It's my opinion that no other investigation would be necessary in order to issue such a sanction, but a vote of the majority. Third would be impose censure, which is a more formal reprimand and collective condemnation of specified conduct, but with no fine or suspension of rights or any such sanction. Once again, Council should give Mr. Fullenkamp the opportunity to submit a written response to the complaint. The third option would be Council should do nothing; just end it today.

What are my recommendations? I don't recommend any of these particular steps. I'm laying out what those alternatives are, but what I do recommend is taking action to prevent this kind of controversy from arising. I think that would be by adopting a Code of Ethics and Conduct for both elected and appointed officials which will set forth standards for conduct at public meetings, with each other, with the public, with City staff at both public and private meetings, and with Boards and Commissions, and which sets forth sanctions for improper conduct so you don't get into a situation where there's controversy and yet there is no standard as to what consists of a violation and what a appropriate sanction is. The Code should also impose standards for conduct regarding executive sessions and confidentiality thereof and specifically address whether covert recordings are permissible at such sessions and at non-public meetings with staff. Mr. Fullenkamp did make a recording of the encounter with Mr. Taylor which he provided to me; it was not totally audible for me, but I think while lawful in the State of Ohio, Council I think should have a rule of conduct with regard to such consensual recordings of staff and Council.

The Code should also address how, if at all, individual Council Members should interact and make requests to the City Manager, the Clerk of Council and the Law Director, and whether and how Council Members are to be informed. I cited, and Mr. Curp provided me with, a memorandum regarding a discussion he had with the former Clerk of Council, who was an Interim Clerk of Council, Mary Ann Brane, who also indicated that, I think on May 27th, Mr. Fullenkamp confronted her because she had provided copies to all Council of an email records request that Mr. Fullenkamp had made of her. I spoke with her about that and she confirmed what Mr. Curp had reported in his memorandum to me and indicated that she didn't file a complaint because she knew she was not going to continue on the job and so she chose to leave. She also felt that she was being intimidated and she indicated that Mr. Fullenkamp told her that if she was going to play those games, which are the words that Chief Robinson also cited as having been said to him, and she wasn't exactly

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sure of the exact quote, but basically make her life miserable or her job, clearly meaning on the job. We need guidelines on things like that. Mr. Denning at least on one or more Council meetings has specifically requested that if specific information is provided to one Council Member that it be provided to call Council Members.

It's important that when City staff try to do their jobs that they not feel that they are at risk of being attacked for doing that. A Code of Conduct should specify that Members of Council refrain from disrupting City staff and the performance of their jobs from involving themselves in the City's administrative functions. The City can't function properly if officials, if staff, are performing their jobs and then are being peppered with requests and demands from Council to do this, to do that, to do the other thing. It's my opinion it needs to be funneled through the City Manager, who can then administer the staff and the performance of functions, as opposed to direct inquiries and demands being made to City staff. Of particular importance is the imposition of a clear, unambiguous prohibition against any involvement or interference by a Member of Council in an ongoing Police investigation or prosecution and by that I mean asking for justification, interrogating about the details, expressing opinions about it; it is improper and should not be tolerated.

Council, in conclusion, is now on notice that more than one department head and even the former Clerk of Council have felt harassed by a Member of Council. Other staff members have also reported to the Law Director and to other Members of Council that they have felt intimidated and bullied by one of more Members of Council. While subjection to a hostile work environment, not coupled with unlawful discrimination, is not against the law in Ohio, does not create liability in and of itself; that should not be the standard for behavior. It does compromise work force loyalty, productivity and morale. It is in the best interest of the City of Riverside that Council act promptly and effectively to ensure that all staff members are henceforth treated professionally, courteously, and with dignity. It is equally imperative that Council clearly and definitively prohibit its Members from interfering or attempting to influence the execution of the law enforcement functions by the Police Department. Any involvement by any Council Member in an ongoing investigation or prosecution is highly improper and must be prohibited. Does anybody have any questions?

Mrs. Lommatzsch: On the Code of Ethics, are not all of these issues covered by the Ohio Ethics Commission? Mrs. Grandjean: Not really. I think Council needs to accept and adopt its own Code of Ethics that applies specifically to it and to how meetings are conducted. There's nothing in the Ohio Code of Ethics that says you have to treat employees professionally; that you can't badger or harass them or intimidate them or threaten them or yell at them or humiliate them at a Council meeting. Mrs. Lommatzsch: Not specifically, but I've had the opportunity to attend training sessions on these subjects since 1978 and I feel like the Code of Ethics is broad, I understand that, and I just don't know that it is necessary for us to cross T's and dot I's. I think there is a level of behavior that is expected when you are elected by your constituents that you are expected to behave by. Mrs. Grandjean: I totally understand your viewpoint. My recommendation is coming from my lawyer self, which is if you want to in any way sanction somebody for what you term to be misbehavior, then I think the standard of conduct must be clear and unambiguous. That would be why I would recommend that those things that you deem important be set forth, so that if they are violated you can point to it. Mrs. Lommatzsch: I was on the Charter Commission and I think it was pretty thorough. Do you have any suggested copies of other cities that have found it necessary to do that? Mrs. Grandjean: I do. All work has already been done. Mrs. Lommatzsch: Good. Don't reinvent the wheel. Mrs. Grandjean: I have found some very useful models that other cities have adopted and there would need to be no Charter amendment, I think the Charter is broad enough. Mrs. Lommatzsch: It could be part of this. Mrs. Grandjean: Yes. As I've said, some Council Members have raised 6.04. I would have real concerns about proceeding with 6.04 without there being more specific behavioral conduct guidelines as to what constitutes interference of that level.

Mr. Denning: So the answer is because we don't have the rules written down, specific things, we can't do a whole lot; we need to get our rules in order so that it's in place so that this hopefully won't happen again. Mrs. Grandjean: I think prudence

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would dictate that. Mr. Denning: Because we have never, as a City, had these kind of issues before, it was never part of the rules of engagement so now that we have an issue we need to set up new rules of engagement to say this isn't proper and if you do this, this is what's going to happen. Because we don't have that in place, we are very limited on what we are able to do. We need to get more rules in place, unfortunately. Mrs. Lommatzsch: I don't think that's what she means at all. The front part of the report you missed and that was not what my question was about. I don't think we need to start rewriting rules. Mr. Denning: Do we need to get more specific?

Mr. Curp: Just for some clarification, this is not a new situation. We had this come up before under the previous City Manager, Mr. Chodkowski. We can go back and find that in the minutes if we are really interested in doing that where he has made it clear to the Council what the Council's role is and what his role is and he's told the Council, if you want to report a pothole so that people can get that on the list fine, but don't tell people when they are supposed to come out and fix it. He's told us that if you've got issues with the staff, if you've got requests of the staff, to bring them to him so he can make sure it gets done and he can coordinate those things. This isn't new. It's not that we haven't been told. It's not that we haven't been cautioned of what our behaviors should and should not be. It's been pretty clear. I understand the concern that the Law Director has expressed and Mr. Denning has expressed about defining interference. I think the Law Director has done a good example of identifying that interference has occurred and maybe there's case law out there. The purpose of this is for us to hear the findings of the investigation and take a look at our options because the Law Director said that her position is to provide the legal stuff, the recommendations have to come from us because that's a political thing as opposed to a legal thing. I supposed it is quasi legal from the standpoint that these are our laws in the City and our laws say don't interference with the province of the City Manager. I think if this Council wants to take bold steps, there's nothing to keep us from doing that.

Mayor Flaute: So if we do the bold steps, would we be putting our City in jeopardy of something, someday? Mrs. Grandjean: I will point out that Riverside is a home rule city with its own Charter. By virtue of being a home rule city, it has rights that a statutory city wouldn't have. Riverside has enacted a Charter that has a provision that provides for removal for a Council Member, which another word for that is impeachment, upon the commission of certain acts. 6.04 sets forth what one of those acts is. I think Riverside has the legal authority to invoke 6.04 and to initiate a removal proceeding, but I think it has to be a proceeding that provides due process to the Council Member who would be subject to removal. I do believe that is a lawful power and function of City Council, who is the judge of its own Member's qualifications and their adherence to law and Charter. I'm not saying in doing that would create legal liability; I'm not saying that at all, I think it is well within the powers of the City because it is set forth in the Charter which is effectively Riverside's Constitution. There's nothing in the Federal or Ohio Constitution, that I'm aware of, that would override that, but I just say that if you were to proceed along those lines that there be due process, provisions provided and that special counsel be appointed to prosecute the removal and of course Mr. Fullenkamp would have the opportunity and the right of his own counsel. I would think it would create some legal jeopardy to proceed with something less than that. Mayor Flaute: So that would take legislation or would not take legislation? Mrs. Grandjean: No, a motion by Council to proceed. Mayor Flaute: I promised people that we wouldn't take a vote. Mrs. Grandjean: And that's not necessary tonight. Mayor Flaute: That would mean we would have time to think about it. Mrs. Lommatzsch: When did you promise that? Mayor Flaute: To a whole bunch of folks out there. Mr. Denning: Never make promises that you can't keep. Mayor Flaute: Because they didn't want to be able to speak and so I said that we would be only bringing forth legislation to do something and I'm not sure I'm ready to vote tonight anyway on this. We would bring it up at the next meeting then, unless you want to allow the folks to speak, but we have decided not to do that. I would say give us a week and then we will bring it up at the next meeting. Mr. Denning: I am getting really tired of kicking cans down the road, but if that's what the majority prefers. I just would like to see us get to a finish line, whatever that finish line is, sooner rather than later. Mayor Flaute: Ok. You guys are the boss. I apologize then to folks for saying that. What I said and I told them, it was up to Council and so you

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guys are the boss. It's whatever action you would like to take now, it's up to you guys.

Deputy Mayor Smith: I would like to make a motion to enact Section 6.04 for removal of Mr. Fullenkamp. Mayor Flaute: That would be the proceedings; you are saying everything she is recommending. Deputy Mayor Smith: Yes. Mr. Curp: I will second that.

Mrs. Grandjean: Before there is a vote taken, I believe Mr. Fullenkamp should not be able to vote on this matter. Mr. Fullenkamp: Why not? Mrs. Grandjean: Because you're clearly the... Mr. Fullenkamp: But the Ohio Revised Code specifies that I should be allowed to vote on issues that affect me. Mrs. Grandjean: You don't believe you have a conflict of interest on this issue? Mr. Fullenkamp: Let me read you Ohio Revised Code. I can't find it. I was assured by you and the Mayor that this wasn't going to happen tonight. Mrs. Grandjean: I don't believe the motion is that that happen tonight. Mr. Smith, could you clarify your motion? Deputy Mayor Smith: My motion is to start the process of Section 6.04. Mrs. Grandjean: Meaning as set forth in my memorandum or is your motion not what I understood it to be? I think Mr. Fullenkamp may understand it to be that, is your motion to proceed right now? Deputy Mayor Smith: To start the process. Mrs. Grandjean: Mr. Fullenkamp, my assurance and my opinion of what would happen still stands. I clearly cannot... Mr. Fullenkamp: I believe I have a right to vote on issues of removal. Mr. Curp: I don't have any qualms if all seven people vote. There are requirements in 6.04 and those will prevail in the end and that's fine. This is just to begin a process. This isn't to remove; this is to begin a process. All seven people want to vote, let all seven people vote. Deputy Mayor Smith: That's fine with me.

Mrs. Reynolds: You are requesting that Mr. Fullenkamp's seat be vacated? Deputy Mayor Smith: No, I'm requesting the hearing. Mrs. Reynolds: For the purpose of vacating the seat. Deputy Mayor Smith: That is correct. Mrs. Reynolds: Mrs. Grandjean, you mentioned a minute ago, I think the Mayor asked if there was jeopardy in this for the City and what was your answer again? Mrs. Grandjean: My answer, and I'm not going to pretend that I can re-quote what I stated, but my answer was that Riverside is a Charter city, a home rule city, meaning it's adopted its own Charter which is its own Constitution and under that Constitution there are two provisions that apply to the situation at hand. One is 4.02 governing removal and 6.04 governing interference and specifying that upon a finding of interference that there shall be removal. The people of Riverside have voted to approve that Charter and it is my opinion that it is a lawful provision, but I do believe that if Council is to proceed with such a removal proceeding that it provide for due process and that a special counsel be appointed. There is nothing in the Charter that requires that, but there is also nothing in the Charter that says how Council is to make a finding of interference. Mrs. Lommatzsch: So then that motion should include the appointment of a special counsel to proceed?

A motion was made by Deputy Mayor Smith to enact Section 6.04 and to proceed with a hearing and to appoint special counsel. Mr. Curp seconded the motion. Five were in favor; Mr. Fullenkamp and Mrs. Reynolds were opposed. **Motion carried.**

Mayor Flaute: So actually we are doing what I said we would be doing. We wouldn't be making any decisions tonight. The only decision we are making is to move forward with a hearing and there will be a special hearing where everybody can come in and tell us what they think. Mrs. Grandjean: Yes. Mayor Flaute: That's what I told people. Mrs. Grandjean: Let me clarify. It will be a hearing and the hearing will be in public, unless Mr. Fullenkamp requests that it not be. He's made it clear that he wants it to be public. That does not mean that every member of the public gets to weigh in on that matter. A public hearing is essentially a quasi-judicial proceeding; meaning it's kind of like a court hearing. It's a little bit of a mixture because you are not legislating, you are judging and evaluating and hearing evidence; people who have evidence. If I attend a trial, I don't get to go up and talk just because I have an opinion on what should happen with the case, I'm called as a witness. If I'm called as a witness, then I get to testify. It's going to be up to Council to determine how to conduct the hearing, but it's going to be taking evidence, not having citizens voice

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their opinions. If people have evidence that Council wants to hear that the special prosecutor wants to bring forth, then people will get to testify. They are going to be testifying, not presenting their opinions.

Mr. Curp: If we take that one step further, after that proceeding is done if Council chooses to take a formal action, which would then be on the Council agenda, then those people who wish to address those items that are on the Council agenda can stand up and address those items. Mayor Flaute: Because it would be on the agenda once the hearing is done. Mrs. Grandjean: That would be at the discretion of Council. Mayor Flaute: I feel a little better. People will still be able to speak. Mrs. Grandjean: That's up to Council. It's up to Council. The Judge does not solicit the opinion of the people sitting in the courtroom before the Judge or the Jury renders a verdict, so you kind of compare it to that. When the Judge is determining sentencing, people write letters, as we recently heard about that Oakwood swimmer's case, people wrote lots of letters saying be considerate, be kind, he's a nice guy, whatever. That's the public comment opportunity and it's up to Council to decide who it wants to conduct that, but it's not part of the hearing. It's not a poll, as in a Gallup poll.

Mrs. Reynolds: What is this procedure like? I'm not sure I understand. This is something I've never been through before, so I really don't know what will occur. Mrs. Grandjean: Again the Charter doesn't set forth anything, what I can analogize it to would be the kind of hearings that happen with the BZA or the Planning Commission, where you have staff present one viewpoint and then you have perhaps the developer or the applicant come in and present another viewpoint. Then the applicant can bring in witnesses to support the justification for the variance, or whatever it might be, and then the Board, the BZA or the Planning Commission, deliberates and they may do so in public or they may do so in private; deliberations of a quasi-judicial nature do not have to be in public because that is what you are doing, is deliberating, and then issue a decision. You would have a formal record, which we do anyway; there would be the opportunity for both the special prosecutor and Mr. Fullenkamp or his attorney to call witnesses. Each would have the right to cross examine the others, to present exhibits, and so forth. It's analogous to a trial; it's an evidentiary hearing, otherwise how can you reach the drastic conclusion of removing an elected official from an office that the citizenry voted them into. It's due process.

Mr. Fullenkamp: So it's due process with jury being the Council? Mrs. Grandjean: Yes, as the BZA or as the Planning Commission. That's what it is analogous to. Mr. Fullenkamp: So prior bias is okay in a public hearing of this sort; we will call it a trial? Mrs. Grandjean: I don't think it's my role to address that. I think I am not going to make any judgment about existing bias. The Charter specifically says that Council shall be the judge of the qualifications of its Members and clearly Council, in order to make those judgments, is not someone who has never had connection and communication and relationship with the other Council Members. It's inherent in the Charter that Council has those powers.

Mrs. Reynolds: I guess that's one of the problems that I see us getting ourselves into. I don't know. This is uncharted territory for all of us; it's not anything we've done before. We've had difficult Council people in the past. We've learned to deal with that. I will tell you, I just don't think this is the way we need to be going. I think we are opening a big hole in our City that I don't know that any of us want to walk through. I think that we need to...I just received this document this evening. You all seem to be from reading what I have read in this, some Members of Council have been very intimately involved in this; I haven't, so I have to read this as a document and try to piece it out to know what's going on. I think this is a drastic step that we are taking; to vacate the seat of a Council person. Yeah, smack him in the face, step on his toes, do whatever, tell him don't ever do it again. Let's get a Code of Conduct that we have to live by. The Ethics Commission, all they worry about is our financial side; that's all they ever worry about, they don't worry about ethics. Mrs. Lommatzsch: I beg to differ with you. Have you ever appeared in front of the Ethics? Mrs. Reynolds: I have; I talked to them this week. Mrs. Lommatzsch: I took people to the Ethics Commission and it wasn't over finances. Mrs. Reynolds: I think we need to think about what we are doing. I'm sorry, I just don't know that this is what's good for our City and I know you all have been angry with Mr. Fullenkamp in the past

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for whatever. Mayor Flaute: We've all been angry with everybody. Mrs. Reynolds: That's right, we've all been angry with everybody. We've never taken it to this level. Mayor Flaute: But this is pretty serious. Mrs. Reynolds: I agree, but it can be very serious. I think we need to look at another way to deal with this. I don't know that vacating a seat on a Council person is the way to do it, but that's my opinion.

Mrs. Grandjean: I would add, just to clarify because I'm not advocating for any of these, going forward does not mean that would be the result. Mayor Flaute: Does not mean a result of removal. Mrs. Grandjean: It would not necessarily result in removal, certainly is Council were to go forward it could invoke any of the measures set forth in subparagraph 2 the admonition, sanctions, censure. Mrs. Reynolds: That's why I asked Mr. Smith if it was to vacate the seat. That was my point. Mrs. Grandjean: What he is proposing, if I understand and correct me if I'm wrong, is to go forward with a procedure that could end up in that outcome, but as with any kind of quasi-judicial proceeding that is not necessarily the outcome otherwise you wouldn't have to have a hearing if you already knew what you were going to do. I think what's important is there be a proper evidentiary hearing, at which both sides have the opportunity in accordance with our system of advocacy, to present their views and their evidence.

Deputy Mayor Smith: What I am doing here is moving forward to let Mr. Fullenkamp have his due process and at the same time put this out for Council to make that decision to either remove Mr. Fullenkamp or do something else. We all took an oath of office to uphold the laws in the State of Ohio, the City of Riverside and our Charter. This is in our Charter; if we choose not to honor this then our Charter is not worth what it is wrote. We need to proceed forward, how it comes out is up to how it plays out. All I'm doing is moving this forward based on what our Charter states. Mayor Flaute: When we have this hearing, the public will be invited they just won't be invited to speak. Mrs. Grandjean: Any more than trials are public. Mayor Flaute: There is going to be at least one meeting between there, so they are going to be able to speak to us then. They will be able to write us letters. They will be able to call us up on the phone and tell us what they think. Mrs. Grandjean: I would caution you against taking phone calls and I would say that if you are getting contacted by citizens with regard to how to decide on this that you make sure that's in writing and everybody is provided that. I would caution against talking with somebody at Kroger's about the matter. Mayor Flaute: So if the public wants to talk, they should come to the next Council meeting and talk. That's what I needed to hear. Mrs. Grandjean: I would not be taking calls. I would terminate the discussion if somebody calls you and says, here's what I want you to do or this is wrong or this is whatever. This should not be a Gallup poll as to how many people line up on this side. This is your judgment based on what you find; the findings you make. Mayor Flaute: As Mrs. Reynolds said, this is very serious and I don't think any one of us here is thinking anything but how serious this is.

Mrs. Grandjean: I would ask that the Law Director be directed to find a special counsel and then I will advise Council, perhaps at the next meeting. It would need to be somebody who is familiar; I would say another municipal attorney, well respected and very professional.

A motion was made by Mr. Denning to direct the Law Director locate special counsel to appoint for the hearing process. Deputy Mayor Smith seconded the motion. Five were in favor; Mr. Fullenkamp and Mrs. Reynolds were opposed. **Motion carried.**

ITEM 7: EXECUTIVE SESSION: Section 103.01(d)(1) *Unless the City employee or official requests a public hearing; to consider the appointment, employment, dismissal, discipline, promotion, demotion or compensation of a city employee or official or the investigation of charges or complaints against City employee or official.*

Mayor Flaute: Are you ready to do the executive session part that I had talked to you about or not? Are you not prepared yet? Mrs. Grandjean: I regret, but I had another incident today. Mayor Flaute: There is no need to go into executive session. Mr. Manager, no other need for executive session? Mrs. Grandjean: Mr. Mayor, I don't

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expect it to be complicated. He and I have exchanged phone calls. Mayor Flaute: It's a big decision and I just want to make sure that Council's ok with it and we can't do it through email and all of that. Mrs. Grandjean: The subject of that executive session will be in accordance with what Council has already discussed. Mr. Denning: Will it be ready after next Thursday's meeting to do that? Mrs. Grandjean: Yes.

ITEM 8: ADJOURNMENT: A motion was made by Mr. Denning to adjourn. Deputy Mayor Smith seconded the motion. All were in favor; none were opposed. The meeting was adjourned at 7:08 p.m.

William R. Flaute, Mayor

Clerk of Council