ORIGINAL

In the
Supreme Court of Ohio

STATE EX REL. BRIAN EBERSOLE SHARON VALVONA, AND THOMAS HAPPENSACK,	:	Case No. 2014-1469
Relators,	:	ORIGINAL ACTION IN MANDAMUS
v.	:	PEREMPTORY AND/OR ALTERNATIVE WRIT REQUESTED
CITY COUNCIL OF POWELL, OHIO AND CITY CLERK OF POWELL, OHIO,	:	EXPEDITED ELECTIONS MATTER PURSUANT TO S. CT. R. PRAC. 12.08
Respondents,	:	
THE CENTER AT POWELL CROSSING, LLC AND DONALD R. KENNEY, JR.	:	
Intervenors.	:	

APPENDIX TO MERIT BRIEF OF RELATORS

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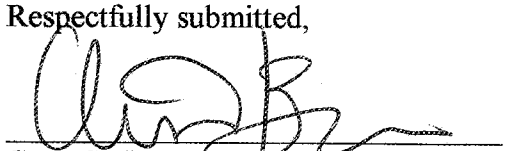
Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Appendix to Merit Brief of Relators* was served by hand delivery this 2nd day of September, 2014, upon the following counsel:

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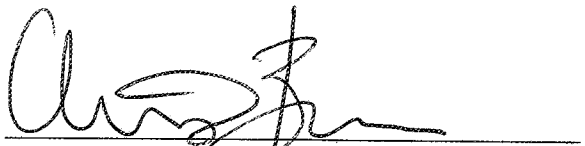

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APPX.1

The Ohio Constitution

[The 1851 Constitution with Amendments to 2011]

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§ 18.08 Submission of question of election of charter commission; approval
[View Article Table of Contents]

The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

(Adopted September 3, 1912.)

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APPX.2

The Ohio Constitution

[The 1851 Constitution with Amendments to 2011]

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§ 18.09 Amendments to charter; submission; approval
[View Article Table of Contents]

Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to the electors as hereinbefore provided for copies of a proposed charter, or pursuant to laws passed by the general assembly, notice of proposed amendments may be given by newspaper advertising. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

(Amended January 1, 1971.)

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APPX.3

ARTICLE IV
LEGISLATIVE AUTHORITY

4.01 NUMBER, SELECTION, TERM

Except as reserved to the people by this Charter, the legislative powers of the City shall be vested in a Council of seven (7) members, elected for four (4) year overlapping terms. All members of Council shall be elected at large.
(Amended 5-7-13)

4.02 QUALIFICATIONS

Any elector who has resided for at least (1) year in the City prior to the date of filing of his or her petition of candidacy, shall be eligible to have his or her name placed on the ballot, if the petition is sufficient as hereinafter provided, and to serve as a member of Council, if elected. Any person convicted of a felony under the laws of this state or any other state or the United States while under court supervision for such offense, including probation and parole, or any individual currently under court order as an adjudicated mental incompetent shall be prohibited from having his or her name placed on the ballot or serving as a member of Council.
(Amended 5-7-13)

4.03 INCOMPATIBLE OFFICES

No holder of an incompatible national, state, county or local government office shall be eligible to enter upon or hold office as a Council member, and no such members shall hold employment with the City. Council shall determine, at its sole discretion, the incompatibility of offices. (Amended 5-7-13)

4.04 VACANCIES

Any Council member who ceases to be an elector or a resident of the City or who accepts and enters upon the performance of the duties of an incompatible office, shall automatically and immediately vacate his office as a Council member. The Council shall have the sole authority to determine that one of its members is no longer a resident of the City, by vote of a majority of all members of Council, whose determination of this issue shall be final in all respects. The Council shall have power to accept the resignation of any of its members or of any other elected officer of the City by an affirmative vote of a majority of all members of Council.
(Amended 5-7-13)

4.05 VACANCIES, HOW FILLED

Any vacancy in the office of a Council member shall be filled by the affirmative vote of a majority of all members of Council within sixty (60) days of acceptance of resignation or within sixty (60) days after Council has declared a vacancy by the selection of a person meeting the qualifications provided in Section 4.02 of this Charter, and who has submitted to the Clerk of Council a written statement indicating a willingness to fill the unexpired term. If Council fails to fill a vacancy in Council within sixty (60) days after the occurrence of the vacancy, the Mayor shall appoint a person to serve for the time as provided in this section.
In all cases, the person so selected shall serve until the first Municipal election occurring not less than one hundred (100) days after selection, at which election a successor shall be chosen by the voters for the remainder of the unexpired term, if any; if not, for a full term.

(Amended 5-7-13)

4.06 SALARY OF COUNCIL MEMBERS

The salary of Council members shall be set by ordinance. No increase in salary shall become effective as to any member in office when such ordinance is adopted or as to newly elected members unless the ordinance is adopted prior to such member's election. Council members in office when such ordinance is adopted may be paid the increased salary only if and when they are elected to succeed themselves. No increase in salary may be passed as emergency legislation.
(Amended 5-7-13)

4.07 POWERS OF COUNCIL

All legislative powers of the City shall be vested in the Council, except as otherwise reserved to the people by this Charter. The legislative powers of Council include, but are not limited to, the following:

a. Creation of additional departments as it may deem necessary and define their duties;

b. Adoption and modification of the master plan for the City as an official map of the City;

c. Regulation of the use of private real estate in the City by establishing zones, limiting the use of each zone and limiting the height of buildings and the intensity of land use;

d. Enactment of a subdivision ordinance, which may provide for platting fees;

e. Enactment of a comprehensive building code;

f. Adoption of an appropriation ordinance based on the annual budget and delegation of its enforcement to the City Manager;

g. Authorization of a levy of taxes and the issuance of bonds, as provided in this Charter and the laws of the State of Ohio;

h. Grant public utility franchises by ordinance, by a vote of not less than a majority of all members of Council; no such franchise shall be passed as an emergency ordinance;

i. Approve, modify or disapprove the recommendations of the Planning and Zoning Commission made to Council;

j. Management and control of the finances and property of the Municipality, except as otherwise provided in this Charter; and

k. Exercise all other powers granted to the Council by this Charter and by the Constitution and laws of the state of Ohio.

(Amended 5-7-13)

4.08 MEETINGS OF THE COUNCIL

The Council shall hold its organizational meeting on or before the tenth (10th) day of January following the preceding general municipal election. At this meeting, the newly elected members shall take the oath of office and the Council shall proceed to elect a Mayor and a Vice-President of Council from among its own members, and appoint a Clerk of Council, and may transact such further business as may come before it. Thereafter, regular Council Meetings shall be held as prescribed in the Council Rules as frequently as Council chooses. All meetings of the Council shall be open to the public subject to the right of Council to meet, but not take action, in a non- public executive session held during a regular or special meeting under circumstances permitted by the laws of the State of Ohio. Regular meetings shall be held at the usual place for conducting such meetings unless ten (10) days public notice is given. Special meetings may be called by the Mayor or by three (3) members of Council. Special meetings of Council may be held with twenty- four (24) hours notice to all Council members, media, and the public. The purpose of the meeting must be stated

in the notice. Four (4) Council members shall constitute a quorum.
(Amended 11-2-04)

4.09 ELECTION CONTESTS
The Council shall be the judge of the election and qualifications of its own members, and for such purpose shall have power by subpoena to compel the attendance of witnesses and the production of ballots and records. (Amended 5-7-13)

4.10 RULES, MINUTES
The Council shall adopt its own rules, in conformity with the provisions of this Charter. It shall cause to be kept minutes of its proceedings, which shall be a public record.
(Amended 5-7-13)

4.11 CLERK OF COUNCIL
There shall be a Clerk of Council, appointed by the Council from outside its membership, to serve at the pleasure of Council. The Clerk shall give notice of Council meetings, keep the minutes, advertise public hearings, record in a separate book and cause to be published ordinances adopted by the Council, and perform such other duties as may be required by this Charter, or by ordinance, or by the rules of the Council. The Clerk may be appointed to serve full-time or part-time and the Council may assign the duties of the Clerk of Council to any employee of the City as an additional duty. The Clerk of Council shall receive a salary as established by the Council. The Clerk of Council may be removed at any time with or without cause, at a regular meeting of Council by a vote of a majority of all members of Council. In the event of a vacancy or temporary absence in the office of Clerk of Council, the Mayor shall designate a qualified person who shall perform the duties of the City Clerk during that period.
(Amended 5-7-13)

4.12 FAILURE TO TAKE OATH
The Council may declare vacant the office of any elected or appointed member of Council who has failed to take the required official oath within ten (10) days after Council's organizational meeting or a meeting held for the purpose of administering the oath.
(Enacted 5-7-13)

4.13 EXPULSION OF MEMBERS
The Council may censure or expel any member of Council for disorderly conduct or violation of its rules, and may also declare any member's seat vacant for absence where such absence has continued for two consecutive calendar months. No expulsion or declaration of vacancy shall take place without the affirmative vote of not less than two-thirds of all members of Council and until the delinquent member has been notified of the charge(s) against them and has had an opportunity to be heard. (Enacted 5-7-13)

ARTICLE VI

RECALL, INITIATIVE, REFERENDUM

6.01 REMOVAL BY RECALL
No petition for removal of an elected officer of the Municipality shall be filed until such officer has served for at least six (6) months of the term during which such officer is sought to be recalled. Any elected officer of the City may be removed from office by the electors of the City. The procedure to effect such removal shall

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be:

(A) A petition signed by electors equal in number to at least fifteen (15) percent of the total votes cast at the last preceding regular municipal election, as defined by the Ohio Revised Code, and demanding the election of a successor to the person sought to be removed, shall be filed with the Delaware County Board of Elections. Such petition shall contain a general statement in not more than two hundred (200) words of the grounds upon which the removal of the person is sought. The form sufficiency, and regularity of any such petition shall be determined as provided by the laws of the State of Ohio.

(B) If the petition is sufficient, and if the person whose removal is sought does not resign within five (5) days after the sufficiency of the petition has been determined, Council shall thereupon order and fix a day for holding an election to determine the question of his or her removal, and for the selection of a successor to each officer named in said petition. Such an election shall be held not less than thirty (30) days nor more than forty (40) days from the time of the finding of the sufficiency of such a petition. The Delaware County Board of Elections shall publish notice and make all arrangements for holding such an election.

(C) The nomination of candidates to succeed each officer sought to be removed shall be made without the intervention of a primary election, by filing with the Delaware County Board of Elections, at least twenty (20) days prior to such a special election, a petition proposing a person for each office, signed by electors equal in number to ten (10) percent of the total votes cast at the last preceding regular municipal election.

(D) The ballots at such a recall election shall be in such form as the Board of Elections for Delaware County, Ohio shall proscribe and shall, with respect to each person whose removal is sought, submit the questions: "Shall (name of person) be removed from the office of (name of office) by recall?"

Immediately following each such question, there will be printed on the ballots, the two propositions in the order set forth:

"For the recall of (name of person)."

"Against the recall of (name of person)."

Under each of such questions shall be placed the names of the candidates to fill the vacancy. The names of the officers whose removal is sought shall not appear on the ballot to succeed such officer. The Board of Elections may modify said ballot for its administrative purposes.

In any such election, if a majority of the votes cast on the question of removal are affirmative, the person whose removal is sought shall be removed from office upon the announcement of the official canvass of that election, and the candidate receiving the plurality of the votes cast for the candidates for that office shall be declared elected. The successor of any person so removed shall hold office during the unexpired term of his predecessor.

In any such election where a majority of votes cast on the question of removal are negative, no further recall petition shall be filed against such incumbent for a period of one year.

(E) If no one is elected, the removal of any elected officer of the City by recall shall constitute a vacancy of the office previously held by that elected officer and such vacancy shall be filled as provided for in this Charter. (Amended 5-7-13)

6.02 <u>INITIATIVE.</u>

Ordinances and other measures providing for the exercise of any powers of government granted by the Ohio Constitution or the laws of the State of Ohio, may be proposed by initiative petition. Such initiative petition must be signed by electors of the City equal to ten (10) percent of the total number of votes cast at the last preceding regular municipal election. The Clerk of Council shall receive the petitions for all initiatives.

When a petition is filed with the Clerk of Council signed by the required number of electors proposing an ordinance or other measure, such Clerk shall, after ten (10) days, transmit a certified copy of the text of the

proposed ordinance or measure to the Delaware County Board of Elections. The Clerk of Council shall transmit the petition to the Board of Elections together with the certified copy of the proposed ordinance or other measure. The Board shall examine all signatures on the petition to determine the number of electors of the City of Powell who signed the petition. The Board of Elections shall return the petition to the Clerk of Council within ten (10) days after receiving it, together with a statement attesting to the number of such electors who signed the petition.

Upon receipt of the statement from the Board of Elections, the Clerk of Council shall submit the petition, the proposed ordinance, and the statement to the Council on the date of its next regular meeting. If the petition and proposed ordinance are determined by the Council to be sufficient and valid, the Council shall, at such regular meeting, read and act upon the same. Council may adopt the ordinance in its original form. Should the Council fail to take action or reject the proposed ordinance, in whole or in part, the Clerk of Council shall provide for the submission of the proposed ordinance in its original form to a vote of the electors of the City at the next succeeding general election.

Upon receipt of the proposed ordinance, the Board of Elections shall submit such proposed ordinance or measure for approval or rejection of the electors of the City at the next succeeding general election occurring subsequent to seventy-five (75) days after receipt of the proposed ordinance. (Amended 5-7-13)

6.03 REPEALING ORDINANCES; PUBLICATION

Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the Council as herein provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors shall be published as in the case of other ordinances.

6.04 REFERENDUM

Any ordinance passed by the Council shall be subject to referendum, except emergency ordinances passed pursuant to Section 5.06 of this Charter and as otherwise provided by any applicable section of the Revised Code, including without limitation Section 731.30. The effective date of ordinances is governed by Section 5.09 of this Charter. If a petition signed by electors of the City, not less in number than ten (10) percent of the total votes cast at the last preceding general municipal election, is filed with the Clerk of Council within thirty (30) days after passage of an ordinance subject to referendum, requesting that any such ordinance be repealed or submitted to a vote of the electors of the City, the ordinance shall not take effect until the steps indicated herein have been taken.

The Clerk shall, within ten (10) days after the filing of a referendum petition, transmit a certified copy of the petition to the Delaware County Board of Elections. The Board shall examine all signatures on the petition to determine the number of electors of the City who signed the petition. The Board shall return the petition to the Clerk of Council within ten (10) days after receiving it, together with a statement attesting to the number of such electors who signed the petition. Upon receipt of the statement from the Board, the Clerk of Council shall submit the petition and the statement to the Council on the date of its next regular meeting. Council shall determine the sufficiency and validity of the petition. If the petition is determined by Council to be sufficient and valid, the Council shall, at such regular meeting, read and act upon the same. Council may repeal the ordinance subject to referendum. Should Council fail to take action or fail to repeal the ordinance subject to referendum, the Clerk of Council shall provide for the submission of such ordinance to a vote of the electors of the City. The Board of Elections shall submit the ordinance to the electors of the City, for their approval or rejection, at the next general election occurring subsequent to seventy-five (75) days after receipt of such ordinance from the Clerk of Council.

(Amended 5-7-13)

6.05 INITIATIVE AND REFERENDUM PETITION PROCEDURES

Any initiative or referendum petition may be presented in separate parts, but each of any initiative petition shall contain a full and correct copy of the title and text of the proposed ordinance or other measure. Each part of any referendum petition shall contain the number, a full and correct copy of the title and date of passage of the ordinance or other measure sought to be referred.

Each signer of any such petition must be an elector of the City in which the election, upon the ordinance or other measure proposed by such initiative petition or the ordinance or measure referred to by such referendum petition, is to be held, and shall place on such a petition, after his name, the date of signing, his place of residence, including street and number, and the ward and precinct.

Each part of such petition shall contain the affidavit of the person soliciting the signatures thereto, which shall state the number of signers of each such part and that, to the best of his knowledge and belief, each of the signatures contained on such part is the genuine signature of the person whose name it purports to be, that he believes such persons are electors of the City, and that they signed such petition with knowledge of the contents thereof.

Upon receipt of a statement from the Delaware County Board of Elections, pursuant to Chapter 731 of the Revised Code, attesting to the number of electors who signed such petition, Council by resolution shall determine the sufficiency and validity of the petition. In determining the validity of any such petition, all signatures that are found to be irregular shall be rejected, but no petition shall be declared invalid in its entirety when one or more signatures are found to be invalid except when the number of valid signatures is found to be less than the total number required.

The petition and signatures upon such petition shall be prima facie presumed to be in all respects sufficient.

No ordinance or other measure submitted to the electors of the City and receiving an affirmative majority of votes cast thereon, shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the ordinance or measure was procured, nor shall rejection, by a majority of the votes cast thereon, of any ordinance or other measure submitted to the electors of such City be held invalid for such insufficiency.

Ordinances proposed by initiative petition and referendums receiving an affirmative majority of the votes cast thereon, shall become effective as provided by the laws of the State of Ohio.

Where the Charter is silent concerning initiative and referendum petition procedures, the laws of the State of Ohio shall be followed, except the statutory functions and duties of the City Auditor shall be performed by the Clerk of Council. (Amended 5-7-13)

6.06 APPROVAL OR REJECTION

(A) Ordinances submitted to the Council by petition and passed by the Council as herein provided, shall be subject to the referendum in the same manner as other ordinances.

(B) Ordinances rejected or repealed by an electoral vote shall not be re-enacted, in whole or in part, except by an electoral vote.

(C) Ordinances approved by an electoral vote shall not be repealed, amended or supplemented, except by an electoral vote.

(D) The adoption or rejection of ordinances submitted to an electoral vote shall take effect as provided by the laws of the State of Ohio.

(Enacted 5-7-13)

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1143.11 PROCEDURES FOR APPROVAL OF PLANNED DISTRICT DEVELOPMENT PLANS.

Planned District Development Plans shall be approved in accordance with the procedures established herein in this section.

(a) Pre-application Meeting. The developer shall meet with the City Manager, with the Zoning Administrator, and with the Planning and Zoning Commission prior to submission of a preliminary development plan. The purpose of such meetings is to discuss early and informally the purpose and effect of this Zoning Ordinance and the criteria and standards contained herein, and to familiarize the developer with zoning and other applicable regulations; it being understood that no statements by officials of Powell, Ohio, or Planning and Zoning Commission members, made in such informal meetings shall be binding on either party.

(b) Filing of a Combined Preliminary and Final Development Plan. Upon approval of the Planning and Zoning Commission at the pre-application meeting, and applicant may be permitted to file a combined preliminary and final development plan following the procedures as set forth in subsection (h) hereof, as if the applicant had received approval in principal of the preliminary development plan.

(c) Preliminary Planned District Development Plan Application Requirements. An application for preliminary Planned District Development Plan approval shall be filed with the Zoning Administrator by the owner of the property for which Planned District development is proposed. At a minimum, the application shall contain the following information, which shall be filed in fifteen (15) copies. Where any of this information is missing or incomplete, the Zoning Administrator shall so notify the applicant and no additional actions need be taken until such missing material is provided.

1) Name, address, and phone number of applicant;

(2) Name, address, and phone number of registered surveyor, registered engineer and/or urban planner assisting in the preparation of the preliminary development plan;

(3) A list containing the names and mailing addresses of all owners of property contiguous to, directly across the street from and within 250 feet of the property in question;

(4) Legal description of the property;

(5) A description of present use(s) on and of the land;

(6) Draft of a proposed Ordinance, prepared with the advice and counsel of the Director of Law, establishing this specific Development Plan as an additional effective zoning control over the land in question, consistent with the continuing authorities of the current Planned District zoning in these areas provided for elsewhere in this Zoning Ordinance;

(7) A vicinity map at a scale approved by the Zoning Inspector showing all property lines, existing streets and alleys, approved future streets and land uses on adjacent Planned District areas, transportation and land use elements of the Municipality's adopted Comprehensive Plan, current zoning classifications and boundaries, and current land uses on the site of the proposed Planned District development and in the surrounding areas to the physical extent deemed necessary by the Zoning Inspector, but no less than 250 feet beyond the limits of the proposed Planned District Development Plan.

(8) A preliminary development plan at a scale approved by the Zoning Administrator illustrating:

A. The property line definition and dimensions of the perimeter of the site;

B. Right-of-ways and paving widths of all existing, currently platted, and previously approved Planned District streets and alleys adjacent to, on, or abutting the site;

C. The area of the site and its subareas in acres;

D. The topography of the site and abutting areas at no more than five (5) foot contour intervals;

E. Existing surface drainageways and surface sheet flow patterns;

F. Flood plain areas, ravine-bottom areas, and areas of ground slope in excess of six (6) percent;

G. Existing vegetation on the site with specific tree spots for all trees six (6) inches in diameter or greater, measured twenty-four (24) inches from the ground.

H. Existing easements on the site with notations as to their type, extent, and nature;

I. The location and dimensions of existing utilities on and adjacent to the site, including the nearest sanitary sewer, with manhole invert elevations;

J. Calculation of the maximum residential units permitted on the site under the terms of this Zoning Ordinance, including delineation of the subdistricts of the site upon which these calculations have been made;

K. A preliminary plan for the first, or next, phase of site development illustrating:

1. New street centerlines, right-of-ways, and street classification types;
2. Names of existing and proposed streets;
3. Generalized lot and block layouts, indicating and illustrating property lines, minimum lot areas, minimum building setbacks and yards, location and extent of major off-street parking areas, etc.;
4. Subareas of the site to be developed, by land use type, housing types, and housing densities, including subarea statistics;
5. All proposed structures shall be located showing square footage, tenant or user types, and expected entranceways and service or loading areas;
6. Common open areas, public lands, and natural scenic easements, including the area of each;
7. Proposed landscape treatment of the site;
8. Proposed utility patterns and provisions, including sanitary sewer, individual waste disposal systems, storm sewer, trash collection systems, outdoor lighting, and water supply, including relevant easements and engineering feasibility studies or other evidences of reasonableness;
9. Provisions for accommodating surface drainage runoff;
10. Proposed architectural design criteria;
11. Proposed pedestrian/jogging/bicycle pathways and equestrian paths, including locations, dimensions, landscape and construction, including relationships of such pathways to existing and proposed future pathways on surrounding property;
12. Overall site development statistics comparing this plan for development with requirements of this Zoning Ordinance and with the comprehensive plan and indicating that all requirements of this Zoning Ordinance and the comprehensive plan have been met in this preliminary plan and will be met in final development.

L. Projected development schedule by subareas of the entire planned development site, and for the first, or next, phase of development, including land uses, public areas, natural and scenic reserves, streets, buildings, utilities, and other facilities, indicating the relationship of the proposed development to existing and probable uses

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of surrounding areas during the development timetable;

M. An overall traffic scheme, illustrating points of access, parking areas, including the number of parking spaces and indicating visitor, employee and service traffic flow, illustrating calculated peak hour traffic use for residents and employees as well as deliveries and other transport and the effect of this traffic on the community traffic ways.

N. If to be developed in phases, the entire site development shall be described in outline and diagrammatic plan form, and in a complementing detailed text in a manner calculated to assure City officials that Planned Development requirements and other requirements of this Zoning Ordinance shall be met in the detailed development of the phases to follow, and that the entire Planned Development area will meet all of the requirements of this Zoning Ordinance, such diagrams and descriptive texts being accepted with, and becoming a part of the extended zoning plan for the entire site;

(9) Evidences of the ability of the applicant to carry forth its plan by control of the land and the engineering feasibility of the plan, and that the applicant has sufficient control over the land and financing to initiate the proposed development plan phase within two (2) years;

(10) Evidence of the applicant's ability to post a bond if the plan is approved assuring completion of public service facilities to be constructed within the project area by the developer;

(11) Verification by the owner of the property that all the information in the application is true and correct to the best of his knowledge.

(12) A statement of the character and nature of the development including the cost range or rent levels for housing in residential development and the general types of business or industrial and commercial developments.

(13) A statement of the general impact the development will have on the infrastructure, municipality and schools including projected demographics, a traffic impact study and a fiscal impact analysis may be required by the Planning and Zoning Commission.

(14) A fee as established by ordinance.

(d) Planning and Zoning Commission Public Hearing. The Planning and Zoning Commission shall schedule a public hearing on the application for approval of the preliminary development plan not less than ten (10) or more than forty (40) days from the date of filing of a completed application and certification by the Zoning Administrator that to the best of his knowledge the preliminary development plan application is complete and that the preliminary development plan, as best he can determine, meets all of the requirements of this Zoning Ordinance and the comprehensive plan. (Amendment by Ordinance 91-40)

(e) Notice of Public Hearing.

(1) Before holding the public hearing, notice of such Commission hearing shall be given in one or more newspapers of general circulation in the Municipality of Powell at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the public hearing, a general description of the planned district development, and a statement that, after the public hearing and after submission of a final development plan, the matter will be referred to the Council for further determination.

(2) Also before holding the public hearing, written notice of such hearing shall be sent by the Planning and Zoning Commission by first class mail, at least ten (10) days before the

hearing, to all owners of property Contiguous to, directly across the street from and within 250 feet of the property in question and to such others as the Commission determines should receive such notice. Notices to individual property owners shall contain the same information as required of notices published in the newspaper.

(Amendment by Ordinance 91-40)

(f) Public Access to Proposed Planned District Plans. For a period of at least ten (10) days prior to the public hearing by the Planning and Zoning Commission, all papers relating to the planned district development plan shall be available for public inspection in the office of the Zoning Administrator.

(g) Approval in Principle of Preliminary Development Plan. Within thirty (30) days after the public hearing, the Planning and Zoning Commission shall review the preliminary development plan to determine if it is consistent with the intent of this Zoning Ordinance and meets all of its requirements. If it does, the Commission shall approve the preliminary development plan in principle. If it does not, the Commission shall recommend changes and additions needed for approval and await a resubmission.

In approving a preliminary development plan in principle, the Planning and Zoning Commission shall consider:

(1) If the proposed development is consistent with the intent and requirements of this Zoning Ordinance;

(2) The appropriateness of the proposed land uses with regard to their type, location, amount, and intensity, where not specifically specified in this Zoning Ordinance;

(3) The relationships between uses, and between uses and public facilities, streets, and pathways;

(4) Adequacy of provisions for traffic and circulation, and the geometry and characteristics of street and pathway systems;

(5) Adequacy of yard spaces and uses at the periphery of the development;

(6) Adequacy of open spaces and natural preserves and their relationships to land use areas and public accessways;

(7) The order, or phases, in which the development will occur and the land uses and quantities to be developed at each phase;

(8) Estimates of the time required to complete the development and its various phases;

(9) Improvements to be made by the Municipality, if any, and their cost;

(10) The community cost of providing public services to the development, and

(11) Impacts of the development on surrounding or adjacent areas.

The Planning and Zoning Commission may require the staging of the planned development to minimize early stage major impacts on the community infrastructure and services systems, and may require the staging of land uses to be generally consistent with the phased development of supporting land uses and public services and facilities.

The Commission's approval in principle of the preliminary development plan shall be necessary before an applicant may submit a final development plan. Approval in principle shall not be construed to endorse a precise location of uses, configuration of parcels, or engineering feasibility.

(h) Submission of Final Development Plan.

(1) After approval in principle of the preliminary development plan, the developer shall submit a final development plan to the Zoning Administrator. The final development plan

shall be in general conformance with the preliminary development plan that was approved in principle. For the purposes of this Zoning Ordinance, submission of a final development plan is a formal request for an amendment addition to the zoning of the property in question, and upon final approval by Council becomes the zoning of the property in question in addition to the other requirements of this Zoning Ordinance.

(2) Copies of the final development plan as specified by the Zoning Administrator shall be submitted and may be endorsed by a qualified professional team which should include an urban planner, licensed architect, registered land surveyor, registered civil engineer, and registered landscape architect.

(Amendment by Ordinance 91-40)

(i) Final Development Plan Application Contents. An application for approval of the final development plan shall be filed with the Zoning Administrator by the owner of the property for which planned district development is proposed. Each application shall be signed by the owner, attesting to the truth and exactness of all information supplied on the application for the final development plan. Each application shall clearly state that the approval shall expire and may be revoked if construction on the project has not begun within two (2) years from the date of issuance of the approval. At a minimum, the application shall contain:

(1) All of the information required for submission of the preliminary planned district development plan application;

(2) All plan materials rendered on an engineering survey of the proposed development site, showing the dimensions and bearings of property lines, property areas in acres, topography, existing features of the development site including major wooded areas, structures, easements, utility lines, land uses, and maximum building footprint areas for all non-residential uses and residential uses other than single-family detached and two-family dwellings;

(3) Engineering feasibility studies and plans showing, as necessary, water, sewer, drainage, electricity, telephone, and natural gas installations; waste disposal facilities; street improvements; and the nature and extent of earthwork required for site preparation and development.

(4) A detailed landscape plan showing existing and proposed future landscape materials, ground cover, paving patterns and materials.

(5) Deed restrictions, protective covenants, and other legal statements or devices to be used to control the use, development and maintenance of the land and the improvements thereon, including those areas which are to be commonly owned and maintained, and

(6) A final development plan fee as established by Ordinance.

(j) Public Hearing by Planning and Zoning Commission. Within thirty (30) days after submission of a completed application for a final development plan and certification by the Zoning Administrator that the plan application is complete and that to the best of his knowledge the plan meets the requirements of this Ordinance and is in compliance with the preliminary development plan that was approved in principle, the Planning and Zoning Commission shall hold a public hearing. Notice and public inspection of the application shall be as specified in subsections (e) and (f).

(k) Recommendation by the Planning and Zoning Commission. Within thirty (30) days after the Public Hearing on the final development plan the Planning and Zoning Commission shall recommend that the final development plan be approved as presented, approved with supplementary conditions, or disapproved, and shall transmit all papers constituting the record and the recommendations to

Council.

Before making its recommendation, the Planning and Zoning Commission shall find that the facts submitted with the application and presented at the public hearing establish that:

(1) The proposed planned district development phase can be initiated within two (2) years of the date of approval and can be completed within five (5) years;

(2) The requirements of the Comprehensive Plan relative to the site at issue have been fulfilled;

(3) The streets proposed are suitable and adequate to carry the anticipated traffic, and increased densities will not generate traffic in such amounts as to overload the street network outside the planned district plan area;

(4) Proposed non-residential developments can be justified at the location and in the amounts proposed;

(5) Housing densities are warranted by amenities and conditions incorporated in the final development plan and are in accordance with these planned district development requirements;

(6) Lands to be dedicated to public use are of acceptable and usable size, shape, and location;

(7) The area surrounding the development can be planned and zoned in coordination with and in substantial compatibility with the proposed development;

(8) The existing and proposed utility services are adequate for the population densities and uses proposed, and

(9) Adequate provision has been made for the detention and channelization of surface drainage runoff.

(Amendment by Ordinance 91-40)

(l) Public Hearing by Council. After receiving the recommendation from the Planning and Zoning Commission, the Council shall hold a public hearing on the planned district final development plan within a reasonable time.

(Ord. 91-01. Passed 2-5-91.)

(m) Notice of Public Hearing by Council.

(1) Before holding its public hearing, notice of such hearing shall be given by at least one publication in one or more newspapers of general circulation in the Municipality of Powell at least ten (10) days before the hearing. The notice shall set forth the time and place of the public hearing, the nature and general description and summary of the planned district development, and a statement that all papers relating to the planned district development are on file with the Clerk and are open for public inspection.

(2) Written notice of the hearing on the planned district development shall be mailed by the Clerk by first class mail, at least ten (10) days before the date of the public hearing, to all owners of property contiguous to, directly across the street from and within 250 feet of the proposed planned district development and to such others as Council may determine should receive such notice. Notices to individual property owners should contain the same information as required of notices published in the newspaper.

(Ord. 2005-11. Passed 3-15-05.)

(n) Action by Council. After the public hearing, the Council shall either adopt or deny the recommendation of the Planning and Zoning Commission or adopt some modification thereof. In the event Council makes a substantial change to the recommendation of the Planning and Zoning Commission, it must do so by a vote of not less than three-fourths (6) of all Members of Council or by approval of a majority of all members of Council (4) and subsequent approval by the Planning

and Zoning Commission. If approved by a majority of Council with a substantial change but by less than three-fourths (3/4), such ordinance with proposed substantial change stated separately shall be submitted to the Planning and Zoning Commission at the next regularly scheduled meeting. If approved by the Commission, then such ordinance with the substantial change shall take effect. If not approved by the Commission, then at the next scheduled Council meeting, Council shall adopt or deny the recommendation of the Planning and Zoning Commission without the substantial changes or adopt the Commission's recommendations with substantial changes with not less than three-fourths (6) of all members of Council. No such Ordinance shall be passed unless it has been fully and distinctly read on two different days and no Ordinance in accordance with the recommendation of the Planning and Zoning Commission shall be deemed to pass or take effect without the concurrence of at least a majority of the full membership of Council. The Council shall be deemed to have rejected the recommendation of the Planning and Zoning Commission when less than a majority of its members (4) vote for its adoption.

(Ord. 98-42. Passed 10-6-98.)

(o) Supplementary Conditions and Safeguards. In approving any planned district development plan application, both the Planning and Zoning Commission and the Council may prescribe appropriate conditions and safeguards in conformity with this Zoning Ordinance. Any violation of such conditions or safeguards, which have been made a part of the terms under which the final development plan has been approved, shall constitute a violation of this Zoning Ordinance and shall be punishable as such.

(p) Expiration of Approval Period. The approval of a final development plan for a planned district development shall be for a period not to exceed five (5) years to allow for preparation and recording of the required subdivision plat and development of the project. Where a project is completed within five (5) years, the approved final development plan shall remain as the effective zoning control over the area included in the plan, in addition to the requirements of this Zoning Ordinance. If required plats are not properly recorded within nine months of final development plan approval and/or if no construction has begun on the site within two (2) years of such approval, the approved final development plan shall be void, and the land shall revert to the original district zoning regulations unless an application for a time extension is submitted and approved, which approval may be withheld for good cause.

(q) Extension of Time Limit. An extension of the time limits set in subsection (p) hereof, as a modification of the approved final development plan, may be approved by Council upon the recommendation of the Planning and Zoning Commission. Such approval shall be granted only upon a finding of a valid purpose and necessity for such extension and evidences of reasonable and diligent efforts toward accomplishment of the original development plan within the originally established time limits, and upon finding that such extension is not in conflict with the general health, welfare and safety of the public or development standards of the district. No extension of time shall be granted except on application filed with the Zoning Administrator not later than ninety days before the expiration of the time limits set in subsection (p) hereof.

(r) Amendment or Alteration of Approved Planned District Development Plans. Once a final development plan for a planned district has been approved by Council, all subsequent substantial changes to that plan shall only be permitted by resubmission as a new substitute plan and repatriation of the procedures established in these sections. "Substantial change" for the purposes of this section shall mean any modification of an approved planned district development plan, as determined by the Zoning Administrator, that results in:

(1) Any increase in the number, or change in the type and/or mix of residences, and/or non-

residential building area or land use;

(2) Decrease in the approved minimum lot size, number of parking spaces to be provided, and/or trash storage areas;

(3) Change in the approved location of land uses, land use subareas or sub-elements, streets, public or private parklands and other public facilities, and/or natural environmental preserves or scenic easements by more than thirty (30) feet;

(4) Reduction in area of public and/or private parklands or other public facilities and/or natural environmental preserves or scenic easements;

(5) Alteration of the basic geometry and/or operational characteristics of any element of the approved street pattern, parking facilities, service access, trash storage facilities, and/or system of pedestrian and/or equestrian paths that results in a change in operating characteristics or character;

(6) Any circumstance below the minimum requirements established in this Zoning Ordinance or as required in the approval of a conditionally permitted use in a planned district.

(s) Subsequent Zoning Amendments Initiated by Other Than Planned District Processes. No zoning amendment passed during the time period granted for the initiation and completion of an approved final development plan shall in any way affect the terms under which the approval of the planned district development was granted.

(t) Plat Required.

(1) In a Planned District, no use shall be established or changed and no structure shall be constructed or altered until the required subdivision plat has been prepared and recorded in accordance with the Development Regulations.

(2) In the event that any public service facilities not to be otherwise guaranteed by a public utility have not been constructed prior to the recording of the plat, the owner of the project shall post a performance bond in favor of the appropriate public officers in a satisfactory amount assuring the expeditious completion of said facilities within one (1) year after the recording of said plat. In no event, however, shall any zoning certificate be issued for any building or use until such time as the facilities for the phase in which the building or use is located are completed.

(Amendment by Ordinance 91-40)

(u) Administrative Review. All plats, construction drawings, restrictive covenants and other necessary documents shall be submitted to the Zoning Administrator, to the Planning and Zoning Commission, and to the Council or to their designated technical advisors upon request for administrative review to assure substantial compliance with the final approved development plan.

ARTICLE V
ORDINANCES AND RESOLUTIONS

5.01 ACTION BY COUNCIL
Action of the Council establishing any offense, or providing for the imposition of any penalty, or for the levy of any tax, or for the expenditure of any public funds, or the contracting of any indebtedness, shall be taken by ordinance. Other actions may be taken by resolution. (Amended 5-7-13)

5.02 INTRODUCTION OF ORDINANCES
Prior to introduction, each ordinance shall be submitted to the Department of Law for approval as to form, then introduced in writing by a member of Council or by the City Manager, and shall contain a title, an opening clause: "Be it ordained by the Council of the City of Powell, Ohio," and shall set forth the action to be taken. Each ordinance shall contain one subject, which shall be set forth in its title; however, general appropriation ordinances may contain the various subjects and accounts for which monies are to be appropriated. (Amended 5-7-13)

5.03 CONSIDERATION OF ORDINANCES
Each ordinance shall be read on two (2) different days, provided that Council may dispense with this rule by the affirmative vote of not less than two-thirds of all members of Council or by the inclusion of the proposed ordinance on the consent agenda as described in Section 5.04. After its introduction, a proposed ordinance shall be given a first reading by title provided that Council may require a reading in full by the affirmative vote of a majority of all members of Council. The proposed ordinance shall then lie over until the next meeting of Council. At least five (5) days before the second reading of the ordinance, the Clerk of Council shall cause to be posted a notice and summary of the content of the proposed ordinance. The notice shall invite interested persons to attend and express their opinions thereon to Council. At the meeting of Council so advertised, the proposed ordinance shall be given a second reading, which may be by title only, and all persons present who desire to be heard for or against its adoption shall be heard, under such rules as the Council may provide. Written arguments and briefs, for or against, may also be filed at this hearing for consideration by Council. After the second reading and such public hearing thereon, the Council may vote on adoption or rejection of the proposed ordinance.
The vote upon each ordinance shall be taken by roll call and recorded by the Clerk of Council. The affirmative vote of a majority of all members of Council shall be necessary to adopt an ordinance, except as otherwise provided in this Charter. (Amended 5-7-13)

5.04 CONSENT AGENDA
Notwithstanding the foregoing, the Council may by resolution designate a specific listing of items which shall be listed as part of a consent agenda on the regular Council meeting agenda. Such items shall be read and a vote shall be taken for approval of all items listed under the consent agenda. Any member of Council may, upon demand, remove any item from the Consent Agenda whereupon it shall be placed on the regular agenda for that Council meeting.
(Amended 11-2-04)

5.05 ADOPTION OF ORDINANCES
After two (2) readings, or if the waiting period and hearing are waived by a suspension of the rules, the Council may vote by roll call on whether the ordinance shall be adopted or rejected. A favorable vote of a majority of all members of Council shall be necessary to adopt an ordinance, except as provided otherwise in this Charter. Final passage shall be certified by the signature of the Mayor and the Clerk of Council. (Amended 5-7-13)

5.06 EMERGENCY ORDINANCES
The Council may, by the affirmative vote of not less than two-thirds of all members of Council, pass an emergency ordinance after declaring that such emergency exists and give the reasons therefore. Only ordinances that are necessary for the immediate preservation of the public peace, health, safety or general welfare as determined by Council in its sole discretion may be passed as emergencies. Such ordinances shall take effect immediately upon their passage. Emergency ordinances shall be published within one (1) week after their passage.

The following types of ordinances shall not be passed as emergency legislation:

a. Tax increases.

b. Any appropriations in excess of twenty five percent (25%) of the City's Annual General Fund appropriation except in response to terror-initiated or natural disasters, including but not limited to any event characterized as a terrorist act by the office of Homeland Security, wind storms and earth movement or flooding.

c. All ordinances establishing, amending, revising, changing or repealing zoning classifications, districts, uses or regulations.
(Amended 5-7-13)

5.07 RESOLUTIONS
Actions by Council not required by this Charter to be by ordinance may be taken by resolution. Such resolution shall be introduced in writing, by a member of Council or the City Manager, and may be adopted by voice vote of a majority of all members of Council. No waiting period, notice or publication shall be required and a resolution shall become effective immediately upon its adoption. The Clerk of Council shall record resolutions in a separate book, which shall be a public record. (Amended 5-7-13)

5.08 PUBLICATION OF ORDINANCES AND RESOLUTIONS
Ordinances and, if desired, resolutions shall be published by posting copies thereof in not less than two (2) public places in the City for a period of not less than fifteen (15) days after their adoption. The public places for such posting shall be determined by Council. Council may, by ordinance or resolution, require that ordinances and resolutions be published by other means in addition to the postings as required by this section. The Clerk of Council shall make and retain a certificate as to the times and places where such postings are done and other means, if any, by which an ordinance or resolution is published. (Amended 5-7-13)

5.09 EFFECTIVE DATE OF ORDINANCES
All ordinances except emergency ordinances shall take effect thirty (30) days after passage by Council (or such other date not less than thirty (30) days after passage as established by Council in an ordinance), and shall be signed by the Mayor and the Clerk of Council in order to afford an opportunity for filing referendum petitions. (Amended 5-7-13)

5.10 ADOPTION OF ORDINANCE BY REFERENCE
The Council may adopt standard ordinances and codes prepared by public and private agencies on such matters as fire prevention, building construction, electrical wiring, plumbing, heating, ventilating and air conditioning, and other similar topics by reference to the date and source of the code without reproducing the same at length in the ordinance. In all cases in which such an ordinance or code shall be adopted by reference, publication of the code at length, by the City, shall not be required. However, such codes shall be kept on file in the office of the Clerk of Council for

consultation by interested persons.
(Amended 5-7-13)

731.32 Copy of proposed ordinance or measure filed with auditor or clerk.

Whoever seeks to propose an ordinance or measure in a municipal corporation by initiative petition or files a referendum petition against any ordinance or measure shall, before circulating such petition, file a certified copy of the proposed ordinance or measure with the city auditor or the village clerk.

As used in this section, "certified copy" means a copy containing a written statement attesting that it is a true and exact reproduction of the original proposed ordinance or measure or of the original ordinance or measure.

Cite as R.C. § 731.32

History. Effective Date: 10-10-1991

733.58 Writ of mandamus.

In case an officer or board of a municipal corporation fails to perform any duty expressly enjoined by law or ordinance, the village solicitor or city director of law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of the duty.

Cite as R.C. § 733.58

History. Effective Date: 11-01-1977

733.59 Taxpayer's suit.

If the village solicitor or city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make any application provided for in sections 733.56 to 733.58 of the Revised Code, the taxpayer may institute suit in his own name, on behalf of the municipal corporation. Any taxpayer of any municipal corporation in which there is no village solicitor or city director of law may bring such suit on behalf of the municipal corporation. No such suit or proceeding shall be entertained by any court until the taxpayer gives security for the cost of the proceeding.

Cite as R.C. § 733.59

History. Effective Date: 11-01-1977

733.61 Duty of court.

If the court hearing a case under section 733.59 of the Revised Code is satisfied that the taxpayer had good cause to believe that his allegations were well founded, or if they are sufficient in law, it shall make such order as the equity of the case demands. In such case the taxpayer shall be allowed his costs, and, if judgment is finally ordered in his favor, he may be allowed, as part of the costs, a reasonable compensation for his attorney.

Cite as R.C. § 733.61

History. Effective Date: 10-01-1953