

IN THE SUPREME COURT OF OHIO

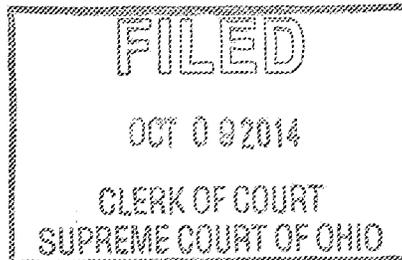
State ex rel. Brian Ebersole, et al.,	:	
	:	
Relators,	:	Case No. 14-1469
	:	
v.	:	Original Action in Mandamus
	:	
City Council of Powell, Ohio, et al.,	:	Expedited Elections Action
	:	
Respondents.	:	

**RESPONDENTS CITY COUNCIL OF POWELL, OHIO AND SUE ROSS, CITY CLERK
NOTICE OF COMPLIANCE**

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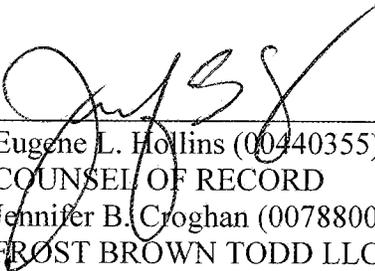
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 COUNSEL OF RECORD
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Powell Ohio and Sue Ross City Clerk Powell

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Counsel for Intervenor The Center for
Powell Crossing LLC, Donald R. Kenney, Jr.



Pursuant to this Court's Opinion of September 29, 2014, reported at 2014-Ohio-4283 and subsequent denial of Respondents' motion for clarification and/or reconsideration on October 6, 2014, reported at 2014-1469, Respondents, City Council of Powell, Ohio and Sue Ross, City Clerk ("Respondents"), give notice of passage of Ordinance 2014-54, "An Ordinance to Submit a Proposed Charter Amendment, Entitled 'An Amendment to the City Charter of Powell, Ohio to Substitute the Comprehensive Plan of the Village of Powell of December 1995 with a New Comprehensive Plan for Zoning and Development in the City of Powell, Ohio' to the Electors of the City of Powell, Ohio, and Declaring an Emergency" on October 7, 2014 (a certified copy of the Ordinance is attached hereto). Further, Respondents give notice that Ordinance 2014-54 and the part-petitions were filed with the Delaware County Board of Elections on October 8, 2014 as evidenced by the receipt provided also attached hereto.

Respectfully submitted,



Eugene L. Hollins (00440355)

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COUNSEL FOR RESPONDENTS

THE CITY COUNCIL OF POWELL OHIO AND

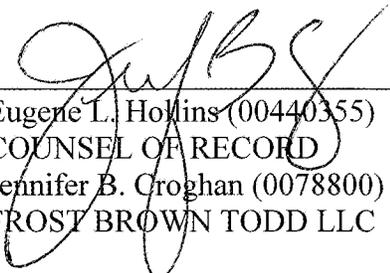
SUE ROSS CITY CLERK POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Notice* was served upon the following, this 9th day of October, 2014, by electronic mail:

Christopher B. Burch
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Joseph R. Miller
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THE CENTER OF PWOELL CROSSING LLC
AND DONALD R. KENNEY, JR.



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CERTIFICATION

I, Sue D. Ross, being the duly appointed City Clerk of the City of Powell, Delaware County, Ohio, do hereby certify that the attached is a true and correct copy of Ordinance 2014-54, entitled "AN ORDINANCE TO SUBMIT A PROPOSED CHARTER AMENDMENT, ENTITLED "AN AMENDMENT TO THE CITY CHARTER OF POWELL, OHIO TO SUBSTITUTE THE COMPREHENSIVE PLAN OF THE VILLAGE OF POWELL OF DECEMBER 1995 WITH A NEW COMPREHENSIVE PLAN FOR ZONING AND DEVELOPMENT IN THE CITY OF POWELL, OHIO" TO THE ELECTORS OF THE CITY OF POWELL, AND DECLARING AN EMERGENCY." adopted by Powell City Council on October 7, 2014.



Sue D. Ross
City Clerk

10/9/2014

Date

Ordinance 2014-54 will be posted at the Village Green Municipal Building, 47 Hall Street and on the City website at www.cityofpowell.us from Wednesday, October 8, 2014 through Friday, October 24, 2014, in accordance with Powell City Charter.



City of Powell, Ohio

ORDINANCE 2014-54

Adopted October 7, 2014

AN ORDINANCE TO SUBMIT A PROPOSED CHARTER AMENDMENT, ENTITLED "AN AMENDMENT TO THE CITY CHARTER OF POWELL, OHIO TO SUBSTITUTE THE COMPREHENSIVE PLAN OF THE VILLAGE OF POWELL OF DECEMBER 1995 WITH A NEW COMPREHENSIVE PLAN FOR ZONING AND DEVELOPMENT IN THE CITY OF POWELL, OHIO" TO THE ELECTORS OF THE CITY OF POWELL, AND DECLARING AN EMERGENCY.

WHEREAS, Section 12.01 of the City Charter states: "Any section of this Charter may be amended as provided in Article XVIII, Section 9 of the Ohio Constitution, by submission of the proposed amendment or amendments to the electors of the City"; and

WHEREAS, pursuant to Article XVIII, Section 9 of the Ohio Constitution, a proposed amendment to the Charter of the City of Powell, entitled "An amendment to the City Charter of Powell, Ohio to substitute the Comprehensive Plan of the Village of Powell of December 1995 with a new Comprehensive Plan for Zoning and Development in the City of Powell, Ohio" (the "Proposed Charter Amendment"), has been submitted by a petition of the electors; and

WHEREAS, Article XVIII, Section 9 of the Ohio Constitution provides that "the submission of proposed amendments to the electors shall be governed by the requirements of [Article XVIII,] 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"; and

WHEREAS, Article XVIII, Section 8 of the Ohio Constitution provides that "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 [60] nor more than one hundred and twenty [120] 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"; and

WHEREAS, Article XVIII, Section 8 of the Ohio Constitution also provides that "not less than thirty [30] 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";

WHEREAS, on September 19, 2014, the Ohio Supreme Court, in *State Ex Rel. Ebersole Et Al. v. The City of Powell Et Al.*, Slip Opinion No. 2014-Ohio-4078, found that "the proposed Charter amendment violates *Eubank* and *Roberge*, and the City Council did not have a clear legal duty to put the measure on the November 4, 2014 ballot," and denied petitioners a writ of mandamus to compel Council to pass an ordinance to submit the proposed Charter amendment to the electors; and

WHEREAS, on September 29, 2014, ruling on a motion for reconsideration, the Ohio Supreme Court, in *State Ex Rel. Ebersole Et Al. v. The City of Powell Et Al.*, Slip Opinion No. 2014-Ohio-4283, found that "after further reflection, we conclude that it was premature to assess the constitutionality of the proposed ordinance and that the City Council abused its discretion by refusing to submit the amendment to the voters"; and

WHEREAS, the Ohio Supreme Court therefore granted a writ of mandamus and stated that "the City Council and the City Clerk are hereby ordered to take all steps necessary to place the proposed Charter amendment on the November 4, 2014 ballot and to submit the question to those voters who have already secured absentee voter ballots"; and

WHEREAS, on October 2, 2014, a Motion for Clarification and/or Reconsideration was filed with the Ohio Supreme Court on behalf of the City respondents, given that the November 4, 2014 ballot is not within the "not less than sixty [60] nor more than one hundred and twenty [120] day" after passage of the ordinance timeline set forth in Article XVIII, Section 8 of the Ohio Constitution and the Clerk has a duty to mail a copy of the proposed Charter amendment to each elector (or give notice by appropriate newspaper advertising) "not less than thirty [30] days prior to such election", making the requirements of the Court's order and the provisions of the Ohio Constitution inconsistent; and

WHEREAS, on October 6, 2014, the Ohio Supreme Court denied the motion without opinion;

WHEREAS, section 4.08 of the Charter of the City of Powell allows for special meetings of Council "with twenty-four (24) hours notice to all Council members, media and the public" but does not provide for emergency meetings, pursuant to the home rule authority to determine by Charter the manner in which meetings will be held (*State ex rel. Plain Dealer Pub. Co. v. Barnes*, 38 Ohio St. 3d 165, 527 N.E.2d 807 (1988)); and

WHEREAS, given that Council's regular meeting occurs on October 7, 2014, which would have been the first date that a special meeting could have been called, this Ordinance was placed on the agenda for the October 7, 2014 regular meeting;

NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:

Section 1: That, mindful of its legal duties and obligations under Sections 8 and 9 of Article XVIII of the Ohio Constitution but desirous of complying with the mandamus order of the Ohio Supreme Court in *State Ex Rel. Ebersole Et Al. v. The City of Powell Et Al.*, Slip Opinion No. 2014-Ohio-4283, Council hereby determines to submit the Proposed Charter Amendment to the electors at a special election to be held on November 4, 2014.

Section 2: That, mindful of its legal duties and obligations under Sections 8 and 9 of Article XVIII of the Ohio Constitution but desirous of complying with the mandamus order of the Ohio Supreme Court in *State Ex Rel. Ebersole Et Al. v. The City of Powell Et Al.*, Slip Opinion No. 2014-Ohio-4283, Council hereby authorizes and directs the Clerk to mail a copy of the proposed Charter amendment to each elector (or give notice by appropriate newspaper advertising pursuant to state law) at the earliest practical date before the election.

Section 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of the Council and any of the decision making bodies of the City of Powell which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

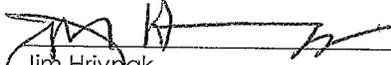
Section 4: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the City and for the further reason that the Ohio Supreme Court, in *State Ex Rel. Ebersole Et Al. v. The City of Powell Et Al.*, Slip Opinion No. 2014-Ohio-4283, ordered that City Council and the City Clerk to "take all steps necessary to place the proposed Charter amendment on the November 4, 2014 ballot"; WHEREFORE, this Ordinance shall take effect and be in force from and after its passage.

VOTE ON RULES SUSPENSION: Y 7

N 0

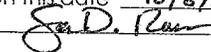
VOTE ON ORDINANCE 2014-54: Y 7

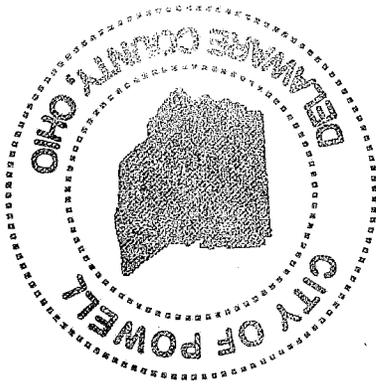
N 0


Jim Hrivnak
Mayor
10-7-14
Date


Sue D. Ross
City Clerk
10/7/2014
Date

EFFECTIVE DATE: October 7, 2014

The legislation has been posted in accordance with
the City Charter on this date 10/8/2014.
 City Clerk



City Council

Jon Bennehoof

Frank Bertone

Jim Hrivnak, Mayor

Richard Cline

Tom Counts

Mike Crites

Brian Lorenz

Receipt for Petitions

Delaware County (Ohio) Board of Election

10-8-14

Received of Sue Ross, City of Powell

Date

Year

- Declaration of Candidacy Petition(s) for the Office of _____
- Declaration of Candidacy Petition(s) for the Party of _____
- Nomination Petition(s) for the Office of _____
- Local Option Petition(s)
- Referendum Petition(s)
- Initiative Petition(s)

Charter Amendment Reg.

Jurisdiction: City of Powell

Number of signatures: _____

Part-petition(s): 12

Filing fee: _____
 Cash Check

Received by: Naee Shalaby