

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF FACTS 2

I. The Untitled and Misleading Petition 2

II. City Council Reviews the Petition For Sufficiency and Validity 4

III. Relators Delay Filing This Action Eight Days 7

STANDARD OF REVIEW GOVERNING WRIT OF MANDAMUS 7

ARGUMENT 8

I. City Council Does Not Have A Clear Legal Duty to Submit a Petition to Amend the City’s Charter to the Board of Elections that Fails to Meet All Statutory Requirements 8

II. Relators Have No Clear Legal Right and Respondent Has No Clear Legal Duty to Approve a Petition that Violates R.C. 731.31 By Failing to State the Title of the Proposed Measure 10

A. The Petition Is Invalid Because It Fails to Strictly Comply with R.C. 731.31..... 11

B. The Petition Fails to Properly and Immediately Alert Petition Signers to Its Full Nature 14

C. A Measure’s Title Provides Immediate Information About the Object of a Measure that Even This Court Relies Upon to Determine Legislative Intent 16

D. R.C. 731.31 Applies to the Petition 18

III. Relators Have No Clear Legal Right and Respondent Has No Clear Legal Duty to Approve a Petition that Could Have Substantially Misled Signers of the Petition 19

IV. Relators Unreasonably Delayed in Bringing This Action; the Doctrine of Laches Bars Relators’ Claim..... 22

CONCLUSION..... 24

CERTIFICATE OF SERVICE 25

TABLE OF AUTHORITIES

Cases

Blankenship v. Blackwell, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382..... 22

City of Macedonia v. Summit Cty. Bd. of Elections, 9th Dist. Summit No. 12860,
1986 Ohio App. LEXIS 9645 (Nov. 26, 1986)..... 21

Columbus Bldg. & Constr. Trades Council v. Moyer, 163 Ohio St. 189, 126 N.E.2d
429 (1955)..... 17

Hinchcliffe v. Gibbons, 116 Ohio St. 390, 156 N.E. 455 (1927) 8

Leninger v. Secretary of State, 316 Mich. 644, 26 N.W.2d 348 (1947) 17

Markus v. Trumbull Cty. Bd. of Elections, 22 Ohio St.2d 197, 259 N.E.2d 501 (1970) 20, 21

Morris v. Macedonia City Council, 71 Ohio St.3d 52, 641 N.E.2d 1075 (1994)..... 8, 18

Shelly & Sands, Inc. v. Franklin Cty. Bd. of Elections, 12 Ohio St.3d 140, 465
N.E.2d 883 (1984) 21

State ex rel. Bay Citizens for Safety v. City Council of Bay Vill., 8th Dist. Cuyahoga
No. 91889, 2008-Ohio-4225 19, 22

State ex rel. Becker v. City of Eastlake, 93 Ohio St.3d 502, 502, 756 N.E.2d 1228
(2001)..... 11, 16, 18, 19

State ex rel. Bona v. Vill. of Orange, 85 Ohio St.3d 18, 706 N.E.2d 771 (1999)..... 22

State ex rel. Brown v. Ashtabula Cty. Bd. of Elections, 142 Ohio St.3d 370, 2014-
Ohio-4022, 31 N.E.3d 596..... 7

State ex rel. Burech v. Belmont Cty. Bd. of Elections, 19 Ohio St.3d 154, 484 N.E.2d
153 (1985)..... 11

State ex rel. Carberry v. Ashtabula, 93 Ohio St.3d 522, 757 N.E.2d 307 (2001) 22

State ex rel. Cody v. Stahl, 8th Dist. Cuyahoga No. 83037, 2003-Ohio-6180..... 14

*State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain
Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239 9

State ex rel. Craig v. Scioto Cty. Bd. of Elections, 117 Ohio St.3d 158, 2008-Ohio-
706, 882 N.E.2d 435 22

State ex rel. Doner v. Zody, 130 Ohio St.3d 446, 2011-Ohio-6117..... 7

<i>State ex rel. Esch v. Lake Cty. Bd. of Elections</i> , 61 Ohio St.3d 595, 575 N.E. 2d 835 (1991).....	passim
<i>State ex rel. Fishman v. Lucas Cty. Bd. of Elections</i> , 116 Ohio St.3d 19, 2007-Ohio-5583, 876 N.E.2d 517	23
<i>State ex rel. Gerspacher v. Coffinberry</i> , 157 Ohio St. 32, 104 N.E.2d 1 (1952).....	22
<i>State ex rel. Hackworth v. Hughes</i> , 97 Ohio St.3d 110, 776 N.E.2d 1050, 2002-Ohio-5334	19
<i>State ex rel. Hazel v. Cuyahoga Cty. Bd. of Elections</i> , 80 Ohio St.3d 165, 1997-Ohio-129, 685 N.E.2d 224	16
<i>State ex rel. Landis v. Morrow Cty. Bd. of Elections</i> , 88 Ohio St.3d 187, 724 N.E.2d 775 (2000).....	23
<i>State ex rel. Manos v. Delaware Cty. Bd. of Elections</i> , 83 Ohio St.3d 562, 701 N.E.2d 371 (1998)	22
<i>State ex rel. McCord v. Delaware Cty. Bd. of Elections</i> , 106 Ohio St.3d 346, 2005-Ohio-4758, 835 N.E.2d 336.....	9
<i>State ex rel. Morrison v. Franklin Cty. Bd. of Elections</i> , 63 Ohio St.2d 336, 410 N.E.2d 764 (1980)	10
<i>State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico</i> , 106 Ohio St.3d 481, 2005-Ohio-5061, 836 N.E.2d 529	7
<i>State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections</i> , 74 Ohio St.3d 143, 656 N.E.2d 1277 (1995).....	23
<i>State ex rel. Semik v. Bd. of Elections</i> , 67 Ohio St.3d 334, 617 N.E.2d 1120 (1993)	1, 9
<i>State ex rel. Vickers v. Summit Cty. Council</i> , 97 Ohio St.3d 204, 2002-Ohio-5583, 777 N.E.2d 830	24
<i>State ex rel. Waltz v. Michell</i> , 124 Ohio St. 161, 177 N.E. 214 (1931).....	9
<i>State ex rel. Willke v. Taft</i> , 107 Ohio St. 3d 1, 2005-Ohio-5303, 836 N.E.2d 536.....	23
<i>State ex. rel. Ryant Comm. v. Lorain Cty. Bd. of Elections</i> , 86 Ohio St. 3d 107, 712 N.E.2d 696 (1999)	23
<i>Stevens v. Ackman</i> , 91 Ohio St.3d 182, 2001-Ohio-249, 743 N.E.2d 901	13
Constitutional Provisions	
Ohio Constitution, Section 9, Article XVIII.....	8

Statutes

Ohio R.C. 1.01 12

Ohio R.C. 3501.38(E) 19

Ohio R.C. 3513.10(B)(2) 3, 19

Ohio R.C. 731.28 4, 18

Ohio R.C. 731.31 passim

Ohio R.C. 731.32 2, 9, 19

Ohio R.C. 731.33 19

Ohio R.C. 731.35 3

Ohio R.C. 731.36 22

Ohio R.C. 731.41 18

Other Authorities

Black’s Law Dictionary 81 (7th Ed.1999) 14

Codified Ordinances of Hilliard, Ohio, Section 101.01..... 12

Hilliard Charter, Section 2, Article III 13

Hilliard Charter, Section 3, Article I..... 18

Hilliard Charter, Section 3, Article III 13, 15

Hilliard Charter, Section 8, Article III 18

INTRODUCTION

This expedited election action concerns an attempt by Relators to require the City Council of Hilliard, Ohio (“Council” or “City Council”), to rubber stamp the approval of an initiative petition that violates R.C. 731.31 and was patently misleading. This City Council cannot do.

Relators filed a petition to enshrine into Hilliard’s Municipal Charter an amendment that will impose a mandatory sixty-day delay on the effective date of all zoning decisions by City Council and prohibit the City from using state-authorized financing to construct public infrastructure improvements for certain residential improvements (the “Petition”). City Council reviewed the Petition to carry out its affirmative duty to determine whether the Petition was sufficient and whether all statutory requirements were met. *State ex rel. Semik v. Bd. of Elections*, 67 Ohio St.3d 334, 335, 617 N.E.2d 1120 (1993).

During Council’s review, the evidence demonstrated that the Petition does not satisfy applicable election law. The Petition fails to include a title for the proposed measure in violation of R.C. 731.31 and is misleading because the form was altered to inject an endorsement of some “Keep Hilliard Beautiful Committee” that neither existed at the time the Petition was circulated, nor does the measure entail a beautification project as the endorsement implies. To the contrary, the evidence shows that the motivation behind the measure was economics – to suppress residential development – so that Hilliard “get[s] the income tax revenue while other cities get the burden of providing schools and services.” (Resp’t Evidence Ex. 9.)

In the face of these defects, Relators seek to overturn *State ex rel. Esch v. Lake Cty. Bd. of Elections* and its progeny, wherein this Court has repeatedly held that an initiative petition must strictly comply with the requirement in R.C. 731.31 that the measure contain a title. 61

Ohio St.3d 595, 596, 575 N.E. 2d 835 (1991) (“We are asked to decide in this appeal if the title requirement in R.C. 731.31 must be met with strict compliance * * * we hold that it must * * *.”). The Petition omits **any** prefatory language that describes the full nature of the measure presented to the electorate, nor does it disclose how the measure seeks to amend the City’s existing Charter. Relators request that the Court relax the strict compliance standard and acquiesce in some substantial compliance regime wherein multiple section headings can be strung together and substituted in lieu of the singular title required by law for an entire measure. Likewise, Relators request that this Court ignore that they altered the prescribed petition form at their peril to include a misleading endorsement of some “Keep Hilliard Beautiful Committee” when the measure has nothing at all to do with any beautification effort.

Relators have no clear legal right to the relief they seek, nor does City Council have any legal duty to perform the actions requested by Relators. Indeed, Relators’ position would require Council to abdicate its clear legal duty to determine the validity of petitions presented. Relators also failed to pursue their adequate remedy at law which enables them to re-circulate a petition that is not misleading and that satisfies all statutory requirements. Instead, and absent any proof of fraud, corruption or a gross abuse of discretion by Council, Relators ask this Court to overrule decades of precedent in this original expedited election matter.

Relators’ request for extraordinary relief must be denied.

STATEMENT OF FACTS

I. The Untitled and Misleading Petition.

On September 28, 2015, Relator and Hilliard City Council member Les Carrier filed a certified copy of proposed amendments to the Hilliard City Charter with the Clerk of City Council consistent with R.C. 731.32 and enclosed a check to pay the filing fee pursuant to R.C.

3513.10(B)(2). (Resp't Evidence Ex. 2.) Relator Carrier certified that he was a member of a "citizens committee" but did not disclose the purported committee's name. (*Id.* at "Certification Statement of Les Carrier", ¶ 2.)

Relator Carrier then filed on November 2, 2015, the Petition with the Clerk of City Council (the "Clerk") and enclosed a "Statement of Circulator or Agent in Charge of an Initiative or Referendum Petition" pursuant to R.C. 731.35 and fee required under R.C. 3513.10(B)(2). (Resp't Evidence Ex. 3.)

The Petition consists of forty (40) separate part-petitions, each set forth on "Form No. 6-B Prescribed by Secretary of State (03-09)". (Resp't Evidence Ex. 1.) The first page of every part petition presents a "proposed amendment" as follows:

We, the undersigned, qualified electors of the City of Hilliard, Ohio respectfully petition the legislative authority to forthwith provide by Ordinance, for the submission to the electors of said city or village, the following proposed amendment to the Charter of said city or village to-whit:

ARTICLE XII, SECTION 12.09 – REFERENDUM AND EFFECTIVE DATE ON ZONING ORDINANCES

Notwithstanding any other provision of this Charter, a referendum petition on any Zoning Ordinance may be filed within sixty (60) days after passage by the Council of the Zoning Ordinance, in order to afford an opportunity during that period for the filing of referendum petitions thereon. Notwithstanding any other provision of this Charter, a Zoning Ordinance shall not become effective prior to sixty (60) days following its passage by the Council, in order to afford an opportunity during that period for the filing of referendum petitions thereon. Notwithstanding any other provision of this Charter, no Zoning Ordinance shall be passed by Council on an emergency basis. "Zoning Ordinance" for purposes of this Section, means any ordinance or other measure passed by the Council that modifies the City's zoning code or modifies the application of the City's zoning code to any property in the City.

ARTICLE XII, SECTION 12.10 – PROHIBITION OF CREATION OF TAX INCREMENT FINANCING INCENTIVE DISTRICTS FOR DWELLING UNIT IMPROVEMENTS AND PROHIBITION

OF DECLARATION OF DWELLING UNIT IMPROVEMENTS TO BE A PUBLIC PURPOSE

Notwithstanding any other provision of this Charter or Ohio law, the Council shall not:

(a) declare an improvement to any parcel in the City to be a “public purpose,” pursuant to section 5709.40(B) of the Revised Code, or any other provision of Revised Code Chapter 5709, as now exists or hereafter amended, if the improvement includes the construction or creation of one or more Dwelling Units; or

(b) create an “incentive district,” pursuant to section 5709.40(C) of the Revised code, or any other provision of Revised Code Chapter 5709, as now exists or hereafter amended, unless the Council limits the improvements in the “incentive district” so as to exclude the construction or creation of one or more Dwelling Units in the “incentive district.”

“Dwelling Unit” for purposes of Section 12.10, means any permanent building or portion thereof which is designated or used exclusively for residential occupancy containing sleeping, cooking and sanitary facilities, including, but not limited to, apartments, houses, town houses, row houses, retirement communities or condominiums.

(Emphasis and spacing in original.) (*Id.*) The second page of the Secretary of State’s prescribed form was intentionally altered in each part petition to insert “Keep Hilliard Beautiful Committee” just above where electors were requested to sign the part petition. (*Id.*) The prescribed form does not request, nor designate a space for the endorsement of any committee name anywhere on the form. (*Id.*)

II. City Council Reviews the Petition For Sufficiency and Validity.

The Petition was made available for public inspection for ten days following its receipt consistent with R.C. 731.28. The eleventh day after the Petition was filed with the Clerk, the Petition was sent to the Franklin County Board of Elections (the “Board”). (*See Resp’t Evidence Ex. 4.*) Within ten days of receipt of the Petition, the Board notified the Clerk on Wednesday, November 18, 2015, that there were 156 invalid signatures and 946 valid signatures. (*Id.*) According to the Board, ten percent of the total electors who voted in the 2013 general election in the City of Hilliard was 251 electors. (*Id.*)

The following Monday, on November 23, 2015, City Council introduced and held the first reading of Ordinance No. 15-61, titled: “TO PROVIDE FOR THE SUBMISSION OF A PROPOSED CHARTER AMENDMENT TO THE ELECTORS OF THE CITY OF HILLIARD, OHIO PURSUANT TO SECTION 12.06 OF THE CITY’S CHARTER AND DECLARING AN EMERGENCY” (“Ord. 15-61”). (Resp’t Evidence Ex. 5.) Among other things, Ord. 15-61 states that “the Petition declares that it is governed by Ohio Revised Code Section 731.31.” (*Id.*) Relator Carrier was present at the first hearing and did not object to the application of R.C. 731.31 to the Petition.

Ord. 15-61 received its second reading on December 7, 2015, at which Relator Paul Lambert testified in favor of the Ordinance and a citizen, Mr. Simms, testified against it. (Resp’t Evidence Ex. 14.) At this hearing, Relator Lambert revealed that when the Petition was circulated, the “Keep Hilliard Beautiful Committee” did not exist and admitted that it “was the working title [on the] petition” and that such committee had not “been formally established yet”. (*Id.* at 6-7.) Councilwoman McGivern stated that she was concerned with the confusion that the misleading committee name creates on the face of the petition given that the proposed charter amendment has nothing to do with any beautification or landscaping effort. (*Id.* at 7-8.) Relator Lambert, a member of the Hilliard City School Board, also revealed that the motivation behind the proposal was driven by economics, not to beautify the City: “[I]t’s actually economically advantageous to have the employers in Hilliard and their employees living somewhere else. We get the income tax revenue while other cities get the burden of providing schools and services.” (Resp’t Evidence Ex. 9.)

Another citizen, Mr. Simms, testified that he was fundamentally opposed to the anti-business measure and its inevitable suppression of small business and commercial development

within the City. (Resp't Evidence Ex. 14, at 13-17.) Relator Carrier did not question the application of R.C. 731.31 to the Petition, nor did he move to approve Ord. 15-61 during the second reading, agreeing to hold over Ord. 15-61 for a third and final reading to be held the following week. (*Id.* at 21.)

On December 14, 2015, Council conducted the third and final reading of Ord. 15-61. (Resp't Evidence Ex. 11, at 4.) Another citizen submitted a written statement to City Council explaining that he was misled at the time he signed the petition, stating that “[k]nowing what I know now, I would not have signed the petition and will not support its passage.” (Resp't Evidence Ex. 12.) At the outset of the hearing, the President of Council cautioned that Council was reviewing the form of the petition and not the merits of the proposal:

City Council's review of the petition circulated among our residents is to determine that the form of the petition meets Ohio's election laws. In making this decision, City Council must not look into the substantive merits of what is being proposed, rather our charge tonight is to evaluate whether the form of the petition strictly complies with Ohio law.

(Resp't Evidence Ex. 15, at 9.) During the third reading, Council was advised that each part petition was defective in three respects: (1) A statutorily required title for the proposed measure was omitted in violation of R.C. 731.31; (2) As a result of the missing title or any prefatory language explaining the nature of the amendment, it would not be clear to anyone approached to sign a part petition that the proposal seeks to enact two entirely new sections into the City's Charter; and (3) The prescribed petition form was intentionally altered by the petitioners to insert “Keep Hilliard Beautiful Committee” above where electors were requested to sign the petition where no committee name is requested or contemplated and which name is misleading in light of the substance of the actual proposed measure. (*Id.* at 10-17.) Thereafter, Relator Carrier and another member of Council voted in favor of Ord. 15-61 and five members opposed it. (Resp't Evidence Ex. 5, at 4.)

III. Relators Delay Filing This Action Eight Days.

Just one day later, it was reported on Tuesday, December 15, 2015, that the Keep Hilliard Beautiful Committee “would challenge the legal opinion” and was considering “seeking a writ of mandamus” in this Court. Corvo, *Legal Advice Stalls Drive for Charter Changes*, ThisWeek Community News (Dec. 15, 2015), <http://www.thisweeknews.com/content/stories/hilliard/news/2015/12/15/legal-advice-stalls-drive-for-charter-changes.html> (accessed Dec. 27, 2015). Relators, through counsel, waited until **Sunday**, December 20, 2015, to demand the City’s Law Director to institute an action in mandamus with a deadline of 4:00 p.m. on Monday, December 21, 2015. (Resp’t Evidence Ex. 13.) The Law Director responded that providing less than a single business day to review the demand was unreasonable. (*Id.*) Relators commenced this action on Tuesday, December 22 seeking a writ of mandamus.

STANDARD OF REVIEW GOVERNING WRIT OF MANDAMUS

“A writ of mandamus is an extraordinary remedy, exercised by this court with caution and issued **only when the right is clear.**” (Emphasis added.) *State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 142 Ohio St.3d 370, 2014-Ohio-4022, 31 N.E.3d 596, ¶ 11. To justify such extraordinary relief, Relators “must establish a clear legal right to the requested relief, a corresponding clear legal duty on the part of the [Respondent] to provide it, and the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico*, 106 Ohio St.3d 481, 2005-Ohio-5061, 836 N.E.2d 529, ¶ 11. When seeking such extraordinary relief, relators are required to prove that they are entitled to the writ by clear and convincing evidence. *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, paragraph three of the syllabus.

Here, the Relators cannot prove by clear and convincing evidence that there is any clear legal right nor corresponding clear legal duty to forward an initiative petition that fails to strictly comply with applicable election law requirements. Likewise, Relators have failed to exercise an adequate remedy available to them under law. As Relators cannot demonstrate by clear and convincing evidence that they are entitled to the extraordinary remedy they seek, their request must be denied.

ARGUMENT

I. City Council Does Not Have A Clear Legal Duty to Submit a Petition to Amend the City's Charter to the Board of Elections that Fails to Meet All Statutory Requirements.

Time and again, this Court has repeatedly held that a City Council has an affirmative duty to review petitions that seek to initiate amendments to a City's Charter to ensure that all statutory requirements are met. Section 9 of Article XVIII of the Ohio Constitution requires the submission of a petition to amend a municipal charter to the municipality's legislative authority, which "clearly implies, if it does not definitely express, that some power and some duty is intrusted [*sic*] to that legislative authority." *Hinchcliffe v. Gibbons*, 116 Ohio St. 390, 394, 156 N.E. 455 (1927); see also *Morris v. Macedonia City Council*, 71 Ohio St.3d 52, 55, 641 N.E.2d 1075 (1994). Under this duty, the legislative authority must review the form of the petition and is not to "rubber stamp" a petition simply based on a board of elections' review of a petition's quantity of signatures. See *Hinchcliffe v. Gibbons*, 116 Ohio St. at 394-395. Instead, "[i]nasmuch as the Constitution requires the submission [of a petition to amend a municipal charter] to be made by legislative authority, it follows that that authority need not make the submission unless satisfied of the sufficiency of the petitions and that **all statutory**

requirements are fairly met.” (Emphasis added.) *State ex rel. Semik v. Bd. of Elections*, 67 Ohio St.3d 334, 335-336, 617 N.E.2d 1120 (1993) (citation omitted).

The standard guiding City Council’s review of the form of the petition for compliance with the statutory requirements is strict compliance unless some other standard is codified. *State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239, ¶ 49 (“The settled rule is that **election laws are mandatory and require strict compliance** and that substantial compliance is acceptable only when an election provision expressly states that it is.” (emphasis added)), citing *State ex rel. Phillips v. Lorain Cty. Bd. of Elections*, 93 Ohio St.3d 535, 539, 757 N.E.2d 319 (2001). *Accord State ex rel. Columbus Coalition for Responsive Government v. Blevins*, 140 Ohio St.3d 294, 2014-Ohio-3745, 17 N.E.3d 578, ¶ 10 (requiring strict compliance with R.C. 731.32); *State ex rel. McCord v. Delaware Cty. Bd. of Elections*, 106 Ohio St.3d 346, 2005-Ohio-4758, 835 N.E.2d 336, ¶ 36.

City Council’s review of an initiative petition concerning its City’s own municipal charter is afforded great deference. City Council’s decision cannot be disturbed unless Relators prove by clear and convincing evidence that City Council’s decision resulted from “fraud, corruption or a gross abuse of discretion”:

It is quite clear that the duty and responsibility of determining the sufficiency of such petitions are conferred upon the city council, and that upon the finding of insufficiency of such petitions, **the court will not issue a writ of mandamus requiring a submission of the proposed amendment to the electors, unless it clearly and affirmatively appears that the finding of council in that respect had resulted from fraud, corruption or a gross abuse of discretion.**

(Emphasis added.) *State ex rel. Waltz v. Mitchell*, 124 Ohio St. 161, 164, 177 N.E. 214 (1931) (citation omitted) (denying writ to compel city council to conduct election on proposed charter

amendment). *Accord State ex rel. Morrison v. Franklin Cty. Bd. of Elections*, 63 Ohio St.2d 336, 339, 410 N.E.2d 764 (1980).

As set forth below, Relators' scant evidence fails to prove that City Council's determination concerning the defects evident in the face of the Petition resulted from any fraud, corruption or a gross abuse of discretion. Accordingly, Relators cannot demonstrate a clear legal right, nor a corresponding clear legal duty of City Council to reverse its decision through the extraordinary relief Relators seek. The writ must be denied.

II. Relators Have No Clear Legal Right and Respondent Has No Clear Legal Duty to Approve a Petition that Violates R.C. 731.31 By Failing to State the Title of the Proposed Measure.

Relators have no clear legal right to insist upon substantial compliance with R.C. 731.31's title requirement when strict compliance is required. *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d 595, 596, 575 N.E. 2d 835 (1991). R.C. 731.31 plainly requires petitions to specify a title for the entire measure; attempting to string together multiple section headings in order to substantially comply with this requirement ignores the legislative authority's custom and use of titles for legislative measures.

R.C. 731.31 clearly and unequivocally requires any initiative petition to set forth a singular title of the entire proposed measure: "Any initiative * * * petition may be presented in separate parts, but each part of any initiative petition shall contain **a full and correct copy of the title and text of the proposed ordinance or other measure * * ***" (Emphasis added.) R.C. 731.31. None of the part petitions include a title for the proposed measure. (Resp't Evidence Ex. 1.) Instead, Relators claim that the part petitions substantially comply with R.C. 731.31 because multiple section headings could be substituted for a title of the measure. (Rel. Br. 7-9.) Relators fail to cite any authority for this Court to relax enforcement of this requirement, nor do Relators dispute that R.C. 731.31 applies to the Petition.

A. The Petition Is Invalid Because It Fails to Strictly Comply with R.C. 731.31.

Relators' substantial compliance tact has been attempted before and was outright rejected by this Court. *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d at 596. In *Esch*, this Court held that a county board of elections "had a duty under R.C. 731.31 to reject" a petition that lacked a title and affirmed a writ to prohibit the measure from being placed on the ballot. *Id.* at 598. It was argued that the omission of a title was a mere technicality, so long as the measure's text was present. *Id.* at 597. However, "[m]ore so than the text, the title immediately alerts signers to the nature of proposed legislation. As this notice helps prevent the signers from being misled we * * * hold that the instant petition must contain a title for the proposed ordinance as required by R.C. 731.31." (Emphasis added.) *Id.*, following *State ex rel. Burech v. Belmont Cty. Bd. of Elections*, 19 Ohio St.3d 154, 484 N.E.2d 153 (1985) (holding that strict compliance required with similar title requirement in R.C. 305.32).

Likewise, in *State ex rel. Becker v. City of Eastlake*, the Court denied a request for a writ of mandamus seeking to place a proposed charter amendment on the ballot even though the measure's full text – two paragraphs in length – was attached to each part petition. *State ex rel. Becker v. City of Eastlake*, 93 Ohio St.3d 502, 502, 756 N.E.2d 1228 (2001). In *Becker*, the measure sought to enact a single section in the City of Eastlake's charter and contained prefatory language before the amendment's text that stated:

Shall the Charter of the City of Eastlake **be amended to enact new Article X, Section 9 so that the same shall read as follows:**

No ordinance, resolution, order, or other legislation involving * * *.

(Emphasis added.) *Id.* at 502. Notwithstanding the prefatory language (which is even omitted in the Petition here), and a stipulation that a sufficient number of signatures was submitted, Relators' own counsel in this case argued in *Becker* on behalf of the City of Eastlake that R.C.

731.31 was not satisfied. This Court agreed and denied the very writ Relators seek here. *Id.* at 507. As the Court concluded, the failure to include a measure’s title “is a fatal defect because it interferes with the petition’s ability to fairly and substantially present the issue and might mislead electors.” *Id.*

The Petition here likewise fails to include a title for the measure and, worse than in *Becker*, fails to provide any prefatory language at all to indicate that the proposed amendment seeks to enact new provisions to Hilliard’s Charter. Relators concede that there is no title on the Petition that summarizes or combines the proposal’s two sections, but claim that the “titles of the sections” should suffice as a title to substantially comply with R.C. 731.31. (*See* Compl. ¶ 17.) Relators’ contention fails as an initial matter because there are no “section titles” in the Ohio Revised Code or even in the Codified Ordinances of the City of Hilliard. *See e.g.*, R.C. 1.01 (describing section headings as headings and not titles: “Title, Chapter, and **section headings**” (emphasis added)); Codified Ordinances of Hilliard, Ohio, § 101.01 (“Code, title, chapter and **section headings** do not constitute any part of the law as contained in the Codified Ordinances.” (Emphasis added.)). The General Assembly and/or the City of Hilliard could have expressly permitted the use of section “headings” instead of a measure’s “title” to alert petition signers to the nature of a proposed measure – but neither have done so. The plain language requires the petition to contain a title for the measure. R.C. 731.31.

Notwithstanding the unambiguous requirement that a title of the proposed measure be included, it is absurd to suggest that the General Assembly could have intended for section headings to satisfy an express title requirement when the General Assembly does not itself use section headings. The Ohio General Assembly does not include section headings in its proposed measures – only a title for the proposal that precedes the body of the legislation. *E.g.*, *Stevens v.*

Ackman, 91 Ohio St.3d 182, 197, 2001-Ohio-249, 743 N.E.2d 901 (Cook, J., dissenting in part) (“ ‘In Ohio, the General Assembly does not assign official Revised Code headings, or taglines; they are written by the Publisher’s editorial staff.’ ” (Citation omitted.)).

Likewise, the City of Hilliard’s Charter distinguishes between the body of a legislative measure and the measure’s title, which precedes it. *See e.g.*, Section 2, Article III, Hilliard Charter (“Each ordinance shall contain but one subject, which shall be clearly set forth **in its title**” (emphasis added)); Section 3, Article III, Hilliard Charter (“After its introduction, a proposed ordinance * * * shall be given a first reading **by title only** * * *.” (Emphasis added)). Nowhere in the City’s Charter is the title of a legislative measure contemplated to include a culmination of multiple section headings contained throughout the measure. Therefore, neither the General Assembly, nor the City of Hilliard use the term “title” to refer to multiple section headings in legislative proposals.

Relators concede the distinction between substituting section headings in place of a measure’s title, noting that – in their opinion – section headings are preferable to a single title addressing the entire measure because “a single title [covering] the entire measure would be less informative than the section titles.” (Rel. Br. 8.) However, Relators’ preference is not codified in law and their remedy is to petition the legislature to amend the title requirement. Additionally, the flaw in Relators’ preference is that it falls apart when a proposal contains multiple sections – petition signers should be “immediately alert[ed] ... to the nature of proposed legislation” rather than forced to string together multiple section headings to discover the same. *See State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d at 597. Consequently, Relators have not and cannot cite to a single decision where multiple section headings strung together were found to satisfy the title requirement in R.C. 731.31 with which strict compliance is required.

Because R.C. 731.31 plainly requires a proposed measure to have a title and the Petition fails to meet this requirement, Relators lack a clear legal right to the extraordinary relief they seek. The writ must be denied.

B. The Petition Fails to Properly and Immediately Alert Petition Signers to Its Full Nature.

The Petition is fatally flawed for the additional reason that it fails to properly and immediately alert petition signers to its full nature. *State ex rel. Cody v. Stahl*, 8th Dist. Cuyahoga No. 83037, 2003-Ohio-6180, ¶ 15 relying on *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d 595, 575 N.E.2d 835 (1991). Nowhere on the face of the Petition is there any indication of what the proposed amendment to the City’s Charter entails – whether the amendment contemplates changing provisions within existing law, repealing existing law or enacting new law. *See Black’s Law Dictionary* 81 (7th Ed.1999) (defining “amendment” as “[a] change made by addition, deletion, or correction; an alteration in wording.”). Nor is there any formatting to connote the type of amendment being proposed, such as underlining or highlighting new text being proposed to be inserted into the Charter. Rather, the Petition merely states that the measure is a “proposed amendment” to the Charter:

We, the undersigned electors of the City of Hilliard, Ohio respectfully petition the legislative authority to forthwith provide by Ordinance, for the submission to the electors of said city or village, the following proposed amendment to the Charter of said city or village to-wit:

ARTICLE XII, SECTION 12.09 – REFERENDUM AND EFFECTIVE DATE ON ZONING ORDINANCES

Notwithstanding any other provision...

(Gap in space and emphasis in original.) (Resp’t Evidence Ex. 1.) Consequently, the only way for a petition signer to know that the two sections set forth in the Petition are entirely new, would be to compare the existing Charter’s Article XII with the Petition’s “proposed amendment”.

To be sure, City Council – of which Relator Carrier is a member – sets forth the title of proposed measures separate and apart from the text and any section headings, for example:

Ordinance No. 14-32

ENACTING CHAPTER 753 OF THE CITY’S CODIFIED ORDINANCES **TO REGULATE AND PERMIT** MOBILE FOOD VENDING UNITS IN THE CITY.

Ordinance No. 14-29

REPEALING ALL CHAPTERS CONTAINED IN PART ELEVEN – ‘PLANNING AND ZONING CODE’ OF THE CITY’S CODIFIED ORDINANCES AND **ENACTING** A NEW PART ELEVEN – ‘PLANNING AND ZONING CODE’, AND ALL CHAPTERS CONTAINED THEREIN, WHICH SHALL BECOME A PART OF THE CITY’S CODIFIED ORDINANCES; AND **ADOPTING** A NEW OFFICIAL ZONING MAP FOR THE CITY; AND **ADOPTING** A DEVELOPMENT HANDBOOK.

Ordinance No. 14-23

AMENDING CHAPTER 917 WEEDS OF THE CITY’S CODIFIED ORDINANCES **TO ESTABLISH** DEFINITIONS AND **TO MODIFY** NOTICE REQUIREMENTS.

(Bold emphasis added.) (Resp’t Evidence Exs. 16-18.) As the above examples demonstrate, a measure’s title immediately indicates whether the proposed amendment “enacts”, “repeals”, “modifies”, “establishes” or “adopts” provisions within the measure. Indeed, the Charter requires that these titles – and not some list of subheadings – be read into the record at the first reading for all proposed new ordinances. Article III, Section 3, Hilliard City Charter (“After its introduction, a proposed ordinance * * * shall be given a first reading by title only by the Clerk of Council.”). This is precisely the title that is missing from the Petition and that is necessary to “immediately alert[] signers to the nature of proposed legislation” in the Petition. *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d at 597.

Moreover, as Relators must concede, there is no language that precedes the body of the proposed amendment's text that in any way addresses Article XII, Section 12.10 of the amendment. As such, *State ex rel. Hazel v. Cuyahoga Cty. Bd. of Elections*, though distinguishable, supports denial of the writ. In *Hazel*, a proposed ordinance contained the following prefatory language for an amendment to a single section of the building code:

PART FIFTEEN – BUILDING CODE be Amended by adding the following section thereto:

CHAPTER 1529. General Building Regulations.

(1529.44) Penal Facilities Acquisition/Construction/Regulation

(A.) The City of Parma, Ohio may establish, erect, maintain and regulate a jail * * *.

(Bold emphasis added.) *State ex rel. Hazel v. Cuyahoga Cty. Bd. of Elections*, 80 Ohio St.3d 165, 165, 1997-Ohio-129, 685 N.E.2d 224. Unlike here, the petition in *Hazel* contained a title that precedes the only section being amended and immediately alerted the petition signers to the fact that the proposal sought to add one section to the city's Code of Ordinances. *Id.* Thus, Relators have not and cannot rely on *Hazel* to somehow concoct a title from their Petition because no such prefatory language exists that addresses all of the sections within the proposal.

Because the Petition lacks a title of the proposed measure as required, "City Council had no duty to submit the proposed charter amendment to the electors because the applicable statutory requirements were not all met." *State ex rel. Becker v. City of Eastlake*, 93 Ohio St.3d at 507. The writ should be denied.

C. A Measure's Title Provides Immediate Information About the Object of a Measure that Even This Court Relies Upon to Determine Legislative Intent.

Particularly where, as here, a measure contains more than one section, the measure's title permits a petition signer to immediately be informed of the nature and purpose of a proposal

without being forced to discover the same by reading the full text. In affirming a similar title requirement for initiated measures, the Supreme Court of Michigan explained that a measure's title contains the object of a proposed law – which like Ohio, precedes the body of an act – and provides necessary information immediately available at the outset of the proposal. *Leninger v. Secretary of State*, 316 Mich. 644, 649, 26 N.W.2d 348 (1947) (holding that lack of a title was fatal defect in an initiative petition). The Court explained that more so than the body of a proposed measure, the title helps ensure that the measure is fully understood, that its design is fairly portrayed, and the scope of the provisions that are germane to the proposal's object. *Id.* Where there are multiple sections, a title also helps immediately disclose whether a proposal violates the single-subject rule. *Id.* at 648 (recognizing that a title is essential because it assists in identifying violations of the single-subject rule). The Court concluded that these benefits supported the purpose of the title requirement which is “**not accomplished by the mere fact that the object of the law may be discovered by a reading of the body of the act.**” (Emphasis added.) *Id.* at 649-50.

Indeed, even this Court utilizes a measure's title to glean the intent or purpose of a particular legislative enactment. *See e.g., Columbus Bldg. & Constr. Trades Council v. Moyer*, 163 Ohio St. 189, 200, 126 N.E.2d 429 (1955) (construing the title of a House Bill to consist of the text preceding the body of the act “to amend Section 2364 and to enact supplemental Sections 2314-1 and 2314-2 of the General Code, to provide for * * *” and using the title to determine the bill's purpose).

This Court should decline Relators' invitation to erode the title requirement in R.C. 731.31 by permitting future petitioners to force petition signers to string together multiple section headings to uncover the object or purpose of a legislative proposal.

D. R.C. 731.31 Applies to the Petition.

Relators do not dispute that the form of the Petition is governed by R.C. 731.31.¹ Indeed, “[p]ortions of pertinent statutes that do not conflict with the Ohio Constitution and the city charter apply.” *State ex rel. Becker v. City of Eastlake*, 93 Ohio St.3d 502, 506, 756 N.E.2d 1228 (2001) (holding that failure to include title in petition to initiate charter amendment was fatal under R.C. 731.31) (citing *Morris v. City Council of Macedonia*, 71 Ohio St.3d 52, 641 N.E.2d 1075 (1994) and holding that failure to include title in petition to initiate charter amendment was fatal under R.C. 731.31).

Hilliard’s Charter expressly incorporates R.C. Sections 731.28 through 731.40 into its initiative and referendum procedures. Section 8, Article III of Hilliard Charter (“Initiative and Referendum. Except as otherwise provided in this Charter, ordinances may be submitted to popular vote through the initiative and referendum under the procedure set forth in Sections 731.28 to 731.40 of the Revised Code of Ohio, as now exist or as hereafter amended.”). Additionally, procedures under state law are incorporated as default procedures in the Charter unless the state’s procedures conflict with Hilliard’s specific procedure. Section 3, Article I of Hilliard Charter (“If no procedure is established either by the Charter or by ordinance, then that provided by general state law shall be followed until the Council shall provide a different procedure by ordinance.”). Because the procedures set forth in R.C. 731.31 are incorporated into the Charter’s petition procedures and do not otherwise conflict with Hilliard’s adopted petition procedure, R.C. 731.31 must be applied to Relators’ Petition.

¹ R.C. 731.31 applies unless it is expressly displaced or it conflicts with a different requirement in a municipality’s Charter, which does not exist here. R.C. 731.41 (“Sections 731.28 to 731.41, inclusive, of the Revised Code do not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative measures.”).

Relators have not and cannot argue that R.C. 731.31 does not apply to the Petition. The very petition forms used by Relators, which are prescribed by the Ohio Secretary of State, put Relators on notice that the form of the Petition was governed by R.C. 731.31. (Resp't Evidence Ex. 1.)

Additionally, any notion that Ohio's statutory election procedures do not govern the Petition is belied by Relators' conduct. Consistent with R.C. 731.32, a certified, pre-circulation copy of proposed charter amendment was filed with the Clerk of Council on September 28, 2015. (Resp't Evidence Ex. 2.) Respondent's submitted a check in the amount of \$12.50 for the express purpose to comply with R.C. 3513.10(B)(2). (*Id.*) Each part petition Relators used contained the red-lettered Notice required under R.C. 731.33 and a circulator statement that was executed pursuant to R.C. 3501.38(E). (Resp't Evidence Ex. 1.) Any claim that the statutory procedures do not somehow apply is contrary to law, contradicted by Relators' own Petition form, and undermined by Relators own actions.

Accordingly, "City Council had no duty to submit the proposed charter amendment to the electors because the applicable statutory requirements were not all met." *State ex rel. Becker v. City of Eastlake*, 93 Ohio St.3d at 507. The writ should be denied.

III. Relators Have No Clear Legal Right and Respondent Has No Clear Legal Duty to Approve a Petition that Could Have Substantially Misled Signers of the Petition.

The Petition contains an additional fatal defect in that Relators' intentional alteration to the Secretary of State's prescribed petition form for charter amendment's was misleading. "The language of an initiative petition must avoid misleading electors." *State ex rel. Bay Citizens for Safety v. City Council of Bay Vill.*, 8th Dist. Cuyahoga No. 91889, 2008-Ohio-4225, ¶ 6 citing *State ex rel. Hackworth v. Hughes*, 97 Ohio St.3d 110, 776 N.E.2d 1050, 2002-Ohio-5334 (holding that proposed charter amendment violated R.C. 731.31 because petition's formatting

was misleading). Thus, petitions “ought to be free from any misleading tendency.” *State ex rel. Bay Citizens for Safety v. City Council of Bay Vill.*, 2008-Ohio-4225, ¶ 6 quoting *Markus v. Trumbull Cty. Bd. of Elections*, 22 Ohio St.2d 197, 203, 259 N.E.2d 501 (1970). Therefore, it is within the discretion of City Council to refuse to submit an initiative petition to a county board of elections that contains misleading tendencies in the form of the petition. *Id.* at ¶ 7.

Here, Relators intentionally interjected the endorsement of a “Keep Hilliard Beautiful Committee” just above where electors were asked to sign on the second page of every single part petition. (Resp’t Evidence Ex. 1.) Not only does the Secretary of State’s petition form not permit such endorsement, but Relator Lambert admitted during the December 7 hearing that there was no such committee in existence **at the time the Petition was circulated:**

Vice President McGivern: Okay. I just had a question about what’s the name of the organization that you are part of that are pushing the changes?

Mr. Lambert: It’s to enact these changes to the City Charter.

Vice President McGivern: Do you have a committee name?

Mr. Lambert: **I don’t think it’s been formally established yet.**

Vice President McGivern: Oh, okay. I thought it was something like Keep Hilliard Beautiful or something like that. I can’t remember.

Mr. Lambert: **Yes. That was the working title [on the] petition, I believe.**

(Emphasis added.) (Resp’t Evidence Ex. 14, at 6-7.)

Additionally, as Councilwoman McGivern explained, on its face, adding the endorsement of “Keep Hilliard Beautiful” is misleading where the measure actually imposes a mandatory sixty-day delay on the effective date of certain ordinances and prohibits the City from using state-authorized financing to construct public infrastructure improvements for certain residential

improvements and has nothing to do with any beautification project at all. (*Id.*) The true purpose of the amendment is to discourage residential development so that the school board and other city services can enjoy the revenue from income tax of people who work in Hilliard, but do not live in the City. (Resp't Evidence Ex. 9 (“[I]t’s actually economically advantageous to have the employers in Hilliard and their employees living somewhere else. We get the income tax revenue while other cities get the burden of providing schools and services.”))

Subsequently, during the third reading on the Ordinance, a citizen wrote that he was misled at the time he signed the petition, stating that “[k]nowing what I know now, I would not have signed the petition and will not support its passage.” (Resp't Evidence Ex. 12.)

Petitioners who alter the prescribed petition form to include some purported endorsement of a group do so at their peril. “Submission of initiative petitions may be enjoined when the language contained in the petitions ‘**could have** substantially misled those persons who signed them.’ A showing of actual detrimental reliance is unnecessary.” (Emphasis added.) *City of Macedonia v. Summit Cty. Bd. of Elections*, 9th Dist. Summit No. 12860, 1986 Ohio App. LEXIS 9645, *5-6 (Nov. 26, 1986) quoting *Markus v. Bd. of Elections*, 22 Ohio St. 2d 197, 200 (1970). *Accord Shelly & Sands, Inc. v. Franklin Cty. Bd. of Elections*, 12 Ohio St.3d 140, 141, 465 N.E.2d 883 (1984) (petitions cannot mislead, contain inaccuracies or material omissions which confuse the average person). Particularly whereas here, the purported group did not exist and the name does not fairly represent the proposed issue. Were such practice permissible, future petition forms could bear endorsements such as “Citizens for Security Against ISIS” or “Citizens for Lower Taxes” that have no direct correlation to the actual measure being proposed, but is intentionally added to the form right where signers are asked to sign so that electors are more likely to sign the petition. This overt misrepresentation is misleading and constitutes a

direct or indirect willful misrepresentation of the proposed measure's contents in violation of R.C. 731.36.

It was within Council's discretion to invalidate the Petition on its misleading grounds alone. *State ex rel. Bay Citizens for Safety v. City Council of Bay Vill.*, 2008-Ohio-4225, ¶ 7. When the legal right is doubtful, mandamus may not rightfully issue. *State ex rel. Gerspacher v. Coffinberry*, 157 Ohio St. 32, 37, 104 N.E.2d 1 (1952). Because Relators' have no clear legal right to place a misleading petition's proposal on the ballot, Relators' requested extraordinary relief must be denied.²

IV. Relators Unreasonably Delayed in Bringing This Action; the Doctrine of Laches Bars Relators' Claim.

The Ohio Supreme Court has "consistently required relators in election cases to act with the **utmost diligence**." (Emphasis added.) *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382, ¶ 19; *See also State ex rel. Bona v. Vill. of Orange*, 85 Ohio St.3d 18, 20, 706 N.E.2d 771 (1999) (noting that **extreme diligence and promptness** are required in election matters). Where relators do not exercise this extreme and utmost diligence, laches may bar the action. *State ex rel. Craig v. Scioto Cty. Bd. of Elections*, 117 Ohio St.3d 158, 2008-Ohio-706, 882 N.E.2d 435, ¶ 11. This Court has also noted that the consistent requirement that expedited election cases be filed with extreme promptness "is not simply a technical nicety." *State ex rel. Carberry v. Ashtabula*, 93 Ohio St.3d 522, 524, 757 N.E.2d 307 (2001). Relators, and not respondents, have the burden of establishing that they acted with the requisite diligence. *See State ex rel. Manos v. Delaware Cty. Bd. of Elections*, 83 Ohio St.3d 562, 564, 701 N.E.2d 371 (1998).

² Relators' requested relief fails for the additional reason that Relators' have an adequate remedy at law. While the Petition is invalid, Relators are permitted as a matter of law to re-circulate another petition that cures the Petition's defects.

“The elements of laches are (1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party.” *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995). Here all of the elements of laches are present due to the eight day delay of the Relators. The Relators took eight days to file their eight-page complaint when Relators acknowledged the very next day in the media that they would challenge City Council’s decision. *See Corvo, supra* at 7.

Relators were most certainly aware that it was this delay that actually triggered the expedited schedule under S.Ct. Prac. R. X(9). The application of the expedited schedule has prejudiced the Respondents as Relators served their Merit Brief and Evidence on Respondents on December 24, indicating that the same was submitted to the Court on December 24. *See e.g., State ex rel. Willke v. Taft*, 107 Ohio St. 3d 1, 2005-Ohio-5303, 836 N.E.2d 536, ¶ 18 (“Normally, this prejudice in expedited election cases occurs because relators’ delay prejudices respondents by making the case an expedited election case under S.Ct.Prac.R. X(9), which ***restricts respondents’ time to prepare and defend against relators’ claims * * ****.” (Emphasis added.)). Relators’ delay has caused the exact prejudice referenced in *Willke*. Thus, this Court has held that a delay of nine days was sufficient to trigger the application of laches. *See State ex rel. Landis v. Morrow Cty. Bd. of Elections*, 88 Ohio St.3d 187, 189, 724 N.E.2d 775 (2000); *see also State ex rel. Fishman v. Lucas Cty. Bd. of Elections*, 116 Ohio St.3d 19, 2007-Ohio-5583, 876 N.E.2d 517 (laches barred relator’s prohibition action for delaying 16 days); *State ex rel. Ryant Comm. v. Lorain Cty. Bd. of Elections*, 86 Ohio St. 3d 107, 113, 712 N.E.2d 696 (1999) (extraordinary relief barred by laches where relators engaged in “gamesmanship” which prejudiced electors); *State ex rel. Vickers v. Summit Cty. Council*, 97 Ohio St.3d 204, 2002-Ohio-

5583, 777 N.E.2d 830 (19-day delay to file expedited election action constituted laches, which barred relators' claim).

Relators have failed to demonstrate the reasonableness in or justification for their delay. The doctrine of laches should bar their claim.

CONCLUSION

For the above reasons, Relators' failure to comply with applicable election laws invalidates the Petition. Relators failed to prove by clear and convincing evidence that any fraud, corruption or gross abuse of discretion occurred. Accordingly, Relators have no clear legal right to place the invalid measure on the ballot, nor does the City Council of Hilliard, Ohio have a clear legal duty to take any further action on the invalid measure. Relators' requested extraordinary relief should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Merit Brief of Respondent Hilliard City Council* was served via e-mail pursuant to S.Ct.Prac.R. 12.08(C) on this 28th day of December 2015, upon the following:

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IN THE SUPREME COURT OF OHIO

STATE EX REL. LES CARRIER, et al.,	:	
	:	Case No. 2015-2061
Relators,	:	
	:	ORIGINAL ACTION IN MANDAMUS
v.	:	
	:	EXPEDITED ELECTIONS MATTER
HILLIARD CITY COUNCIL,	:	PURSUANT TO S. CT. R. PRAC. 12.08
	:	
Respondent.	:	

**APPENDIX TO MERIT BRIEF OF
RESPONDENT HILLIARD CITY COUNCIL**

<u>APPENDIX</u>	<u>PAGE</u>
A. Ohio Constitution Art. XVIII, Sec. 9	2
B. Ohio Revised Code Sections	4
• R.C 1.01	
• R.C. 731.28	
• R.C. 731.31	
• R.C. 731.32	
• R.C. 731.33	
• R.C. 731.35	
• R.C. 731.36	
• R.C. 731.41	
• R.C. 3501.38	
• R.C. 3513.10	
C. Hilliard City Charter	19
D. Codified Ordinances of Hilliard, Ohio, Sec. 101.01	37

APPENDIX A

OHIO CONSTITUTION ART. XVIII, SEC. 9

Oh. Const. Art. XVIII, § 9

Current through 2015 Ohio Issues 1 and 2

Page's Ohio Revised Code Annotated > *CONSTITUTION OF THE STATE OF OHIO* > *Article XVIII MUNICIPAL CORPORATIONS*

§ 9 Amendments to charter; submission; approval.

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.

History

Amended January 1, 1971.

Page's Ohio Revised Code Annotated

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APPENDIX B

OHIO REVISED CODE SECTIONS

ORC Ann. 1.01

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 31 (HB 244).

Page's Ohio Revised Code Annotated > *Ohio Revised Code General Provisions* > *Chapter 1: Definitions; Rules of Construction*

§ 1.01 “Revised Code”.

All statutes of a permanent and general nature of the state as revised and consolidated into general provisions, titles, chapters, and sections shall be known and designated as the “Revised Code,” for which designation “R.C.” may be substituted. Except as otherwise provided in [*section 1301.107 of the Revised Code*](#), Title, Chapter, and section headings and marginal General Code section numbers do not constitute any part of the law as contained in the “Revised Code.”

The enactment of the Revised Code shall not be construed to affect a right or liability accrued or incurred under any section of the General Code prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in violation of any section of the General Code, nor to affect an indictment or prosecution therefor. For such purposes, any such section of the General Code shall continue in full force notwithstanding its repeal for the purpose of revision.

History

Bureau of Code Revision. Eff 10-1-53; [*2011 HB 9*](#), § 1, eff. June 29, 2011.

Page's Ohio Revised Code Annotated

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[ORC Ann. 731.28](#)

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 31 (HB 244).

[Page's Ohio Revised Code Annotated](#) > [Title 7: Municipal Corporations](#) > [Chapter 731: Organization](#)
> [Initiative and Referendum](#)

§ 731.28 Ordinances and measures proposed by initiative petition.

Ordinances and other measures providing for the exercise of any powers of government granted by the constitution or delegated to any municipal corporation by the general assembly may be proposed by initiative petition. Such initiative petition must contain the signatures of not less than ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in the municipal corporation.

When a petition is filed with the city auditor or village clerk, signed by the required number of electors proposing an ordinance or other measure, such auditor or clerk shall, after ten days, transmit a certified copy of the text of the proposed ordinance or measure to the board of elections. The auditor or clerk shall transmit the petition to the board 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 municipal corporation who signed the petition. The board shall return the petition to the auditor or clerk within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition.

The board shall submit such proposed ordinance or measure for the approval or rejection of the electors of the municipal corporation at the next general election occurring subsequent to ninety days after the auditor or clerk certifies the sufficiency and validity of the initiative petition to the board of elections. No ordinance or other measure proposed by initiative petition and approved by a majority of the electors voting upon the measure in such municipal corporation shall be subject to the veto of the mayor.

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

History

GC § 4227-1; 102 v 521; 103 v 211; 104 v 238; Bureau of Code Revision, 10-1-53; 125 v S 242 (Eff 1-1-54); 126 v 205 (Eff 1-1-56); 138 v H 1062 (Eff 3-23-81); [144 v H 192](#) (Eff 10-10-91); [146 v H 99](#). Eff 8-22-95; 153 v H 48, § 1, eff. 7-2-10.

Page's Ohio Revised Code Annotated

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[ORC Ann. 731.31](#)

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 31 (HB 244).

[Page's Ohio Revised Code Annotated](#) > [Title 7: Municipal Corporations](#) > [Chapter 731: Organization](#)
> [Initiative and Referendum](#)

§ 731.31 Presentation of petition.

Any initiative or referendum petition may be presented in separate parts, but each part of any initiative petition shall contain a full and correct copy of the title and text of the proposed ordinance or other measure, and each part of any referendum petition shall contain the number and a full and correct copy of the title of the ordinance or other measure sought to be referred. Each signer of any such petition must be an elector of the municipal corporation in which the election, upon the ordinance or measure proposed by such initiative petition, or the ordinance or measure referred to by such referendum petition, is to be held. Petitions shall be governed in all other respects by the rules set forth in [section 3501.38 of the Revised Code](#). In determining the validity of any such petition, all signatures which 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 by this section.

The petitions and signatures upon such petitions shall be prima facie presumed to be in all respects sufficient. No ordinance or other measure submitted to the electors of any municipal corporation, and receiving an affirmative majority of the 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 the rejection, by a majority of the votes cast thereon, of any ordinance or other measure submitted to the electors of such municipal corporation, 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 on the fifth day after the day on which the board of elections certifies the official vote on such question.

History

GC § 4227-4; 102 v 521, § 4; 103 v 211; 115 v 214; Bureau of Code Revision, 10-1-53; 125 v S 242 (Eff 1-1-54); 138 v H 1062. Eff 3-23-81.

Page's Ohio Revised Code Annotated

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[ORC Ann. 731.32](#)

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 31 (HB 244).

[Page's Ohio Revised Code Annotated](#) > [Title 7: Municipal Corporations](#) > [Chapter 731: Organization](#)
> [Initiative and Referendum](#)

§ 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.

History

GC § 4227-6; 104 v 238; Bureau of Code Revision, Eff 10-1-53; [144 v H 192](#). Eff 10-10-91.

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ORC Ann. 731.33

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 31 (HB 244).

Page's Ohio Revised Code Annotated > *Title 7: Municipal Corporations* > *Chapter 731: Organization*
> *Initiative and Referendum*

§ 731.33 Words which shall be printed in red.

At the top of each part of the petition mentioned in [section 731.32 of the Revised Code](#), the following words shall be printed in red:

Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution.

History

GC § 4227-7; 104 v 238; Bureau of Code Revision. Eff 10-1-53.

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ORC Ann. 731.35

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 31 (HB 244).

Page's Ohio Revised Code Annotated > *Title 7: Municipal Corporations* > *Chapter 731: Organization*
> *Initiative and Referendum*

§ 731.35 Itemized statement by circulator of petition.

- (A) The circulator of an initiative or referendum petition, or his agent, shall, within five days after such petition is filed with the city auditor or village clerk, file an itemized statement, made under penalty of election falsification, showing in detail:
 - (1) All moneys or things of value paid, given, or promised for circulating such petition;
 - (2) Full names and addresses of all persons to whom such payments or promises were made;
 - (3) Full names and addresses of all persons who contributed anything of value to be used in circulating such petitions;
 - (4) Time spent and salaries earned while circulating or soliciting signatures to petitions by persons who were regular salaried employees of some person who authorized them to solicit signatures for or circulate the petition as a part of their regular duties.
- (B) The statement provided for in division (A) of this section shall not be required from persons who take no other part in circulating a petition than signing declarations to parts of the petition and soliciting signatures to them.
- (C) Such statement shall be open to public inspection for a period of one year.

History

GC § 4227-9; 104 v 238; Bureau of Code Revision, 10-1-53; 138 v H 1062. Eff 3-23-81.

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[ORC Ann. 731.36](#)

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 31 (HB 244).

[Page's Ohio Revised Code Annotated](#) > [Title 7: Municipal Corporations](#) > [Chapter 731: Organization](#)
> [Initiative and Referendum](#)

§ 731.36 Prohibited practices relative to petitions.

No person shall, directly or indirectly:

- (A) Willfully misrepresent the contents of any initiative or referendum petition;
- (B) Pay or offer to pay any elector anything of value for signing an initiative or referendum petition;
- (C) Promise to help another person to obtain appointment to any office provided for by the constitution or laws of this state or by the ordinances of any municipal corporation, or to any position or employment in the service of the state or any political subdivision thereof as a consideration for obtaining signatures to an initiative or referendum petition;
- (D) Obtain signatures to any initiative or referendum petition as a consideration for the assistance or promise of assistance of another person in securing an appointment to any office or position provided for by the constitution or laws of this state or by the ordinance of any municipal corporation therein, or employment in the service of the state or any subdivision thereof;
- (E) Alter, add to, or erase any signatures or names on the parts of a petition after such parts have been filed with the city auditor or village clerk;
- (F) Fail to file the sworn itemized statement required in [section 731.35 of the Revised Code](#).

History

GC § 4227-10; 104 v 238; 106 v 443; Bureau of Code Revision. Eff 10-1-53.

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ORC Ann. 731.41

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 31 (HB 244).

Page's Ohio Revised Code Annotated > *Title 7: Municipal Corporations* > *Chapter 731: Organization*
> *Initiative and Referendum*

§ 731.41 Charter municipal corporations.

Sections 731.28 to 731.41, inclusive, of the Revised Code do not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative measures.

History

GC § 4227-12; 104 v 238; Bureau of Code Revision. Eff 10-1-53.

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[ORC Ann. 3501.38](#)

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 31 (HB 244).

[Page's Ohio Revised Code Annotated](#) > [Title 35: Elections](#) > [Chapter 3501: Election Procedure; Election Officials](#) > [Polling Places](#)

§ 3501.38 Declaration of candidacy, nominating petition, and other petition requirements; withdrawal of declaration of candidacy or petition.

All declarations of candidacy, nominating petitions, or other petitions presented to or filed with the secretary of state or a board of elections or with any other public office for the purpose of becoming a candidate for any nomination or office or for the holding of an election on any issue shall, in addition to meeting the other specific requirements prescribed in the sections of the Revised Code relating to them, be governed by the following rules:

- (A) Only electors qualified to vote on the candidacy or issue which is the subject of the petition shall sign a petition. Each signer shall be a registered elector pursuant to [section 3503.01 of the Revised Code](#). The facts of qualification shall be determined as of the date when the petition is filed.
- (B) Signatures shall be affixed in ink. Each signer may also print the signer's name, so as to clearly identify the signer's signature.
- (C) Each signer shall place on the petition after the signer's name the date of signing and the location of the signer's voting residence, including the street and number if in a municipal corporation or the rural route number, post office address, or township if outside a municipal corporation. The voting address given on the petition shall be the address appearing in the registration records at the board of elections.
- (D) Except as otherwise provided in [section 3501.382 of the Revised Code](#), no person shall write any name other than the person's own on any petition. Except as otherwise provided in [section 3501.382 of the Revised Code](#), no person may authorize another to sign for the person. If a petition contains the signature of an elector two or more times, only the first signature shall be counted.
- (E)
 - (1) On each petition paper, the circulator shall indicate the number of signatures contained on it, and shall sign a statement made under penalty of election falsification that the circulator witnessed the affixing of every signature, that all signers were to the best of the circulator's knowledge and belief qualified to sign, and that every signature is to the best of the circulator's knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to [section 3501.382 of the Revised Code](#). On the circulator's statement for a declaration of candidacy or nominating petition for a person seeking to become a statewide candidate or for a statewide initiative or a statewide referendum petition, the circulator shall identify the circulator's name, the address of the circulator's permanent residence, and the name and address of the person employing the circulator to circulate the petition, if any.

- (2) As used in division (E) of this section, “statewide candidate” means the joint candidates for the offices of governor and lieutenant governor or a candidate for the office of secretary of state, auditor of state, treasurer of state, or attorney general.
- (F) Except as otherwise provided in [section 3501.382 of the Revised Code](#), if a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than the person’s own on a petition paper, that petition paper is invalid; otherwise, the signature of a person not qualified to sign shall be rejected but shall not invalidate the other valid signatures on the paper.
- (G) The circulator of a petition may, before filing it in a public office, strike from it any signature the circulator does not wish to present as a part of the petition.
- (H) Any signer of a petition or an attorney in fact acting pursuant to [section 3501.382 of the Revised Code](#) on behalf of a signer may remove the signer’s signature from that petition at any time before the petition is filed in a public office by striking the signer’s name from the petition; no signature may be removed after the petition is filed in any public office.
- (I)
- (1) No alterations, corrections, or additions may be made to a petition after it is filed in a public office.
- (2)
- (a) No declaration of candidacy, nominating petition, or other petition for the purpose of becoming a candidate may be withdrawn after it is filed in a public office. Nothing in this division prohibits a person from withdrawing as a candidate as otherwise provided by law.
- (b) No petition presented to or filed with the secretary of state, a board of elections, or any other public office for the purpose of the holding of an election on any question or issue may be resubmitted after it is withdrawn from a public office or rejected as containing insufficient signatures. Nothing in this division prevents a question or issue petition from being withdrawn by the filing of a written notice of the withdrawal by a majority of the members of the petitioning committee with the same public office with which the petition was filed prior to the sixtieth day before the election at which the question or issue is scheduled to appear on the ballot.
- (J) All declarations of candidacy, nominating petitions, or other petitions under this section shall be accompanied by the following statement in boldface capital letters: **WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.**
- (K) All separate petition papers shall be filed at the same time, as one instrument.
- (L) If a board of elections distributes for use a petition form for a declaration of candidacy, nominating petition, or any type of question or issue petition that does not satisfy the requirements of law as of the date of that distribution, the board shall not invalidate the petition on the basis that the petition form does not satisfy the requirements of law, if the petition otherwise is valid. Division (L) of this section applies only if the candidate received the petition from the board within ninety days of when the petition is required to be filed.

History

130 v 822 (Eff 1-1-64); 135 v H 662 (Eff 9-27-74); 137 v S 125 (Eff 5-27-77); 138 v H 1062 (Eff 3-23-81); 141 v H 555 (Eff 2-26-86); 141 v H 524 (Eff 3-17-87); 143 v H 7 (Eff 9-15-89); [149 v H 5](#) (Eff 8-28-2001); [149 v H 445](#). Eff 12-23-2002; [150 v H 86](#), § 1, eff. 11-13-03; 150 v H 1, § 1, eff. 3-31-05; [151 v H 3](#), § 1, eff. 5-2-06; [151 v H 312](#), § 1, eff. 8-22-06; [2013 SB 47](#), § 1, eff. June 21, 2013.

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[ORC Ann. 3513.10](#)

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 31 (HB 244).

Page's Ohio Revised Code Annotated > Title 35: Elections > Chapter 3513: Primaries; Nominations

§ 3513.10 Filing fees for candidates and persons proposing ballot question or issue.

(A) At the time of filing a declaration of candidacy for nomination for any office, or a declaration of intent to be a write-in candidate, each candidate, except joint candidates for governor and lieutenant governor, shall pay a fee as follows:

For statewide office	\$100
For court of appeals judge	\$ 50
For court of common pleas judge	\$ 50
For county court judge	\$ 50
For municipal court judge	\$ 50
For district office, including member of the United States house of representatives and member of the general assembly	\$ 50
For county office	\$ 50
For city office	\$ 20
For village office	\$ 10
For township office	\$ 10
For member of state board of education	\$ 20
For member of local, city, or exempted village board of education or educational service center governing board	\$ 10

At the time of filing a declaration of candidacy or a declaration of intent to be a write-in candidate for the offices of governor and lieutenant governor, the joint candidates shall jointly pay to the secretary of state a fee of one hundred dollars.

(B)

(1) At the same time the fee required under division (A) of this section is paid, each candidate shall pay an additional fee as follows:

For the joint candidates for governor and lieutenant governor	\$ 50
For statewide office	\$ 50
For district office, including member of the	

United States house of representatives and member of the general assembly	\$ 35
For member of state board of education	\$ 35
For court of appeals judge	\$ 30
For court of common pleas judge	\$ 30
For county court judge	\$ 30
For municipal court judge	\$ 30
For county office	\$ 30
For city office	\$ 25
For village office	\$ 20
For township office	\$ 20
For member of local, city, or exempted village board of education or educational service center governing board	\$ 20

- (2)** Whoever seeks to propose a ballot question or issue to be submitted to the electors shall pay the following fee at the time the petition proposing the question or issue is filed:
- (a)** If the question or issue is to be submitted to the electors throughout the entire state, twenty-five dollars;
 - (b)** If the question or issue is to be submitted to the electors of a county or of a district that consists of all or part of two or more counties but less than the entire state, fifteen dollars;
 - (c)** If the question or issue is to be submitted to the electors of a city, twelve dollars and fifty cents;
 - (d)** If the question or issue is to be submitted to the electors of a village, a township, a local, city, county, or exempted village school district, a precinct, or another district consisting of less than an entire county, ten dollars.
- (C)** No fee shall be required of candidates filing for the office of delegate or alternate to the national convention of political parties, member of the state central committee of a political party, or member of the county central committee of a political party.
- (D)** All fees required under division (A) of this section immediately shall be paid by the officer receiving them into the state treasury to the credit of the general revenue fund, in the case of fees received by the secretary of state, and into the county treasury to the credit of the county general fund, in the case of fees received by a board of elections.

- (E) The officer who receives a fee required under division (B) of this section immediately shall pay the fee to the credit of the Ohio elections commission fund created by division (I) of [section 3517.152 of the Revised Code](#).
- (F)
- (1) In no case shall a fee paid under this section be returned to a candidate.
 - (2) Whenever a section of law refers to a filing fee to be paid by a candidate or by a committee proposing a ballot question or issue to be submitted to the electors, that fee includes the fees required under divisions (A) and (B) of this section.
- (G) As used in divisions (A) and (B) of this section, “statewide office” means the office of secretary of state, auditor of state, treasurer of state, attorney general, justice and chief justice of the supreme court, and member of the United States senate.

History

GC § 4785-73; 113 v 307(340), § 73; 117 v 494; 123 v 380; Bureau of Code Revision, 10-1-53; 125 v 713(776) (Eff 1-1-54); 133 v S 17 (Eff 10-30-69); 137 v S 115 (Eff 3-10-78); 143 v H 36 (Eff 1-1-90); [144 v S 8](#) (Eff 5-21-91); [146 v H 117](#) (Eff 9-29-95); [146 v S 9](#). Eff 8-24-95; 150 v H 1, § 1, eff. 3-31-05.

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APPENDIX C
HILLIARD CITY CHARTER

RETURN ADDRESS

****NEED TO ROTATE****

**Council Clerk's Office
City of Hilliard
3800 Municipal Way
Hilliard, Ohio 43026**

**A CHARTER
FOR THE
CITY OF HILLIARD,
OHIO**

****NEED TO ROTATE****

**Presort Std.
US Postage
PAID
Hilliard, OH
Permit No. 37**

TABLE OF CONTENTS

ARTICLE I – Incorporation; Powers; Form of Government..... 1
1.01 INCORPORATION 1
1.02 POWERS..... 1
1.03 MANNER OF EXERCISE OF POWERS. 2
1.04 FORM OF GOVERNMENT 2

ARTICLE II – The Council 2
2.01 NUMBER; SELECTION; TERM 2
2.02 QUALIFICATIONS 2
2.03 INCOMPATIBLE OFFICES 2
2.04 VACANCIES 3
2.05 VACANCIES, HOW FILLED 3
2.06 SALARY OF COUNCIL MEMBERS 3
2.07 POWERS OF THE COUNCIL 3
2.08 DIVISION OF CITY INTO WARDS 4
2.09 MEETINGS OF COUNCIL 5
2.10 EXECUTIVE SESSION 5
2.11 RULES; JOURNAL 7
2.12 PRESIDENT OF COUNCIL..... 7
2.13 CLERK OF COUNCIL 8

ARTICLE III – Ordinances and Resolutions..... 8
3.01 ACTION BY COUNCIL..... 8
3.02 INTRODUCTION OF ORDINANCES 8
3.03 CONSIDERATION OF ORDINANCES 9
3.04 PASSAGE OF ORDINANCES..... 9
3.05 EMERGENCY ORDINANCES..... 9
3.06 PUBLICATION OF ORDINANCES 10
3.07 EFFECTIVE DATE OF ORDINANCES 10
3.08 INITIATIVE AND REFERENDUM 10
3.09 ADOPTION OF ORDINANCES BY REFERENCE..... 10
3.10 RESOLUTIONS..... 11
3.11 ADMINISTRATIVE CODE 11

ARTICLE IV – Mayor 12
4.01 SELECTION OF MAYOR 12
4.02 DUTIES OF MAYOR..... 12
4.03 SALARY OF MAYOR 13
4.04 ABSENCE OR DISABILITY OF MAYOR 13
4.05 VACANCY, HOW FILLED 13

January 2010

The members of Hilliard City Council
wish to express their appreciation to the members
of the Hilliard Charter Review Commission:

*Tom Baker, Neil Brown, Charles Coleman, Albert Iosue,
Nick Johnson, J.W. Kline, Amy Koncelik,
Kimberley Movshin, Dana Peacock, Todd Sarver,
Charles Schneider, Don Schonhardt and William Smith*

and to

Pam Fox, Law Director and Lynne Fasone, Council Aide

and to all others who gave their time and counsel
to conduct a comprehensive review of this Charter.

TABLE OF CONTENTS

ARTICLE V – Departments and Divisions 14
5.01 ADMINISTRATIVE DEPARTMENTS 14
5.02 DIRECTOR OF PUBLIC SERVICE 14
5.03 DIRECTOR OF FINANCE 15
5.04 DIRECTOR OF PUBLIC SAFETY 15
5.05 DIRECTOR OF LAW 15
5.06 DIRECTOR OF RECREATION AND PARKS 16
5.07 DEPARTMENT DIVISIONS 16

ARTICLE VI – Finance 16
6.01 FISCAL YEAR 16
6.02 ANNUAL TAX BUDGET 16
6.03 HEARING ON TAX BUDGET 16
6.04 TAX LEVIES 17
6.05 MUNICIPAL OPERATING BUDGET 17
6.06 ANNUAL APPROPRIATION ORDINANCE 17
6.07 EFFECT OF APPROPRIATION ORDINANCE 17
6.08 AVAILABILITY OF FUNDS 18
6.09 CAPITAL IMPROVEMENT PROGRAM AND BUDGET 18
6.10 TRANSFERS 18
6.11 PURCHASING 18
6.12 OVER-EXPENDITURES 19
6.13 COMPETITIVE BIDDING 19
6.14 FEES 19

ARTICLE VII – Borrowing 19
7.01 POWER TO BORROW 19
7.02 RESTRICTIONS ON BOND ISSUES 20

ARTICLE VIII – Personnel 20
8.01 CIVIL SERVICE 20

ARTICLE IX – Boards and Commissions 20
9.01 PLANNING AND ZONING COMMISSION 21
9.02 POWERS AND DUTIES OF THE
PLANNING AND ZONING COMMISSION 21

ARTICLE X – Nominations and Elections 22
10.01 MUNICIPAL ELECTIONS 22
10.02 NOMINATIONS 22
10.03 WATCHERS AND CHALLENGERS 22

ARTICLE XI – Recall 23
11.01 RECALL 23
11.02 FORM OF PETITION 23
11.03 ELECTION 23

ARTICLE XII – General Provisions 24
12.01 OATH OF OFFICE 24
12.02 OFFICIAL BONDS 24
12.03 PERSONAL INTEREST 24
12.04 REMOVAL FROM OFFICE 25
12.05 ENFORCEMENT OF SUBPOENAS 25
12.06 AMENDMENTS TO THE CHARTER 25
12.07 CHARTER REVIEW COMMISSION 25
12.08 ACCESS TO GOVERNMENT 25

ARTICLE XIII – Transitional Provisions 26
13.01 FISCAL SUCCESSION 26
13.02 CONTINUATION OF ORDINANCES 26
13.03 CONTINUATION OF OFFICERS 26
13.04 CONTINUATION OF EMPLOYEES 26
13.05 TRANSFER OF RECORDS AND PROPERTY 26
13.06 CONTINUATION OF CONTRACTS AND
IMPROVEMENTS 27
13.07 PENDING ACTIONS AND PROCEEDINGS 27
13.08 WHEN CHARTER TAKES EFFECT 27

**CHARTER
OF THE
CITY OF
HILLIARD, OHIO**

PREAMBLE

We, the people of Hilliard, desirous of securing for our City, and for ourselves and our children, the advantages of self-government conferred by the home rule provisions of the Ohio Constitution, do hereby ordain and establish the following Charter:

**ARTICLE I
Incorporation; Powers; Form of Government**

1.01 INCORPORATION.

The inhabitants of the City of Hilliard, in Franklin County, Ohio, within the corporate limits as now established or as hereafter established in the manner provided by law, shall be and continue to be a municipal corporation in perpetuity, under the name of "The City of Hilliard."

1.02 POWERS.

The City shall have and may exercise all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever, under the Constitution of the United States and the Constitution of the State of Ohio. The City shall have all powers which now or hereafter may be granted to municipalities by the laws of the State of Ohio. The enumeration of specific powers in this Charter shall not be deemed exclusive, as it is intended that in addition to the powers enumerated herein implied thereby, are appropriate to the exercise of such powers, the City shall have and may exercise all powers which it would be competent for this Charter specifically to enumerate.

1.03 MANNER OF EXERCISE OF POWERS.

All powers of the City shall be vested in the officers provided for in this Charter. Such powers shall be exercised in the manner prescribed by this Charter, or if the manner be not so prescribed, then in the manner prescribed by ordinance. If no procedure is established either by the Charter or by ordinance, then that provided by general state law shall be followed until the Council shall provide a different procedure by ordinance.

1.04 FORM OF GOVERNMENT.

The form of government provided by this Charter shall be known as "The Mayor-Council Plan."

**ARTICLE II
The Council**

2.01 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 members, elected for four-year overlapping terms. All members of Council shall be elected at large, and all terms shall begin on January 1 next following the November municipal election. Three members shall be elected at one municipal election, and four members shall be elected at the next municipal election.

2.02 QUALIFICATIONS.

Any person who is a registered elector in the City, who has been domiciled for one year in the City or in territory annexed thereto by the date of filing of a petition of candidacy, shall be eligible to have his or her name placed on the ballot, if his or her petition is sufficient as hereinafter provided, and to serve as a member of Council, if elected.

2.03 INCOMPATIBLE OFFICES.

No holder of an incompatible office under the national, state, or county government shall be eligible to enter upon or hold office as a Council member.

2.04 VACANCIES.

Any Council member who ceases to be a registered elector in the City, or who accepts and enters upon the performance of the duties of an incompatible office, shall automatically vacate the office as a Council member. The Council shall have power to declare vacant by resolution the seat of any Council member who shall be absent, without excuse acceptable to the Council, from as many as one third of the regular meetings of the Council in any consecutive period of six months. The Council shall have power to accept the resignation of any of its members or of any other elected officer of the City.

2.05 VACANCIES, HOW FILLED.

Any vacancy in the office of Council member shall be filled within forty-five (45) days by the selection of some suitable qualified person, by a vote of the majority of the remaining members of the Council. In the event the members of the Council fail to fill any vacancy on Council within forty-five (45) days, the President of Council shall fill any such vacancy by the appointment of a qualified elector of the City within ten (10) days. In all cases, the person so selected shall serve until the first municipal election occurring not less than one hundred (100) days thereafter, when a successor shall be chosen by the voters for the remainder of the unexpired term, if any; if not, for a full term.

2.06 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 nor as to newly elected Council members unless the ordinance is adopted prior to the election of the new Council members. 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.

2.07 POWERS OF THE COUNCIL.

All powers of the City not specifically vested in other offices by this Charter, shall be vested in the Council. Among other powers the Council shall:

- (1) Define the duties and procedures of the administrative departments created by this Charter and create such additional departments, boards, and commissions as it may deem necessary and define their duties and procedures;
- (2) Adopt and modify the master plan(s) of the City and official map(s) of the City;

- (3) Regulate the use of private real estate in the City by establishing zones, limiting the uses in each zone, and limiting the height of buildings and the intensity of land use;
- (4) Enact a subdivision platting ordinance, which ordinance may provide for platting fees;
- (5) Enact a comprehensive building code;
- (6) Adopt an appropriation ordinance and delegate its enforcement to the Mayor;
- (7) Authorize the levy of taxes and the issuance of bonds, as provided in this Charter;
- (8) Inquire into the conduct of any officer or employee of the City in the performance of the officer's or employee's public duties, and make investigations of any office, department, or agency of the City government; and for these purposes the Council shall have authority to issue subpoenas for witness testimony and require the production of books and papers;
- (9) Grant public utility franchises by ordinance, by a vote of not less than two-thirds (2/3) of the Council; no such ordinance shall be passed as an emergency ordinance;
- (10) Approve, modify, or disapprove, the recommendations of the Planning and Zoning Commission;
- (11) Create a police auxiliary, or reserve police force, if such is deemed necessary;
- (12) Appoint persons other than Clerk of Council that it deems necessary for the proper discharge of its duties.

2.08 DIVISION OF CITY INTO WARDS.

The division of the City into four wards, as exists at the time this Charter is adopted, shall continue to be the division of the City by wards, except as hereinafter provided. Within sixty (60) days after the results of each Federal Decennial Census are proclaimed by the Secretary of State, the Council shall redivide the wards of the City which shall be as nearly equal in population as possible, each composed of contiguous and compact territory bounded by natural boundaries or street lines. If the results of the federal decennial census reflect an increase in the overall population of the City by at least twenty percent (20%) from the previous decennial census, then Council shall redivide the City into five wards, and shall continue to redivide the City by the addition of one ward for every increase in population by twenty percent (20%) thereafter. Upon

the failure of Council to redivide the City within the timeframe outlined above, the Director of Law shall notify City Council in writing that unless City Council redivides the City within sixty (60) days from the date of notification, the Director of Law will so redivide the City as herein provided. Any redivision of the City conducted by the Director of Law in accordance with this section shall be filed with the Clerk of Council. Such plan shall thereupon become the new division by wards of the City.

2.09 MEETINGS OF COUNCIL.

The Council shall hold its organization meeting on or after January first (1ST) but on or before January fourth (4TH), following each municipal election. At this meeting the newly elected members shall take the oath of office and the Council shall proceed to elect a President and a Vice President from among its own members, and appoint a Clerk of Council, and may transact such further business as may come before it. Thereafter, regular meetings shall be held as prescribed in the Council rules, but not less frequently than once each month. All meetings of City Council shall be open to the public, except as provided in Section 2.10 of this Charter. A majority of members shall constitute a quorum.

2.10 EXECUTIVE SESSION.

- (1) Council may hold an executive session only after five (5) members of Council who are present determine, by a roll call vote, to hold an executive session and only at a regular or special meeting of City Council for the sole purpose of the consideration of the specific matters enumerated in this section. The Director of Law, or the Director of Law's designee acting as legal representative to Council, shall be present at each Council executive session unless the Director of Law is the subject of any such executive session, whereupon Council will have a legal representative present. If Council holds an executive session pursuant to this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in this section are the purpose(s) for which the executive session is to be held. Council may hold an executive session, upon a valid motion and vote, for the following purposes only:

- (a) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of a public employee or official unless the public employee or official requests a public hearing. Council shall not hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If an executive session relates to this subsection, the motion and vote shall state the specific approved purpose listed herein, but need not include the name of any person to be considered at the meeting;
- (b) To consider the purchase of real or personal property, or services, for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No members of Council shall use this subsection as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of Council that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers;

If the minutes of Council show that all meetings and deliberations of the public body have been conducted in compliance with this subsection, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with

this subsection insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned;

- (c) Conferences with an attorney for Council concerning disputes involving Council that are the subject of pending or imminent court action;
 - (d) Preparing for, conducting, or reviewing negotiations of bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;
 - (e) Matters required to be kept confidential by federal law or regulations or state statutes;
 - (f) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office.
- (2) Council shall not adopt a resolution, rule or take formal action of any kind in or during an executive session. A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in subsection A of this section and conducted at an executive session held in compliance with this section.
- (3) Any person may bring an action to enforce this section in accordance with the laws of the State of Ohio.

2.11 RULES; JOURNAL.

The Council shall adopt its own rules, in conformity with the provisions of this Charter. It shall cause to be kept a journal of its proceedings, which shall be a public record.

2.12 PRESIDENT OF COUNCIL.

The President of Council shall serve as the presiding officer at all meetings of the Council, maintain order and decorum, and see that this Charter is observed in all Council proceedings. The President of Council shall hold office until the next organizational meeting and may be reelected. The President of Council shall have all the powers, duties, functions, obligations and rights of

any other Council member including the right to vote. In the President's absence, the Vice President of Council shall serve as Acting President. In the absence of the President and the Vice President, the Council members present shall elect a temporary presiding officer from among their own number to serve during the meeting.

2.13 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 of Council shall give notice of Council meetings, keep the journal, 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 of Council may be appointed to serve full time or part-time and the Council may assign the duties of 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 Council may appoint such other persons as it deems necessary for the proper discharge of its duties.

ARTICLE III Ordinances and Resolutions

3.01 ACTION BY COUNCIL.

Every action of the Council establishing any offense, ~~or~~ providing for the imposition of any penalty or for the levy of any tax, or, except as provided in Section 3.10 of this Charter, for the expenditure of any public funds, or the contracting of any indebtedness, as well as all actions required by this Charter to be taken by ordinance, shall be taken by ordinance in the manner hereinafter provided. Other actions may be taken by resolution.

3.02 INTRODUCTION OF ORDINANCES.

Formal action by the Council shall be by ordinance. Each proposed ordinance shall be submitted to the Department of Law for approval as to form, introduced in writing by a member of the Council or by the Mayor, and shall contain a title, an opening clause: "Be it ordained by the Council of the City of Hilliard, Ohio," and a body in which there shall be set forth at length the action to be taken and the classes of persons to be affected thereby. Each ordinance shall contain but one subject, which shall be clearly set forth in its title; however, general appropriation ordinances may contain the various subjects and accounts for which monies are to be appropriated.

3.03 CONSIDERATION OF ORDINANCES.

After its introduction, a proposed ordinance shall be seconded by a member of Council, other than the member who introduced it, and then shall be given a first reading by title only by the Clerk of Council. It shall then lie over for at least seven (7) days, or until the next regular meeting of the Council. At least five (5) days before the second reading of the ordinance, the Clerk of the Council shall cause to be published in a newspaper of general circulation in the City, in the form of a legal advertisement, a summary, prepared by the Director of Law, of the content of the proposed ordinance and of the time and place of the Council meeting at which it shall be considered. The publication shall invite interested persons to attend and express their opinions thereon to the Council. At the time and place so advertised the Council shall convene. The 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 passage shall be heard, under such rules as the Council may provide. Written arguments and briefs, for or against, may also be filed at or prior to this hearing for consideration and discussion by Council. At the next regular meeting, or not less than seven (7) days following the second reading, the proposed ordinance shall be given a third reading, which may be by title only. After the third reading the Council shall vote on passage or rejection of the proposed ordinance.

3.04 PASSAGE OF ORDINANCES.

After the hearing, or if the waiting period and hearing are waived by a declaration of emergency, then the Council may vote by roll call on whether the ordinance shall be passed, or rejected. A favorable vote of four members of Council shall be necessary to pass an ordinance, except as provided otherwise in this Charter. Final passage shall be certified by the signatures of the President of Council and the Clerk of Council. The failure or refusal by the President of Council and/or the Clerk of Council to sign shall not invalidate otherwise properly enacted ordinances.

3.05 EMERGENCY ORDINANCES.

Any ordinance which must be passed at once in order to meet a real and present emergency in the operation of the City government, or which is necessary for the immediate preservation of the public peace, health, safety, or general welfare as determined by Council in their sole discretion, may be passed without delay as prescribed in Section 3.03 and without public notice and hearing, provided the Council shall, in a separate section thereof, adopt by an affirmative vote of not less than five (5) members of Council, with not more than one (1) dissent, declare that such emergency exists, giving the reasons therefore. Such an ordinance shall take effect immediately upon its passage and

approval by the Mayor. Emergency ordinances shall be published within one (1) week after their passage.

3.06 PUBLICATION OF ORDINANCES.

After final passage, public notice of each new ordinance shall be given in one of the following ways:

- (1) By publication, in summary, one time, in a newspaper of general circulation in the City, within two (2) weeks after passage;
- (2) By publication, at length in the official City Bulletin of the City of Hilliard;
- (3) In the case of annual appropriation ordinances, by reproduction and distribution as provided in Section 6.07 of this Charter;
- (4) By publication in any manner that publication of official government action is permitted under state law.

3.07 EFFECTIVE DATE OF ORDINANCES.

Ordinances making appropriations for current operating expenses of the City government, directing an election or question to the electorate, authorizing annual tax levies, or providing for improvements petitioned for by owners of the requisite majority of the front footage or of the areas of the property benefited and to be assessed, shall take effect upon passage and shall not be subject to referendum. All other ordinances, except emergency ordinances, shall take effect thirty (30) days after the passage by Council and signing by the Mayor in order to afford an opportunity for filing referendum petitions as may be authorized by the revised code of Ohio as now exists or as hereafter amended. Any ordinance which is passed over the veto of the Mayor shall be effective thirty (30) days after passage over the veto.

3.08 INITIATIVE AND REFERENDUM.

Except as otherwise provided in this Charter, ordinances may be submitted to popular vote through the initiative and referendum under the procedure set forth in Sections 731.28 to 731.40 of the Revised Code of Ohio, as now exist or as hereafter amended.

3.09 ADOPTION OF ORDINANCES BY REFERENCE.

The Council may adopt standard ordinances and codes prepared by public or private agencies on such matters as fire prevention, building construction, electric 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. However, if the Council desires to modify, add to, or eliminate from any such code any section or part thereof, such addition, modification, or omission shall be clearly stated 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.

3.10 RESOLUTIONS.

Action by Council which is not required by this Charter to be by ordinance may be taken by resolution. All resolutions shall be introduced in writing, by a member of Council, and, except as provided herein may be adopted by voice vote of a majority of a quorum. Where action by Council relates solely to the expenditure of any public funds or the contracting of any indebtedness or expenditures that have been previously appropriated within the same fiscal year, approval of those contracts may be by resolution, which shall be adopted only after a favorable vote of at least four (4) members of Council, following an opportunity for public input and comment. Notice of Council's consideration of the type of resolution described in the preceding sentence shall be made at the same time and in the same manner as notice of Council's public hearings for ordinances. Upon adoption of all resolutions, no waiting period, notice, or publication shall be required and resolutions shall become effective immediately. However, the Clerk of Council shall record resolutions in a separate book, which shall be a public record.

3.11 ADMINISTRATIVE CODE.

Subject to the provisions of this Charter, and after consultation with the Mayor, the Council shall adopt an administrative code which shall provide in detail the organization of the municipal government, define the powers and duties of each organization unit, and determine the administrative procedures to be followed. The Council shall have authority to delegate to the Mayor and the Mayor shall have authority to delegate to the heads of the departments, power to make rules and regulations to govern management practices, consistent with the administrative code. Amendments to, and revisions of, the administrative code shall be made only after consultation with the Mayor.

ARTICLE IV Mayor

4.01 SELECTION OF MAYOR.

The voters shall elect, each four years, at the regular municipal election, a person to serve as Mayor.

Qualified candidates shall be registered voters who have been domiciled for one (1) year in the City or in territory annexed thereto by the date of filing of a petition of candidacy. The term of Mayor shall commence on January 1 next following the regular municipal election

4.02 DUTIES OF MAYOR.

The Mayor shall be the chief executive officer and head of the administrative agencies of the City. The Mayor shall be responsible for the proper administration of all affairs of the City, and, to that end, subject to the provisions of this Charter, shall have authority and shall be required to:

- (1) See that this Charter and the ordinances of the City are faithfully enforced;
- (2) Appoint, and, when necessary for the good of the service, direct the various department directors to remove an officer and employee of the City not elected or appointed by Council, in the manner provided in this Charter;
- (3) Prepare the budget estimates annually, submit them to the Council, and administer the appropriations adopted by the Council;
- (4) Prepare and submit to the Council, and to the public, annually, not later than March 31, a complete report on the finances and administrative activities of the City for the preceding year;
- (5) Keep the Council informed of the current financial condition and future needs of the City;
- (6) Appoint such citizen advisory committees as the Mayor deems desirable, and discharge them when, in the judgment of the Mayor, their functions have been completely served;
- (7) Within ten days of passage approve ordinances and resolutions enacted by the Council by signing said ordinances and resolutions, or veto any ordinance or resolution enacted by the Council, setting forth the reason for the veto. If such approval or veto is not accomplished within the ten day period, the ordinance or resolution shall forthwith become law. The Council may, by a two-thirds (2/3) vote of its members, enact any ordinance or resolution despite veto by the Mayor.

- (8) Declare a public disaster and implement procedures as Council shall authorize by ordinance and/or resolution.
- (9) Act in the capacity of Director for any administrative department at any time such department does not have an appointed director.
- (10) With the advice and consent of Council, appoint a magistrate, qualified under the rules and regulations mandated by the State of Ohio, to hear and determine the misdemeanor cases arising under the City ordinances, as provided by State law, unless and until a different court is established for such purposes by State law.

4.03 SALARY OF MAYOR.

The Mayor shall receive a salary as set by ordinance. The Council shall have the authority to change the salary of the Mayor by ordinance, but no such ordinance shall take effect as to the Mayor then in office during the existing term. Such an ordinance shall not be passed as an emergency ordinance. In an ordinance establishing the Mayor's salary, Council may grant annual raises providing, however that such ordinance shall be effective prior to election to office for the given term. Council shall, notwithstanding the previous section of this paragraph, be empowered by ordinance to provide additional compensation including, but not limited to, insurance and transportation during term of office.

4.04 ABSENCE OR DISABILITY OF MAYOR.

The Mayor may designate, by letter filed with the Clerk of Council, any department director of the City to perform the Mayor's administrative duties during a temporary absence or disability. In the event that such a designation has not been made, the Council may, by resolution, appoint a department director of the City to perform such duties until the Mayor shall return or until the disability ceases.

4.05 VACANCY, HOW FILLED.

In the event of a vacancy in the office of Mayor, due to the resignation, death, or permanent disability of the Mayor, the President of Council shall serve as Mayor. If the President of Council is not available, Council shall then appoint a Council member who has been elected by the people to serve as Mayor. The person assuming the duties of Mayor shall serve until the earlier of the next general election occurring not less than 100 days after the vacancy

occurs, or a special election provided for by Council. If no Council member accepts the appointment as Mayor, then Council shall appoint a qualified department director to serve as acting Mayor and Council shall authorize a special election to be held not less than 100 days after the vacancy occurs.

**ARTICLE V
Departments and Divisions**

5.01 ADMINISTRATIVE DEPARTMENTS.

The City shall have a Department of Finance, a Department of Public Safety, a Department of Public Service, a Department of Law, and a Department of Recreation and Parks. The Mayor shall appoint as head of each department a director, who need not be an elector of the City. The Mayor shall also appoint directors of such other departments as may be established by ordinance. The directors shall be administrative officers of the City, and shall have supervision and control over their respective departments. Two or more departments may be headed by the same person, subject to approval by the Council. Each department director shall be the hiring/firing authority for its department.

5.02 DIRECTOR OF PUBLIC SERVICE.

Except as may be provided otherwise in this Charter or as may be prescribed by the Mayor, the Director of Public Service shall have charge of all public works and improvements and the construction thereof, of all engineering and inspection in connection therewith, and of all building inspection. Such duties shall also include the construction, repair, and maintenance of streets, sidewalks, alleys, lanes, and bridges; of water mains, pipes, purification and sanitation plants, and the water distribution system; of sewers, sewage systems, drains, ditches, culverts, and other public places belonging to the City or dedicated to public use. The Director of Public Service shall manage and control sanitary facilities, sewage treatment plants, water works, and all public utilities of the City supported in whole or in part by taxation, and shall enforce all the obligations of privately owned or operated public utilities enforceable by the City. It shall be a charge of the Director of Public Service to make and service all surveys, maps, plans, drawings, and estimates for public works; the cleaning, resurfacing, repairing, sprinkling, and lighting of all streets and public places; the collection and disposal of waste, if such is provided for; and the preservation of all property belonging to the City and pertaining to the functions thereof. The Director of Public Service shall work in cooperation with other

directors when there are complementary responsibilities of the respective directors' work relating to City lands and facilities. The Director of Public Service shall perform other such duties consistent with the office as may be required by this Charter, by ordinance of the Council, or as directed by the Mayor.

5.03 DIRECTOR OF FINANCE.

The Director of Finance shall be the fiscal officer of the City, appointed by the Mayor, with the advice and consent of the Council, and shall serve the Mayor and Council as financial advisor in connection with municipal affairs. The Director of Finance shall be a person skilled in government finance and budgeting. The duties of the Director of Finance shall be to examine all payrolls, bills, and other claims against the City, but shall issue no warrant unless the Director of Finance finds that the claim is in proper form, correctly computed, and duly approved, and that it is due and payable, and that appropriation has been made therefor. The Director of Finance shall perform all other duties now or hereafter imposed upon City auditors and treasurers by the laws of the State of Ohio, unless otherwise provided by this Charter or by ordinance of the Council; and shall perform such other duties as the Mayor may direct, consistent with the office.

5.04 DIRECTOR OF PUBLIC SAFETY.

The Director of Public Safety shall be the head of the divisions of police and fire and shall make all necessary rules and regulations for the government of the Department of Public Safety and the several divisions. The Director of Public Safety shall be charged with the duty of enforcing all police, health, safety, and sanitary regulations that may be prescribed by ordinance or the general laws of the State of Ohio. If the City does not operate a Division of Fire, then the Director of Public Safety shall lead only the Division of Police. The Director of Public Safety shall be appointed by the Mayor, with the advice and consent of Council.

5.05 DIRECTOR OF LAW.

The Director of Law shall serve the Mayor, the Council and the administrative officers and departments as legal counsel; and perform all duties as now or hereafter are imposed by ordinance or resolution of Council. No person shall act as Director of Law unless duly admitted to the practice of law in the State of Ohio. The Director of Law shall be appointed by the Mayor, with the advice and consent of Council.

5.06 DIRECTOR OF RECREATION AND PARKS.

The Director of Recreation and Parks shall have the general oversight of all recreational programs and facilities operated by the City of Hilliard, including, but not limited to, the public parks, amphitheater, municipal pool, community center and senior citizens center, and all programs operated by others using public facilities.

5.07 DEPARTMENT DIVISIONS.

The work of each department shall be distributed among such divisions thereof as may be provided for in the administrative code. Pending the adoption of such a code by the Council, the Mayor may provide for temporary divisions by administrative order.

ARTICLE VI Finance

6.01 FISCAL YEAR.

The fiscal, budget, and accounting year of the City government shall be the calendar year.

6.02 ANNUAL TAX BUDGET.

The Mayor shall submit to the Council a tax budget for the ensuing fiscal year, for filing with the County Budget Commission in accordance with the procedures established by the County Budget Commission, unless such procedures are otherwise waived. For that purpose, at such date as the Mayor shall determine, the head of each department or agency of the City, shall submit plans to the Mayor for the work to be undertaken by such agency during the next fiscal year, together with estimates of the costs of performing such work. The Department of Finance shall supply to the Mayor estimates of anticipated revenue. From these data the Mayor may revise the estimates and prepare recommendations for the tax budget for the ensuing fiscal year.

6.03 HEARING ON TAX BUDGET.

At least two copies of the tax budget estimates as recommended by the Mayor shall be placed on file in the office of the Director of Finance for public inspection. Notice that they are available for that purpose shall be given by publication once in a newspaper of general circulation in the City. Such notice shall also specify the date of the first hearing. The Council shall hold a public

hearing on the tax budget at the time and place specified in the notice and may continue such hearing as necessary. When the hearing is concluded, the Council shall consider the tax budget, adopt it, with or without amendments, which adoption may be by resolution, and transmit it to the County Budget Commission on or before the date set by them in the form required by law.

6.04 TAX LEVIES.

Upon receipt of the advice of action by the County Budget Commission and the certificate of the County Auditor as to estimated resources, the Council shall, take action as is necessary to enable the County Auditor to place the necessary taxes on the tax duplicate.

6.05 MUNICIPAL OPERATING BUDGET.

The Mayor shall prepare and submit to the Council, on or before November 15th of each year, a budget for the following year recommending appropriations from each fund during the ensuing fiscal year.

6.06 ANNUAL APPROPRIATION ORDINANCE.

At the meeting of the Council at which the municipal budget is submitted, the Council shall, by resolution, fix the date and place for a public hearing thereon. A notice of this hearing shall be given by publication once in a newspaper of general circulation in the City at least five (5) days before the date fixed. The notice shall also state that the budget is on file for public inspection in the office of the Clerk of Council during the usual office hours. At the time and place advertised, the Council shall hold a public hearing on the budget as submitted and may continue such hearing from day to day as may be necessary. After the hearing the Council shall adopt the budget as submitted, or as amended, as the appropriation ordinance of the City for the ensuing fiscal year. The budget shall not exceed the total estimated resources certified by the County Budget Commission. Such ordinance shall be finally adopted not later than January 31.

6.07 EFFECT OF APPROPRIATION ORDINANCE.

Upon passage, the appropriation ordinance shall become effective as of the first day of January and shall constitute an appropriation of the several items therein contained, and approval of the work projects supported thereby without further legislation. The appropriation ordinance shall be reproduced and a copy thereof, certified by the President of Council and Clerk of Council, and shall be

filed with the Director of Finance, and certified copies shall be transmitted to each organization unit of the City government, and filed with such county, state, and federal offices as may be required by law or agreement.

6.08 AVAILABILITY OF FUNDS.

Appropriations for debt service and other fixed charges shall become available for expenditure upon the filing of the certified copy of the appropriation ordinance with the Director of Finance.

6.09 CAPITAL IMPROVEMENT PROGRAM AND BUDGET.

The process for the approval of the capital improvement program and budget shall be developed and passed as Council may establish by ordinance.

6.10 TRANSFERS.

The Council, on recommendation of the Mayor, may at any time by resolution, transfer any unencumbered balance of an appropriation from one item or project to another under the jurisdiction of the same organization unit. During the fourth quarter of the fiscal year, the Council may, by resolution, transfer any unencumbered balance of an appropriation from an item under the jurisdiction of one organization unit to one under the jurisdiction of another organization unit supported from the same fund. Transfers shall not be made from appropriations for debt service or other fixed items until all obligations due and payable during the fiscal year have been paid. The Council may at any time amend or revise the appropriation ordinance, provided the ordinance as amended does not authorize the expenditure of more revenue than is estimated will be available.

6.11 PURCHASING.

No City official or employee shall have authority to create an obligation against the City by oral agreement. No purchase order or contract shall be valid as an obligation of the City unless it bears a certificate signed by the Director of Finance or an appointee designated by the Mayor with the advice and consent of Council that the estimated amount thereof has been entered as an encumbrance in the City accounts against an allotment based on a valid appropriation.

6.12 OVER-EXPENDITURES.

No officer, department, or agency of the City shall, during any fiscal year, expend or contract to expend any money, or incur any liability, or enter into any contract which by its terms involves the expenditure of money on behalf of the City, for any purpose, in excess of the amounts appropriated and allotted for such expenditures and obligations. Any such purported obligation, oral or written, made in violation hereof shall be void. The officer or employee who knowingly attempts or purports to create such an obligation shall be guilty of malfeasance in office and upon conviction thereof shall be removed from his or her post and disqualified from holding further office or employment under the government of the City. However, nothing in this section shall prevent the making of contracts not to be fully performed within the fiscal year, when specifically authorized by the Council.

6.13 COMPETITIVE BIDDING.

Purchase of supplies, materials, and equipment and the construction of public improvements for the City shall be made pursuant to specifications through open, competitive bidding, under such rules consistent with this Charter as the Council may establish by ordinance. Formal advertising, bidding, and public opening and tabulation of bids shall be required if the statutory or common law of the state requires it, except in cases of public disaster declared by the Mayor, when purchases may be made in the open market. The acquisition of professional services and the purchase of used equipment may be, but are not required to be obtained, by competitive bidding.

6.14 FEES.

All fees received by any officer or employee of the City in connection with employment with the City shall be accounted for and paid into the City treasury, except as otherwise provided by law.

**ARTICLE VII
Borrowing**

7.01 POWER TO BORROW.

The City may incur indebtedness upon authorization by the Council, by ordinance, by issuing its bonds or notes in anticipation of bonds, or in anticipation of income, to finance any public works project which the Council may decide to construct or existing enterprise it may decide to acquire. Such projects shall include, but shall not be restricted to, those specifically authorized

by general state law. In issuing such bonds or notes, Council shall be bound by the definitions, limitations, and procedures prescribed by the Constitution and general laws of Ohio then in effect.

7.02 RESTRICTIONS ON BOND ISSUES.

The first ordinance in a series leading to the eventual issuance of bonds or notes for the construction of a public improvement shall not be passed without a public hearing. That hearing shall not be at the same meeting at which said ordinance is introduced.

**ARTICLE VIII
Personnel**

8.01 CIVIL SERVICE.

The Civil Service Commission of the City of Hilliard, established and existing under general law, shall be deemed to be established agreeably to the provisions of this Charter. The general laws of Ohio applicable to the civil service of cities shall apply to the civil service of the City of Hilliard, except as otherwise provided in this Charter, and as such shall be modified by City Council, excepting however, that any such modification shall be by ordinance and be adopted by a two-thirds majority of Council members present, voting, and approved by the Mayor. Nothing in this Charter shall be construed to prohibit the Hilliard City School district or any successor thereto, and the City of Hilliard from operating a joint civil service commission.

**ARTICLE IX
Boards and Commissions**

Unless otherwise established in this Charter, the Council may, by ordinance, establish and define the procedures and duties of City Boards and Commissions and fix the number, qualifications and terms of the members thereof. Council may establish a Board of Health by ordinance, unless the City enters into a contract with any health district approved by the Ohio Department of Health as permitted under state law.

9.01 PLANNING AND ZONING COMMISSION.

There shall be a Planning and Zoning Commission consisting of seven (7) members, all of whom shall be qualified electors of the City. Six (6) members shall be appointed by the Mayor, subject to approval by the Council. One (1) member shall be selected from each ward of the City and the remaining member(s) shall be selected at large. The seventh member shall be the Mayor or the Mayor’s designee. All terms shall be for six (6) years. The Commission may, by a majority vote, dismiss a member from office because of poor attendance or misconduct in office. Vacancies shall be filled by appointment by the Mayor, subject to approval by Council. Full-time employees of the City, so long as they are qualified electors of the City, shall be permitted to serve on the Planning and Zoning Commission, provided, however, that no more than one (1) such City employee shall be permitted to serve at the same time. The Mayor shall not be considered a full-time City employee. Members of the Commission shall receive compensation as provided by ordinance.

9.02 POWERS AND DUTIES OF THE PLANNING AND ZONING COMMISSION.

The Planning and Zoning Commission shall have and exercise all powers and duties conferred upon City planning commissions by state law, and such other powers and duties as may be conferred upon it by ordinance. Among its powers and duties, the commission shall:

- (1) Review and recommend to City Council for approval:
 - (a) A master plan;
 - (b) A subdivision platting ordinance, which shall include minimum lot sizes and building sites;
 - (c) An official City map;
 - (d) A zoning plan and ordinance, which may include such requirements for parks, recreation areas, and traffic and utility provisions as may be deemed necessary for the promotion of the public health, safety, and general welfare; and
 - (e) Such changes to the aforementioned plans and ordinances as may be deemed necessary for the promotion of the public health, safety, and general welfare.

- (2) Approve preliminary plats and final plats which conform to the subdivision platting ordinance, provided that such plats shall be subject to review, modification, and reapproval of those plats or portions thereof on which construction has not been started within two years after the next preceding approval.

**ARTICLE X
Nominations and Elections**

10.01 MUNICIPAL ELECTIONS.

The regular municipal election for the choice of members of the Council shall be held on the first Tuesday after the first Monday in November in the odd numbered years. The Council may, by resolution, order a special election at any time, the purpose of which shall be set forth in the resolution. Both regular and special municipal elections shall be conducted by the Board of Elections of Franklin County. Where the Charter and ordinances are silent on election procedure, the provisions of the election laws of the State of Ohio shall be followed.

10.02 NOMINATIONS.

A partisan primary election shall be held in the City for the nomination of all elective City officials. In the event the number of candidates from a political party is less than or equal to the number of positions to be filled in the next election, then no primary election need be held. Nothing herein shall preclude any independent candidate for election from filing consistent with state law with the Board of Elections to be a candidate in the regular municipal election.

10.03 WATCHERS AND CHALLENGERS

At each election, each candidate shall be entitled, to appoint one (1) person and one (1) alternate to represent the candidate as watcher and challenger at each polling place during the casting and counting of ballots, and one (1) person and one (1) alternate to represent him the candidate as watcher and challenger during the canvass of votes at the Board of Elections, as provided by the election laws of the State of Ohio.

ARTICLE XI
Recall

11.01 RECALL.

The voters of the City shall have power to recall and remove from office any elected official before the expiration of that officer's term. A recall may be started by filing with the Board of Elections a petition signed by a number of electors equal to twenty-five percent (25%) of the total number of electors who voted at the last preceding regular municipal election. This petition shall contain the name of the person whose removal is sought and a statement containing no more than two hundred (200) words relating to the grounds for removal.

11.02 FORM OF PETITION.

All petition papers circulated for the purpose of recall shall be uniform in size and style. The signatures to petitions need not all be appended to one paper, but to each separate part there shall be appended a certificate of the circulator that he or she only personally circulated the petition, that it bears a stated number of signatures, that each signature was affixed in his or her presence, and that he or she believes them to be the genuine signatures of the persons whose names they purport to be. This certificate shall be sworn to before an officer qualified by law to administer oaths. Each signer shall sign his or her name in ink or indelible pencil and shall insert after his or her name his or her place of residence and the date of signing. The circulation of petitions, including the qualifications of the circulators thereof, shall be conducted in accordance with the general laws of the State of Ohio; provided, that, a petition circulator shall also be an elector of the City of Hilliard.

11.03 ELECTION.

Upon the determination by the Board of Elections that a recall petition filed in that office is sufficient, Council shall, by resolution, not more than seven (7) calendar days following receipt by the Clerk of Council of a notice of sufficiency by the Board of Elections, certify to the Board of Elections the question "shall John Doe (naming the official) be recalled from office as (naming the office) in the City of Hilliard? Yes... No..." Such question shall be placed upon the ballot at the next primary or municipal election occurring not less than ninety (90) days thereafter. The Council may provide by resolution that the question be submitted at a special election. If a majority of the votes cast on the question shall be in favor of recall, the official shall forthwith retire

from office and the Council shall fill the vacancy thus created in the manner provided in this Charter. If at any stage in the recall procedure, prior to the election, the official against whom the recall petition is directed shall offer a resignation from office, the Council shall have power to accept it, and if accepted, all further proceedings under the recall shall be terminated. No recall shall be filed against an official during the official's first six (6) months in office. If an official against whom a petition is filed is continued in office by the vote at the election, no further recall petitions may be filed against him or her for a period of one year.

ARTICLE XII
General Provisions

12.01 OATH OF OFFICE.

Every officer and employee of the City shall, before entering upon his or her duties, take and subscribe to the following oath or affirmation to be filed and kept in the office of the Clerk of Council:

"I solemnly swear (or affirm) that I will support the Constitution of the United States and of the State of Ohio and will obey the laws thereof, and that I will, in all respects, uphold and enforce the provisions of the Charter and ordinances of this City, and will faithfully discharge the duties of _____ upon which I am about to enter."

12.02 OFFICIAL BONDS.

All officers and employees of the City whose duties require that they handle or be concerned with the management of its money or other property, shall be bonded, before entering upon their duties, by a corporate surety bond issued by a company authorized to do business in Ohio. The amounts of such bonds shall, in each case, be determined by the Council. The premiums on such bonds shall be paid from the funds of the City.

12.03 PERSONAL INTEREST.

Unless otherwise provided by this Charter, the laws of the State of Ohio pertaining to conflicts of interest and unlawful interests in a public contract shall apply to all elected and appointed officials and employees of the City and to the appointees to the City's boards and commissions.

12.04 REMOVAL FROM OFFICE.

Whenever in this Charter certain acts on the part of City officials or employees are described as constituting malfeasance in office, the procedure for complaint, trial, and judgment thereon shall be that prescribed in Section 733.72 to 733.77 of the Revised Code of Ohio, as now exist or as hereafter amended.

12.05 ENFORCEMENT OF SUBPOENAS.

Whenever in this Charter the Council or any other agency of the City government is given authority to issue subpoenas and to require the attendance of witnesses and the production of books, papers, ballots, or records, the same shall be issued and enforced in the manner provided in Section 705.21 of the Revised Code of Ohio, as now exists or as hereafter amended.

12.06 AMENDMENTS TO THE CHARTER.

Any provision of this Charter may be amended, as provided in Article XVIII, Section 9 of the Ohio Constitution, by submission of a proposed amendment to the voters of the City. Such amendment may be initiated either by a two-thirds (2/3) vote of the Council or by petition to the Council signed by ten percent (10%) of the electors.

12.07 CHARTER REVIEW COMMISSION.

As often as necessary, but no less frequently than every ten (10) years, the Council shall appoint a Charter Review Commission who shall review the Charter and make recommendations to the Council for proposed amendments, if any, to be submitted to the voters of the City. Any such ten (10) year time period shall commence upon the date that the then-appointed Charter Review Commission submits its final report and recommendations to the Council. The appointment of a Charter Review Commission within the prescribed period shall not preclude the Council from submitting recommended Charter amendments to the voters from time to time.

12.08 ACCESS TO GOVERNMENT.

The City is committed to the fundamental principle that the government is maintained by its citizens for its citizens. Consistent with this principle, and in accordance with federal and state law, as well as this Charter, the City’s meetings are open to its citizens and its records accessible by its citizens. Every reasonable effort shall be made to ensure that City documents are made available, on a timely basis, to citizens outside of official City business hours, if requested, to the extent possible.

**ARTICLE XIII
Transitional Provisions**

13.01 FISCAL SUCCESSION.

The City of Hilliard, under this Charter, is hereby declared to be the only legal successor of the City of Hilliard under the general law and as such the City has title to all property, real and personal, owned by its predecessor, including all monies on deposit and all taxes in the process of collection together with all accounts receivable and all rights of action. The City also is liable for all outstanding orders, contracts, and debts of its predecessor, and for any other obligations for which it may be held liable, as such successor, by any court of competent jurisdiction.

13.02 CONTINUATION OF ORDINANCES.

All ordinances of the City of Hilliard, in effect at the time this Charter becomes effective, shall remain in effect, except as superseded by the provisions of this Charter, until they are amended or repealed.

13.03 CONTINUATION OF OFFICERS.

All persons holding office at the time this Charter, or any amendment thereto, takes effect shall continue in office within their duly elected or appointed terms except as specifically provided otherwise in this Charter, until provision shall have been made, in conformity with this Charter, for the performance of their duties by a successor, or the office is abolished.

13.04 CONTINUATION OF EMPLOYEES.

Every employee of the City government of Hilliard, Ohio, when this Charter takes effect shall be retained in employment, and shall thereafter be subject in all respects to the provisions of this Charter.

13.05 TRANSFER OF RECORDS AND PROPERTY.

All public records and property in the custody of officers and employees of the City at the time this Charter becomes effective shall be transferred and delivered promptly to their successors. In case of doubt as to which are the successors, Council shall designate them by ordinance.

13.06 CONTINUATION OF CONTRACTS AND IMPROVEMENTS.

All contracts entered into by the City or for its benefit, prior to the taking effect of this Charter, shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws existing at the time this Charter takes effect shall be completed, as nearly as practicable, under the provisions of such laws.

13.07 PENDING ACTIONS AND PROCEEDINGS.

No action or proceedings, civil or criminal, pending at the time this Charter takes effect, brought by or against the City or any office, agency, or officer thereof, shall be abated or affected by anything herein contained, but all such actions shall be prosecuted or defended under the laws in effect when they are filed.

13.08 WHEN CHARTER TAKES EFFECT.

This Charter as amended shall be voted upon at the general election on November 3, 2009. If approved by the voters, the Charter as amended shall go into effect on January 1, 2010.

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NOTES

APPENDIX D

CODIFIED ORDINANCES OF HILLIARD, OHIO, SEC. 101.01

101.01 DESIGNATION; CITATION; HEADINGS.

(a) All ordinances of a permanent and general nature of the Municipality as revised, codified, rearranged, renumbered and consolidated into component codes, titles, chapters and sections shall be known and designated as the Codified Ordinances of Hilliard, Ohio, for which designation "Codified Ordinances" may be substituted. Code, title, chapter and section headings do not constitute any part of the law as contained in the Codified Ordinances.

(ORC 1.01)

(b) All references to codes, titles, chapters and sections are to such components of the Codified Ordinances unless otherwise specified. Any component code may be referred to and cited by its name, such as the "Traffic Code". Sections may be referred to and cited by the designation "Section" followed by the number, such as "Section [101.01](#)".