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Cleveland, Ohio 44113

Court of Appeals

MOTION TO...
December 20, 2017 15:35

By: ROBERT E. CAHILL 0072918

Confirmation Nbr. 1255979

EDWARD GRAHAM, ET AL.

CA 17 106094

vs.

Judge:

CITY OF LAKEWOOD, ET AL.

Pages Filed: 79

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM, et al.,	)	
	)	CASE NO. CA-17-106094
Plaintiffs/Appellants,	)	
	)	
v.	)	
	)	On Appeal from Cuyahoga County
CITY OF LAKEWOOD, et al.,	)	Court of Common Pleas
	)	Case No. CV-15-846212
Defendants/Appellees.	)	
	)	

**APPELLEES CITY OF LAKEWOOD, MAYOR MICHAEL SUMMERS, LAKEWOOD
HOSPITAL ASSOCIATION, THOMAS GABLE, CLEVELAND CLINIC
FOUNDATION, AND DELOS COSGROVE, M.D.'S
MOTION TO PARTIALLY DISMISS**

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CITY OF LAKEWOOD, OHIO AND
MAYOR MICHAEL SUMMERS

APPELLEES' MOTION TO PARTIALLY DISMISS

NOW COME Appellees the City of Lakewood, Mayor Summers, Lakewood Hospital Association, Thomas Gable, Cleveland Clinic Foundation, and Delos Cosgrove, M.D., by and through counsel, and hereby move to partially dismiss this appeal because Appellants' tax payer claims and their claims seeking injunctive relief and mandamus are moot. These claims, set forth in Counts 1A, 1B, 1C, 7, and 8 of the Amended Complaint, seek 1. an injunction to prohibit any resolution or contract in contravention of the Definitive Agreement and Lease, 2. specific performance of the Lease and Definitive Agreement, and 3. a writ of mandamus to ensure operation of Lakewood Hospital and performance of the Lease and Definitive Agreement. R. 75, ¶¶ 98, 99, 100, 115, 116, 117, 131, 132, 133, 199, 200, 203 and 204.¹

The relief Appellants' seek in Counts 1A, 1B, 1C, 7, and 8 cannot be granted because:

- The City of Lakewood enacted Ordinance 49-15 on December 21, 2015 authorizing the City to enter into the Master Agreement with the Cleveland Clinic Foundation and Lakewood Hospital Association;
- The Master Agreement terminated the Definitive Agreement, significantly modified the Lease, and included a mutual waiver of all claims arising from the Definitive Agreement, the Lease, and the operation and management of Lakewood Hospital;
- The City, the Cleveland Clinic Foundation, and Lakewood Hospital Association have been performing under the Master Agreement since December 21, 2015;

¹ Appellants' have not appealed the dismissal of Counts 1B, 1C, 7, and 8 of the Amended Complaint. They have only appealed the dismissal of Count 1A. In any event, the relief sought in all of these claims cannot be granted rendering them moot.

- Lakewood Hospital has been closed for in-patient care since February 6, 2016;
- The citizens of Lakewood ratified Ordinance 49-15 and the closing of Lakewood Hospital via a referendum vote on the ordinance in November, 2016;
- The citizens of Lakewood, in the November, 2017 election, adopted a new city charter which eliminates all reference to Lakewood Hospital or the ownership, leasing, or operation of any hospital;
- Lakewood Hospital's parking garage and professional office building have been demolished; and
- The new Family Health Center is under construction with completion anticipated in the summer of 2018.

As such, the Appellants cannot obtain the relief they seek in their tax payer claims and their claims for injunctive relief and mandamus and the appeal of the trial court's judgment on those claims should be dismissed as moot.

I. FACTS²

² Appellees have supplemented the record by attaching affidavits from the City of Lakewood's Finance Director, Jennifer Pae; the President of the Cleveland Clinic Regional Hospitals and Family Health Centers, Dr. J. Stephen Jones; the Clerk of City Council for the City of Lakewood, Mary Hagan; and the City of Lakewood's Director of Planning and Development, Bryce Sylvester. "Normally, an appellate court can only consider what is in the record on appeal. When it comes to deciding whether an event has caused an issue to be moot, however, it may 'be proved by extrinsic evidence outside the record.'" *Gajewski v. Board of Zoning Appeals*, 8th Dist. Cuyahoga No. 91101, 2008 Ohio 5270, ¶ 14 quoting *State ex rel. Cincinnati Enquirer*,

On December 21, 2015, Lakewood City Council enacted Ordinance 49-15, which authorized the City of Lakewood to enter into the Master Agreement with the Cleveland Clinic Foundation (“CCF”) and Lakewood Hospital Association (“LHA”). ¶¶ 2 and 3 of the affidavit of Jennifer Pae, which is attached as Exhibit A (hereafter referred to as “Pae Affidavit”). Per the terms of the Master Agreement, Lakewood Hospital would cease providing in-patient care, properties would be sold and transferred, monies would be exchanged, the professional office building and garage on the southwest corner of Belle and Detroit would be demolished, and CCF would construct a new \$34,000,000 Family Health Center and garage on the southwest corner of Belle and Detroit. R. 184, Exhibit A. Since December 21, 2015, the parties have been performing under the Master Agreement and have already accomplished the closure of the hospital to in-patient care, transfer of monies, transfer of properties, the demolition of buildings, and the commencement of construction on the Family Health Center as more fully set forth below.

A. The Master Agreement

1. The Master Agreement was entered into by the City, CCF, and LHA on December 21, 2015. R. 184, Exhibit A, pg. 1.
2. The Master Agreement terminated the 1996 Definitive Agreement, which had been entered into by CCF and LHA. R. 184, Exhibit A, pg. 8, Section 3.4 and pgs. F-1 and F-2.
3. The Master Agreement amended the 1996 Lease, which had been entered into by the City and LHA, permitting the termination of all Required Services at

Div. of Gannett Satellite Info. Network, Inc. v. Dupuis, 98 Ohio St.3d 126, 2002 Ohio 7041, 781 N.E.2d 163, ¶ 8.

Lakewood Hospital other than emergency department operations, the winding down of all in-patient services at Lakewood Hospital, and the termination of the Lease upon the opening of the Family Health Center. R. 184, Exhibit A, pg. 10, Section 5.5 and pgs. I-1 to I-8.

4. The Master Agreement also contained a mutual waiver by the City, CCF, and LHA of all claims arising out of the Lease, the Definitive Agreement, and the operation and management of Lakewood Hospital. R. 184, Exhibit A, pg. 16-17, Section 9.4.

B. The Closure of Lakewood Hospital

1. On February 6, 2016, Lakewood Hospital ceased providing in-patient care and was closed, except for a small part of the building which provides emergency service and certain out-patient medical services. ¶ 4 of the affidavit of the President of the Cleveland Clinic Regional Hospitals and Family Health Centers, Dr. J. Stephen Jones, which is attached as Exhibit B (hereinafter referred to as “Jones Affidavit”).
2. Closing a hospital is a complex process that involves coordinating patient care while transitioning doctors and staff to other employment, notifying regulatory bodies, terminating vendor contracts, and responsibly disposing of real estate. Jones Affidavit, ¶ 5. These tasks were undertaken with care and have been completed. Jones Affidavit, ¶ 5.
3. The provider agreement between Lakewood Hospital and the Centers for Medicare and Medicaid Services (“CMS”) was terminated. Jones Affidavit, ¶ 6. As a consequence, Medicare and Medicaid coverage is no longer available for

patients who would be admitted to Lakewood Hospital. Jones Affidavit, ¶ 6. The lack of a valid provider agreement means that Lakewood Hospital is no longer CMS accredited by a recognized agency like The Joint Commission. Jones Affidavit, ¶ 6.

4. Contracts between Lakewood Hospital and commercial payors (insurance companies) have been terminated. Jones Affidavit, ¶ 7. It would be extremely unlikely that new payor contracts could be negotiated in light of the status of the facilities and lack of accreditation by a recognized agency like The Joint Commission. Jones Affidavit, ¶ 7.
5. Contracts between Lakewood Hospital and its suppliers were cancelled. Jones Affidavit, ¶ 8.
6. Lakewood Hospital currently has no employees. Jones Affidavit, ¶ 9. Its former employees have moved to new employment opportunities or retired. Jones Affidavit, ¶ 9.
7. Many of the physicians who provided services at Lakewood Hospital provided services pursuant to contracts. Jones Affidavit, ¶ 10. Those contracts have all been terminated or amended to provide for the provision of services elsewhere. Jones Affidavit, ¶ 10.
8. Certain independent physicians who provided services at Lakewood Hospital maintained private offices in the professional office building located adjacent to the former hospital. Jones Affidavit, ¶ 11. That building was demolished. Jones Affidavit, ¶ 11.

9. Equipment, furniture, and other items that were necessary to the provision of in-patient services at Lakewood Hospital are no longer available for use. Jones Affidavit, ¶ 12. Disposition of these items was provided for in the agreement reached between the City, LHA, and CCF and that process has been or is nearly completed. Jones Affidavit, ¶ 12.
10. The former hospital building itself has been secured to ensure that the portions of the building that are no longer being used do not create safety hazards. Jones Affidavit, ¶ 13. Steps were taken to ensure appropriate management of the facilities to allow for the operation of the emergency department and out-patient services while closing off unused portions of the building, including heating and air conditioning facilities. Jones Affidavit, ¶ 13.
11. Lakewood Hospital cannot be restored to its prior status as a fully operational hospital. Jones Affidavit, ¶ 14.

C. The November, 2016 Referendum Ratified the Closing of Lakewood Hospital

1. During the November, 2016 election, the citizens of Lakewood voted on a referendum on Ordinance 49-15. ¶ 2 of the Affidavit of Clerk of City Council for the City of Lakewood, Mary Hagan, attached as Exhibit C and hereinafter referred to as Hagan Affidavit.
2. A majority of the citizens of Lakewood voted to approve Ordinance 49-15 and the City entering into the Master Agreement as authorized by Ordinance 49-15. Hagan Affidavit, ¶4.
3. Per the Master Agreement, Lakewood Hospital closed to in-patient care on February 6, 2015. R. 184, Exhibit A, pg. 6, Section 3.1(a); Jones Affidavit, ¶ 4.

D. The New City Charter Eliminates All Reference to Lakewood Hospital

1. During the November, 2017 election, the citizens of Lakewood voted to adopt a new city charter, entitled the Third Amended Charter. Hagan Affidavit, ¶¶ 5-7.
2. The Third Amended Charter eliminates all references to Lakewood Hospital and the City owning, leasing, or operating a hospital. Hagan Affidavit, ¶ 9.
3. The Third Amended Charter was adopted by nearly 75% of Lakewood voters. Hagan Affidavit, ¶ 7.

E. The Transfer of Monies Per the Master Agreement

1. On December 31, 2015, the City received \$6,644,731.28 (\$6,800,000.00 payment less title and closing costs) of the total \$8,200,000.00 required to be paid by the Master Agreement from CCF for the sale of LHA's property at 850 Columbia Road, Westlake, Ohio to CCF. The remaining \$1.4 million will be paid to the City by CCF when the new Family Health Center ("FHC") opens on the southwest corner of Belle and Detroit. Pae Affidavit, ¶ 4.
2. On February 22, 2016, \$500,000.00 (of the total \$7,000,000.00 required to be paid by the Master Agreement) was paid to the City by CCF for demolition and/or rehabilitation of the current Lakewood Hospital site (the southeast corner of Belle and Detroit) to be used at the City's sole discretion. The remaining \$6,500,000.00 will be paid by CCF when the FHC opens. Pae Affidavit, ¶ 5.
3. On February 22, 2016, the City received \$1,557,083.89 (the appraised fair market value of \$1,576,000.00 less closing costs) from CCF for the sale of the land on the southwest corner of Belle and Detroit on which the parking garage and

professional office building resided and on which the new FHC is being be built. Pae Affidavit, ¶ 6.

4. On February 23, 2016, the City paid \$1 to LHA for the Curtis Block building (permanent parcel number 314-07-007) and three residential homes that were owned by LHA (permanent parcel numbers 314-04-042, 314-04-030, and 314-04-034). Pae Affidavit, ¶ 7.
5. CCF and/or LHA made payments of \$383,333.33 or \$383,333.34 to the City on March 31, 2016, June 30, 2016, September 30, 2016, March 31, 2017, June 30, 2017, and September 28, 2017 under the 1996 Lease of Lakewood Hospital as modified by the Master Agreement. In addition to the \$2,299,999.99 already paid, CCF and/or LHA are required by the Master Agreement to pay to the City up to another \$587,500.00 through June 30, 2018. Pae Affidavit, ¶ 8.
6. On March 1, 2016, \$200,000.00 was paid by CCF to the City to begin the process of forming a new community wellness foundation. The City is the designated trustee of the funds of the yet-to-be-formed community wellness foundation. When the community wellness foundation is established, the funds the City is holding for the foundation will be transferred from the City to the foundation. The Master Agreement requires an additional \$32,200,000.00 be paid by CCF for the community wellness foundation in various installments over 15 years commencing when the FHC opens. Pae Affidavit, ¶ 9.
7. To date, the City of Lakewood has received a total of \$11,201,815.16 in payments from CCF and/or LHA as a result of entering into the Master Agreement. Pae Affidavit, ¶ 10.

8. The Master Agreement requires that CCF make additional payments to the City and/or the community wellness foundation for the benefit of the City and its citizens totaling \$40,687,500.00. Pae Affidavit, ¶ 11.
9. The total payments provided to and/or for the benefit of the City, its citizens, and the community wellness foundation by CCF and/or LHA as a result of the Master Agreement will total \$51,889,315.16. Pae Affidavit, ¶ 12.

F. The Transfer of Properties Per the Master Agreement

1. On December 21, 2015, LHA's leasehold of seven homes was terminated and the City regained control over those homes (permanent parcel numbers 314-04-045, 314-04-044, 314-04-043, 314-04-041, 314-04-029, 314-04-031, and 314-04-033). ¶ 3 of the affidavit of the City of Lakewood's Director of Planning and Development, Bryce Sylvester, which is attached as Exhibit D (hereafter referred to as "Sylvester Affidavit").
2. On December 31, 2015, LHA sold the 850 Columbia Road, Westlake, Ohio property to CCF and the proceeds of the sale were paid to the City, with some additional proceeds to be paid later. Sylvester Affidavit, ¶ 4.
3. On February 19, 2016, the City sold the land on the southwest corner of Belle and Detroit on which the parking garage and professional office building resided (including some or all of permanent parcel numbers 314-04-001, 314-04-054, 314-04-053, 314-04-052, 314-04-051, 315-04-050, 314-04-002, 314-04-055, 314-04-003, and 314-04-025) to CCF. Sylvester Affidavit, ¶ 5.
4. On February 23, 2016, LHA conveyed by deed the Curtis Block building (permanent parcel number 314-07-007) and three homes (permanent parcel

numbers 314-04-042, 314-04-030, and 314-04-034) to the City. Sylvester Affidavit, ¶ 6.

5. To date and as a result of the Master Agreement, the City of Lakewood has purchased one commercial building and three homes, has regained control over seven homes on which LHA's leasehold was canceled, and has received the proceeds of a sale of LHA's property located in Westlake to CCF. Sylvester Affidavit, ¶ 7. The City has also sold a number of parcels to CCF upon which CCF's new FHC will be built. Sylvester Affidavit, ¶ 7.

G. The Demolition of Buildings and Construction of the New Family Health Center

1. In the Master Agreement, CCF agreed to construct a new \$34,000,000.00 Family Health Center across the street from the current Lakewood Hospital site with a new emergency room that will operate at a level of service generally consistent with or greater than the level of service that is being offered at Lakewood Hospital's existing emergency room. R. 184, Exhibit A, pgs. 2-4, Sections 2.1(a) and 2.4.
2. On September 16, 2016, the City issued a permit to CCF for the demolition of the professional office building and garage that resided on the southwest corner of Belle and Detroit. Sylvester Affidavit, ¶ 10.
3. Demolition of Lakewood Hospital's parking garage began in October, 2016 and the garage has been completely demolished. Sylvester Affidavit, ¶ 11.
4. Demolition of Lakewood Hospital's professional office building began in September, 2016 and the building has been completely demolished. Sylvester Affidavit, ¶ 12.

5. On or about March 31, 2017, the City issued a permit to CCF for the construction of the FHC. Sylvester Affidavit, ¶ 13.
6. CCF commenced construction of the FHC on or about April 27, 2017 on the southwest corner of Belle and Detroit. Sylvester Affidavit, ¶ 14.
7. It is anticipated that CCF will complete construction of the FHC in the summer of 2018. Sylvester Affidavit, ¶ 15.

II. LAW AND ARGUMENT

For more than a century, Ohio courts have refrained from deciding moot cases. In *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21 (1910), the Supreme Court held:

The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact, when not appearing on the record, may be proved by extrinsic evidence.

Miner at 238-239 quoting *Mills v. Green*, 159 U.S. 651, 653 (1895).

The relief sought by Appellants in Counts 1A, 1B, 1C, 7, and 8 of the Amended Complaint, which seek 1. an injunction to prohibit any resolution or contract in contravention of the Definitive Agreement and Lease, 2. specific performance of the Lease and Definitive Agreement, and 3. a writ of mandamus to ensure operation of Lakewood Hospital and performance of the Lease and Definitive Agreement (R. 75, ¶¶ 98, 99, 100, 115, 116, 117, 131, 132, 133, 199, 200, 203 and 204), cannot be granted because City Council enacted Ordinance 49-15 authorizing the City to enter into the Master Agreement with CCF and LHA and the Master

Agreement terminated the Definitive Agreement and significantly modified the Lease. Moreover, the citizens of Lakewood ratified Ordinance 49-1 and the City's entry into the Master Agreement and the resultant closure of Lakewood Hospital. The City, CCF, and LHA have been performing under the Master Agreement and Lakewood Hospital has been closed to in-patient care since February 6, 2016. As such, none of the relief sought by Appellants in Counts 1A, 1B, 1C, 7, and 8 of the Amended Complaint can be granted and the appeal concerning those claims should be dismissed.

Moreover, Appellants never attempted to enjoin the demolition of Lakewood Hospital's garage and professional office building or the commencement of construction of the Family Health Center further rendering their claims moot. In *Ardire v. City of Westlake City Council*, 8th Dist. Cuyahoga No. 99347, 2013 Ohio 3533, ¶ 4, this Court held that:

In construction cases, the courts have held that “where an appeal involves the construction of a building or buildings and the appellant fails to obtain a stay of execution of the trial court's ruling and construction commences, the appeal is rendered moot.” *Schuster v. Avon Lake*, 9th Dist. Lorain No. 03CA008271, 2003 Ohio 6587, ¶ 8.

Ardire at ¶ 4. See also *Gajewski v. Board of Zoning Appeals*, 8th Dist. Cuyahoga No. 91101, 2008 Ohio 5270, ¶¶ 14 and 18 and *Pinkney v. Southwick Investments, L.L.C.*, 8th Dist. Cuyahoga Nos. 85074 and 85075, 2005 Ohio 4167, ¶ 14.

The transformation of the Lakewood Hospital campus is readily apparent from the photographs attached as Exhibits 1 through 4 to the Affidavit of Bryce Sylvester, Lakewood's Director of Planning and Development. Exhibits 1 and 2 depict the southwest corner of Belle and Detroit and how it has changed from September, 2016 to December 6, 2017. The former shows Lakewood Hospital's professional office building and garage and the latter shows the progress made in constructing the Family Health Center. Sylvester Affidavit, ¶¶ 16-17, Exhibits

1-2. Exhibits 3 and 4 also depict these changes from a viewpoint one block west looking at what was the back of the professional office building and garage. Sylvester Affidavit, ¶¶ 18-19, Exhibits 3-4.

While Appellants did not have an opportunity to stay demolition and construction in this Court because the motion to dismiss was still pending in the trial court, they certainly had an opportunity to seek injunctive relief in the trial court to prevent the demolition of Lakewood Hospital's garage and professional office building and/or the commencement of construction of the Family Health Center. Appellants failed to seek injunctive relief to stop the demolition of both structures and the commencement of construction of the FHC. The *Ardire*, *Gajewski*, and *Pinkney* cases are compelling authority that Appellants' failure to attempt to enjoin the demolition of Lakewood Hospital's garage and professional office building and the construction of the Family Health Center further renders this appeal moot.

III. CONCLUSION

Appellants cannot obtain the relief they seek in Counts 1A, 1B, 1C, 7, and 8 of the Amended Complaint given the enactment of Ordinance 49-15; the City, CCF, and LHA entering into and performing under the Master Agreement; and the closure of Lakewood Hospital to in-patient care on February 6, 2016. For all the foregoing reasons, the appeal of the trial court's dismissal of Counts 1A, 1B, 1C, 7, and 8 of the Amended Complaint should be dismissed as moot.

Respectfully submitted,

s/Kevin M. Butler

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Gable

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2017, the foregoing Appellees' Motion to Partially Dismiss Due to Mootness was electronically filed with the Clerk of the Court using the Court's Electronic Filing system which will send notification of to each party to this action. In addition, the following have been served with this motion via e-mail:

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s/Robert E. Cahill
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IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM, et al.,	)	
	)	CASE NO. CA-17-106094
Plaintiffs/Appellants,	)	
	)	
v.	)	
	)	On Appeal from Cuyahoga County
CITY OF LAKEWOOD, et al.,	)	Court of Common Pleas
	)	Case No. CV-15-846212
Defendants/Appellees.	)	
	)	

AFFIDAVIT OF JENNIFER PAE

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Jennifer Pae, being first duly sworn according to law, states as follows:

1. I am the Finance Director for the City of Lakewood and have served the City in that capacity since September 5, 2006. I was hired by the City on February 6, 2006 as the Assistant Finance Director and served as the acting Finance Director from March 1, 2006 through September 4, 2006.
2. As part of my duties as Finance Director, I am aware of the financial transactions that have occurred and will occur as a result of the passage of Ordinance 49-15 on December 21, 2015, which authorized the City to enter into the Master Agreement

with the Cleveland Clinic Foundation (“CCF”) and Lakewood Hospital Association (“LHA”).

3. The City entered into the Master Agreement with CCF and LHA on December 21, 2015 after the passage of Ordinance 49-15.
4. On December 31, 2015, the City received \$6,644,731.28 (\$6,800,000.00 payment less title and closing costs) of the total \$8,200,000.00 required to be paid by the Master Agreement from CCF for the sale of LHA’s property at 850 Columbia Road, Westlake, Ohio to CCF. The remaining \$1.4 million will be paid to the City by CCF when the new Family Health Center (“FHC”) opens on the southwest corner of Belle and Detroit.
5. On February 22, 2016, \$500,000.00 (of the total \$7,000,000.00 required to be paid by the Master Agreement) was paid to the City by CCF for demolition and/or rehabilitation of the current Lakewood Hospital site (the southeast corner of Belle and Detroit) to be used at the City’s sole discretion. The remaining \$6,500,000.00 will be paid by CCF when the FHC opens.
6. On February 22, 2016, the City received \$1,557,083.89 (the appraised fair market value of \$1,576,000.00 less closing costs) from CCF for the sale of the land on the southwest corner of Bell and Detroit on which the parking garage and professional office building resided and on which the new FHC is being built.
7. On February 23, 2016, the City paid \$1 to LHA for the Curtis Block building (permanent parcel number 314-07-007) and three residential homes that were owned by LHA (permanent parcel numbers 314-04-042, 314-04-030, and 314-04-034).

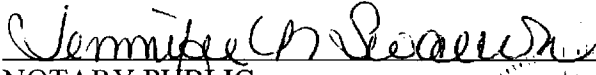
8. CCF and/or LHA made payments of \$383,333.33 or \$383,333.34 to the City on March 31, 2016, June 30, 2016, September 30, 2016, March 31, 2017, June 30, 2017, and September 28, 2017 under the 1996 Lease of Lakewood Hospital as modified by the Master Agreement. In addition to the \$2,299,999.99 already paid, CCF and/or LHA are required by the Master Agreement to pay to the City up to another \$587,500.00 through June 30, 2018.
9. On March 1, 2016, \$200,000.00 was paid by CCF to the City to begin the process of forming a new community wellness foundation. The City is the designated trustee of the funds of the yet-to-be-formed community wellness foundation. When the community wellness foundation is established, the funds the City is holding for the foundation will be transferred from the City to the foundation. The Master Agreement requires an additional \$32,200,000.00 be paid by CCF for the community wellness foundation in various installments over 15 years commencing when the FHC opens.
10. To date, the City of Lakewood has received a total of \$11,201,815.16 in payments from CCF and/or LHA as a result of entering into the Master Agreement.
11. The Master Agreement requires that CCF make additional payments to the City and/or the community wellness foundation for the benefit of the City and its citizens totaling \$40,687,500.00.
12. The total payments provided to and/or for the benefit of the City, its citizens, and the community wellness foundation by CCF and/or LHA as a result of the Master Agreement will total \$51,889,315.16.

FURTHER AFFIANT SAYETH NAUGHT.



JENNIFER PAE

SWORN TO AND SUBSCRIBED before me and in my presence this 11 day of December,
2017.



NOTARY PUBLIC

Jennifer L. Swallow, Atty.
Notary Public
State of Ohio
My commission has no expiration date.
RC 147.03 O.R.C.

**IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO**

Edward Graham, et al.,

Appellant,

v.

City of Lakewood, et al.,

Appellees.

Case No. CA-17-106094

On Appeal from Cuyahoga County Court
of Common Pleas Case No. CV-15-
846212

Regular Calendar

AFFIDAVIT OF DR. J. STEPHEN JONES

Dr. J. Stephen Jones, being first duly sworn according to law, states as follows:

1. I, Dr. J. Stephen Jones, am a physician employed by The Cleveland Clinic Foundation (the "Clinic"). I have been employed at the Clinic since 2000. I am currently the President of the Cleveland Clinic Regional Hospitals and Family Health Centers. Lakewood Hospital was one of the Cleveland Clinic Regional Hospitals over which I had responsibility, until it closed in February, 2016. I have personal knowledge of the facts stated herein and am competent to testify.
2. Lakewood Hospital was a community hospital located in Lakewood, Ohio, that was governed by the Lakewood Hospital Association ("LHA"). LHA contracted with the Clinic to provide medical services and management at Lakewood Hospital in 1996.
3. Over the several years prior to the Hospital's closing, Lakewood Hospital's patient volumes declined as the demand for inpatient services at community hospitals declined.

Lakewood Hospital was faced with financial challenges, which were discussed among the LHA Board of Trustees and the City of Lakewood.

4. That process continued through 2014 and 2015, during which experts were consulted, extensive review was undertaken, and City Council publicly deliberated over potential options. The process culminated in an agreement to transition to an outpatient model of care and close Lakewood Hospital. Consistent with that agreement, Lakewood Hospital's inpatient operations were terminated on February 6, 2016 and Lakewood Hospital was closed. A small part of the building remains open for the provision of emergency services and certain outpatient medical services. These operations will be transferred to a new facility, once construction of that facility is completed.

5. Closing a hospital is a complex process that involves coordinating patient care while transitioning doctors and staff to other employment, notifying regulatory bodies, terminating vendor contracts, and responsibly disposing of real estate. These tasks were undertaken with care and have been completed.

6. The provider agreement between Lakewood Hospital and the Centers for Medicare and Medicaid Services ("CMS") was terminated. As a consequence, Medicare and Medicaid coverage is no longer available for patients who would be admitted to Lakewood Hospital. In addition, lack of a valid provider agreement means that it is no longer CMS accredited by a recognized agency like The Joint Commission.

7. Contracts between Lakewood Hospital and commercial payors (insurance companies) were terminated. It would be extremely unlikely that new payor contracts could be negotiated in light of the status of the facilities and lack of accreditation by a recognized agency like The Joint Commission.

8. Contracts between Lakewood Hospital and its suppliers were cancelled.
9. Lakewood Hospital currently has no employees. Its former employees moved to new employment opportunities or retired.
10. Many of the physicians who provided services at Lakewood Hospital provided services pursuant to contracts. Those contracts were all terminated or amended to provide for the provision of services elsewhere.
11. Certain independent physicians who provided services at Lakewood Hospital maintained private offices in the Professional Office Building located adjacent to the former hospital. The building was demolished. It is not suitable for the restoration of physician offices.
12. Equipment, furniture, and other items that were necessary to the provision of inpatient services in Lakewood Hospital are no longer available for use. Disposition of these items was provided for in the agreement reached between the City, LHA, and the Clinic, and that process has been or is nearly completed.
13. The former hospital building itself has been secured to ensure that the portions of the building that are no longer being used do not create safety hazards. Steps were taken to ensure appropriate management of the facilities to allow for the operation of the aforementioned emergency department and outpatient services while closing off unused portions of the building, including heating and air conditioning facilities.
14. I do not believe that Lakewood Hospital currently could be restored to its prior status as a fully operational hospital. Moreover, the health and safety of patients would be seriously compromised if the inpatient hospital were reopened without the return of a full hospital staff.


J. Stephen Jones, M.D.

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) SS.

Notary Public



**My Commission Expires
April 28, 2019**

My Commission Expires: 9/28/19

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM, et al.,	)	
	)	CASE NO. CA-17-106094
Plaintiffs/Appellants,	)	
	)	
v.	)	
	)	On Appeal from Cuyahoga County
CITY OF LAKEWOOD, et al.,	)	Court of Common Pleas
	)	Case No. CV-15-846212
Defendants/Appellees.	)	
	)	

AFFIDAVIT OF MARY HAGAN

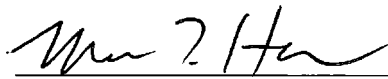
STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Mary Hagan, being first duly sworn according to law, states as follows:

1. I am the Clerk of City Council for the City of Lakewood and have served the City in that capacity since February 2, 1999. I have been employed by the City since July 11, 1988.
2. City Council received the certified election results on Issue 64, which was a referendum on Ordinance 49-15, from the Cuyahoga County Board of Elections, after those results were certified on November 23, 2016.

3. A true and accurate copy of the Certificate of Result of Election on Question or Issue that City Council received from the Board of Elections on Issue 64 is attached as Hagan Exhibit 1.
4. The Certificate of Results for Issue 64 provides that the voters authorized and approved Ordinance 49-15 by a vote of 11,818 to 11,111. Hagan Exhibit 1.
5. City Council received the certified election results on Issue 24, which proposed the adoption of a new city charter entitled the Third Amended Charter, from the Cuyahoga County Board of Elections, after those results were certified on November 28, 2017.
6. A true and accurate copy of the Certificate of Result of Election on Question or Issue that City Council received from the Board of Elections on Issue 24 is attached as Hagan Exhibit 2.
7. The Certificate of Results for Issue 24 provides that the voters adopted the Third Amended Charter by a vote of 6,414 to 2,180. Hagan Exhibit 2.
8. A true and accurate copy of the newly adopted Third Amended Charter is attached as Hagan Exhibit 3.
9. The Third Amended Charter eliminates all references to Lakewood Hospital and the City owning, leasing, or operating a hospital. Hagan Exhibit 3.

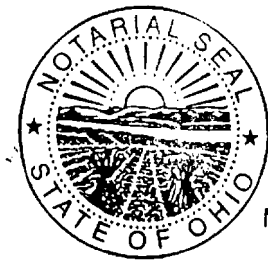
FURTHER AFFIANT SAYETH NAUGHT.



MARY HAGAN

SWORN TO AND SUBSCRIBED before me and in my presence this 8th day of December,

2017.



Amy Antel
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Cuyahoga County
My Comm. Exp. 12/19/2017

Amy Antel
NOTARY PUBLIC

CERTIFICATE OF RESULT OF ELECTION ON QUESTION OR ISSUE

Revised Code 3501.11, 3505.33, 5705.19 – 5705.25

The State of Ohio, Cuyahoga County, ss.

To: Lakewood City Council; Secretary of State Jon Husted

We the undersigned, Cuyahoga County Board of Elections, do hereby certify that at the election held in the City of Lakewood in the county, on the 8th day of November, 2016, the vote cast on the following issue was as follows:

Issue 64: Referendum on Ordinance No. 49-15 (by Petition): Shall Ordinance No. 49-15 of the City of Lakewood authorizing the execution and delivery of an agreement by and between the City of Lakewood, the Lakewood Hospital Association, and the Cleveland Clinic Foundation and authorizing and approving related matters be approved?

Votes For the Ordinance:

eleven thousand eight hundred eighteen

11,818

Votes Against the Ordinance:

eleven thousand one hundred eleven

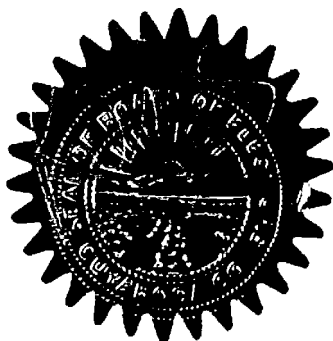
11,111

Total vote cast on issue:

twenty-two thousand nine hundred twenty-nine

22,929

IN WITNESS WHEREOF, we have hereunto subscribed our names officially,
at Cuyahoga County, Ohio, this 23rd day of November, 2016.



Attest:

Pat McDonald
Director

Inajo Davis Chappell
Inajo Davis Chappell, Chair

Jeff Hastings
Jeff Hastings

Robert S. Frost
Robert S. Frost

David J. Wondolowski
David J. Wondolowski

Cuyahoga County, Ohio

CERTIFICATE OF RESULT OF ELECTION ON QUESTION OR ISSUE

Revised Code 3501.11, 3505.33, 5705.19 – 5705.25

The State of Ohio, Cuyahoga County, ss.

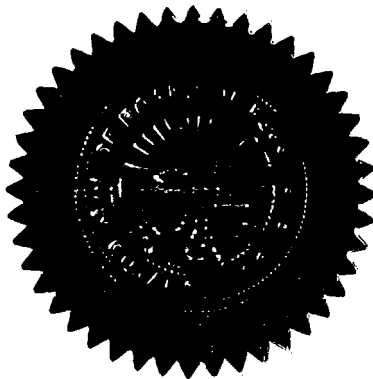
To: City of Lakewood; Secretary of State Jon Husted

We the undersigned, Cuyahoga County Board of Elections, do hereby certify that at the election held in the City of Lakewood in the county, on the 7th day of November, 2017, the vote cast on the following issue was as follows:

Issue 24. Proposed Charter: Shall the proposed Third Amended Charter of the City of Lakewood, as reported by the City Council of the City of Lakewood be adopted?

Votes Yes:	6,414
Votes No:	2,180
Total vote cast on issue:	8,594

IN WITNESS WHEREOF, we have hereunto subscribed our names officially at Cleveland, Ohio, this 28th day of November, 2017.



A handwritten signature in dark ink, appearing to read "Inajo Davis Chappell", written over a horizontal line.

Inajo Davis Chappell, Chair

A handwritten signature in dark ink, appearing to read "Jeff Hastings", written over a horizontal line.

Jeff Hastings

A handwritten signature in dark ink, appearing to read "Robert S. Frost", written over a horizontal line.

Robert S. Frost

A handwritten signature in dark ink, appearing to read "David J. Wondolowski", written over a horizontal line.

David J. Wondolowski

Board of Elections

Attest:

A handwritten signature in dark ink, appearing to read "Pat McDonald", written over a horizontal line.

Director

Cuyahoga County, Ohio

THIRD AMENDED CHARTER

OF THE CITY OF LAKEWOOD, OHIO

Adopted November 7, 2017

TABLE OF CONTENTS

PREAMBLE

ARTICLE ONE. MUNICIPAL POWERS

- 1.1 Municipal Powers
- 1.2 Manner of Exercise
- 1.3 Interpretation

ARTICLE TWO. COUNCIL

- 2.1 Membership, Election and Term
- 2.2 Qualifications and Vacancies
- 2.3 Council Salaries
- 2.4 Council Meetings and Election of Officers
- 2.5 Organization and Procedures
- 2.6 President and Vice President of Council
- 2.7 Clerk and Other Staff of Council
- 2.8 Enactment of Ordinances and Resolutions
- 2.9 Mayor's Approval or Disapproval of Legislation
- 2.10 Recording and Codification of Legislation
- 2.11 Publication
- 2.12 Effective Date of Legislation

ARTICLE THREE. OFFICE OF THE MAYOR

- 3.1 Executive and Administrative Powers
- 3.2 Residency, Term and Qualifications of Mayor
- 3.3 Mayor Ex-Officio Director

- 3.4 Mayor's Appointment Power
- 3.5 Salary of the Mayor
- 3.6 General Powers and Duties of Mayor
- 3.7 Mayor's Investigation
- 3.8 Acting and Interim Mayor
- 3.9 Location of Office; Full-Time Position
- 3.10 Right of Mayor and Directors in Council

ARTICLE FOUR. DEPARTMENTS AND OFFICERS

- 4.1 General Provisions
- 4.2 Directors of Departments
- 4.3 Department of Law
- 4.4 Department of Finance

ARTICLE FIVE. FINANCE

- 5.1 Director of Finance
- 5.2 Bonds Required
- 5.3 Fiscal Year
- 5.4 Appropriations
- 5.5 Budget Document
- 5.6 Reports
- 5.7 Capital Plan
- 5.8 Assessments
- 5.9 Municipal Income Tax
- 5.10 Property Tax Levies
- 5.11 Charter Exceptions for Debt Instruments

ARTICLE SIX. CIVIL SERVICE COMMISSION

- 6.1 Appointment and Term of Members
- 6.2 President; Secretary
- 6.3 Classified and Unclassified Service
- 6.4 Procedure
- 6.5 Salaries and Council Appropriation
- 6.6 Suspension and Removal of Commission Member
- 6.7 Salary Recommendations

ARTICLE SEVEN. BOARDS AND COMMISSIONS

- 7.1 General Provisions
- 7.2 Planning Commission

- 7.3 Board of Zoning Appeal
- 7.4 Board of Building Standards and Building Appeals
- 7.5 Charter Review Commission and Charter Amendments

ARTICLE EIGHT. ETHICS AND TRAINING

- 8.1 Ethics
- 8.2 Training for Council and Mayor

ARTICLE NINE. ELECTIONS, INITIATIVE, REFERENDUM, RECALL

- 9.1 Elections
- 9.2 Initiative
- 9.3 Referendum
- 9.4 Recall

ARTICLE TEN. APPROPRIATION OF PROPERTY

- 10.1 Appropriation
- 10.2 Initial Resolution
- 10.3 Notice
- 10.4 Further Proceedings

ARTICLE ELEVEN. GENERAL PROVISIONS

- 11.1 Continuance of Officers, Ordinances and Contracts
- 11.2 Severability

THIRD AMENDED CHARTER

OF THE CITY OF LAKEWOOD, OHIO

PREAMBLE

We, the people of the city of Lakewood, in the county of Cuyahoga and state of Ohio, in order that we may have the benefits of municipal home rule and exercise all the powers of local self-government, do frame and adopt this charter for the government of the city.

ARTICLE ONE. MUNICIPAL POWERS

1.1 MUNICIPAL POWERS

The city shall have all power now or later granted to municipalities by the Constitution and laws of the state of Ohio.

1.2 MANNER OF EXERCISE

All powers shall be exercised in the manner required by this charter, or if not required by this charter, in a manner provided by ordinance or resolution of city council.

1.3 INTERPRETATION

Unless the context clearly requires otherwise, words and phrases used in this charter shall be interpreted in the same manner as provided in the Ohio Revised Code for the interpretation of state statutes. As used in this charter relating to matters of local self-government, “general law” means law that may be altered, excepted from or disregarded under the authority of this charter. As used in this charter relating to matters of police, sanitary or other similar regulations, “general law” means law that may not be altered, excepted from or disregarded under the authority of this charter.

ARTICLE TWO. COUNCIL

2.1 MEMBERSHIP, ELECTION AND TERM

Except as limited by this charter, the legislative powers of the city shall be vested in a city council consisting of seven members. Four members shall be residents of and elected from the four wards in the city, one member from each ward, and three members shall be elected at large. Except as necessary in the case of vacancies, members representing each ward shall be elected in the regular municipal election held in the year immediately prior to the year in which a presidential general election is held; and members at large shall be elected in the regular municipal election held in the year immediately following the year in which a presidential general election is held. All members of council shall serve for a term of four years commencing on January 1 of the year following the date of the member's election.

2.2 QUALIFICATIONS AND VACANCIES

(a) Qualifications. Each member of council shall have been for at least one year immediately prior to the date of taking office both a resident and registered voter of the city. Each member of council elected from a ward of the city shall be a resident of the ward from which the member was elected. All members of council shall continue to be residents and registered voters of the city and, if elected or appointed from a ward, shall be and continue to be a resident of that ward.

Any member who ceases to possess those qualifications shall immediately forfeit his or her office. Council shall be the judge of the election and qualification of its members.

(b) Vacancy. Vacancies in council shall be filled by appointment made by the remaining councilmembers. In the event council does not appoint a successor within 60 days of the occurrence of a vacancy, the mayor may fill the vacancy. If the vacancy occurs more than two years and 120 days before the municipal primary election for the next term of that office, the appointee shall serve only until his or her successor is elected and qualified at the next regular municipal election. If the vacancy occurs afterward, the appointee shall serve until the end of the unexpired term of the former councilmember. Any vacancy that results from a recall election shall be filled in the manner provided by Article Nine.

2.3 COUNCIL SALARIES

(a) Salaries. The salaries of the members of council shall be established by

ordinance or resolution, provided that the legislation is adopted not less than 30 days prior to the deadline for the filing of nominating petitions by candidates for the office of councilmember for the next term, and subject to further provisions of this charter.

(b) Salary Recommendation. Council shall accept, reject, or modify the civil service commission's recommendations made under Article Six within 90 days of receiving them. Without any action by council within the 90-day period, the recommendations of the civil service commission shall become effective as if adopted by ordinance or resolution under Section 2.8, but consistent with Section 2.3(c).

(c) Timing of Salary Change. No change in the salary for a member of council shall take effect during the current term of that member.

2.4 COUNCIL MEETINGS AND ELECTION OF OFFICERS

(a) Meetings. At 7:30 p.m. on the first Monday in January following each regular municipal election or, if that Monday falls on a holiday, on the first Tuesday, council shall meet at the usual place of holding council meetings. After the first meeting, council shall meet at times established by its rules or by ordinance or resolution.

The mayor, president of council, or any three members of council may call special meetings of council upon written notice served in whichever ways are reasonably calculated to give members of council the most immediate notice possible, at least six hours before the time of the meeting. Any notice of a special meeting shall state the subject or subjects to be considered at the meeting and no other subject shall be considered.

All meetings of council or its committees shall be open to the public, except that executive sessions may be held in accordance with general law.

(b) Election of Council Officers. The president and vice president of council shall be elected at the first meeting of council by a majority of those present. The member of council present who has the longest consecutive tenure of office shall preside over the organizational meeting until the president of council is elected.

2.5 ORGANIZATION AND PROCEDURES

(a) Quorum. A majority of councilmembers shall be a quorum to do business but a smaller number may adjourn from day to day and compel

the attendance of absent members in a manner and under penalties established by ordinance or resolution.

(b) Rules. Council shall determine its own rules and order of business and shall keep a permanent record of its proceedings. Any citizen shall have access to the minutes and records at all reasonable times.

(c) Voting. The affirmative vote of a majority of councilmembers present shall be necessary to adopt any ordinance or resolution. The vote on any ordinance or resolution shall be recorded and kept in a permanent record.

2.6 PRESIDENT AND VICE PRESIDENT OF COUNCIL

(a) The president and vice president shall each serve a term of two years. The president or vice president may be removed from his or her office by a two-thirds vote of all councilmembers.

The president of council shall preside at all meetings of council and perform the duties imposed by this charter and by the rules of council. The president shall have the same right to vote on all matters presented to council as any other member of council.

(b) In the event of a vacancy in the office, or the temporary absence or disability of the president of council, the vice president shall serve as acting president of council. The acting president shall exercise the powers and perform the duties of the president of council until the vacancy in the office of president of council is filled by council or until the temporary absence or disability of the president of council ends.

2.7 CLERK AND OTHER STAFF OF COUNCIL

Council shall choose a clerk of council and other staff employees it determines to be necessary. The clerk of council shall keep the records of council and perform other duties as required by this charter or by council. The clerk and other staff employees shall serve at the pleasure of council.

2.8 ENACTMENT OF ORDINANCES AND RESOLUTIONS

(a) Each proposed ordinance or resolution shall be in writing and shall not contain more than one subject, which shall be clearly stated in the title. General appropriation ordinances may contain the various subjects and accounts for which moneys are appropriated. The vote on the passage of each ordinance or resolution shall be officially recorded and the official

record shall be publicly available.

(b) No resolution of a permanent character or ordinance shall come to a vote until it has been read, by title, on three separate days. The requirement of reading on three separate days may be dispensed with by a two-thirds vote of all councilmembers. A majority of councilmembers present may require that an ordinance be read in full rather than by title.

No ordinance, resolution or section of an ordinance or resolution shall be revised or amended unless the new ordinance or resolution contains the entire ordinance or resolution or section to be revised or amended, and the ordinance, resolution or section revised or amended is repealed.

(c) No ordinance or resolution shall under any circumstances be adopted or passed unless it has been read on three separate days, which (1) changes the amount of salary or compensation for any elected officer of the city; (2) amends any zoning ordinance; (3) grants, renews or extends a franchise or other special privilege; or (4) regulates the rate to be charged by a public utility for its services.

(d) The enacting clause of all ordinances passed by council shall be "Be it ordained by the city of Lakewood." The enacting clause of all ordinances submitted by initiative shall be "Be it ordained by the people of the city of Lakewood."

2.9 MAYOR'S APPROVAL OR DISAPPROVAL OF LEGISLATION

(a) Any ordinance or resolution passed by council shall be signed by the presiding officer and presented to the mayor by the clerk of council. If the mayor approves the ordinance or resolution, the mayor shall sign it within 10 days after its passage or adoption.

(b) If the mayor does not approve an ordinance or resolution, the mayor shall return it to council with a statement of his or her objections to the measure within 10 days, or if council is not then in session, at the next regular meeting of council, which objections council shall enter into its minutes. The mayor may approve or disapprove the whole or any item or part of any ordinance or resolution appropriating money, but otherwise the approval or disapproval shall be addressed to the entire ordinance or resolution. Not later than at the next regular meeting, council shall reconsider the legislation and, if upon reconsideration the legislation or the part of the legislation disapproved by the mayor is approved by a vote of two thirds of all members of council, it shall then take effect as if it had

received the signature of the mayor.

(c) If the mayor does not sign or disapprove an ordinance or resolution within 10 days after its passage, it shall take effect in the same manner as if the mayor had signed it on the 10th day.

2.10 RECORDING AND CODIFICATION OF LEGISLATION

(a) All ordinances and resolutions upon their final passage or adoption shall be recorded in an official record kept for that purpose and shall be authenticated by the signatures of the presiding officer and the clerk of council.

(b) Ordinances of a general and permanent nature shall, after their effective date, be incorporated into the codified ordinances of the city. Council shall prescribe how the codified ordinances are to be organized and maintained. The codified ordinances shall be published and available for public inspection at all reasonable times.

2.11 PUBLICATION

Council may prescribe the manner of giving public notice of the enactment of any and all ordinances, resolutions or other acts, procedures, statements, including financial statements, or reports required by law to be published. Publication shall include posting on the official city website.

2.12 EFFECTIVE DATE OF LEGISLATION

(a) Council may provide for legislation to take immediate effect by stating the necessity for its immediacy in a separate section of the legislation and passing the legislation by a two-thirds vote of all councilmembers. An ordinance or resolution passed in this manner shall become effective upon approval by the mayor, or upon the expiration of the time within which it may be disapproved by the mayor, or upon its passage or approval notwithstanding the disapproval by the mayor, as the case may be, as provided in Section 2.9, or at a time fixed in the legislation sooner than the period of time specified in Section 2.12(b).

(b) No other ordinance or resolution shall become effective until 40 days after its passage or adoption and approval by the mayor, the expiration of the time within which it may be disapproved by the mayor, or its passage or adoption notwithstanding the disapproval by the mayor, as the case may be, as provided in Section 2.9.

**ARTICLE THREE.
OFFICE OF THE MAYOR**

3.1 EXECUTIVE AND ADMINISTRATIVE POWERS

The executive and administrative powers of the city shall be vested in the mayor, directors of departments and other administrative officers provided for in this charter or by ordinance or by resolution.

3.2 RESIDENCY, TERM AND QUALIFICATIONS OF MAYOR

The mayor shall be elected for a term of four years, commencing on the first day of January following the election, shall have been for at least one year immediately prior to the date of taking office both a resident of the city and a registered voter of the city, and shall continue as both a resident and registered voter of the city during the term of office. Except in the case of vacancies, the mayor shall be elected in the regular municipal election held in the year immediately prior to the year in which a presidential general election is held.

3.3 MAYOR EX-OFFICIO DIRECTOR

Subject to the provisions of this charter, if a department of public safety is created the mayor shall by virtue of his or her office be its director, without additional compensation, and to that extent shall exercise all powers and perform all duties delegated to and conferred upon the director of public safety by this charter, by ordinance or resolution and by general law.

3.4 MAYOR'S APPOINTMENT POWER

The mayor may appoint, with approval of council, and may remove, if and when the office is created, a director of public safety, and shall appoint, with the approval of council, other directors in accordance with this charter. The mayor shall make all other appointments under the provisions of this charter not otherwise provided for by general law or by council legislation; and those appointees shall serve until removed by the mayor or until their respective successors are appointed and qualified.

3.5 SALARY OF THE MAYOR

(a) Salary. The salary of the mayor shall be established by ordinance or resolution, provided that the legislation must be adopted not less than 30 days prior to the deadline for the filing of nominating petitions by candi-

dates for the office of mayor for the next term, and subject to further provisions of this charter.

(b) Salary Recommendation. Council shall accept, reject, or modify the civil service commission's recommendations made under Article Six within 90 days of receiving them. Without any action by council within the 90-day period, the recommendations of the civil service commission with respect to the mayor's salary shall become effective as if adopted by ordinance or resolution under Section 2.8, but consistent with Section 3.5(c).

(c) Timing of Salary Change. No change in the salary for the mayor shall take effect during the current term of the mayor.

3.6 GENERAL POWERS AND DUTIES OF MAYOR

The mayor shall be the chief conservator of the peace within the city; shall supervise the administration of the affairs of the city; shall see that all ordinances of the city are enforced; shall recommend to council for adoption any measures the mayor may deem necessary or expedient; shall with the director of finance keep council advised of the financial condition and future needs of the city; shall prepare and submit any reports required by council; and shall exercise powers and perform duties conferred upon or required of the mayor by this charter, by ordinance or resolution of council, or by general law.

3.7 MAYOR'S INVESTIGATION

The mayor or anyone appointed by the mayor may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined or investigated.

3.8 ACTING AND INTERIM MAYOR

(a) Temporary Absence. When the mayor is absent and inaccessible, or is unable for any cause to perform the duties of the office of mayor, the person designated by ordinance or resolution of council shall be the acting mayor until the mayor resumes the office.

If the mayor does not resume the duties of the office within 60 days, council shall declare the office vacant and appoint an interim mayor as specified in Section 3.8(b).

(b) Vacancy in the Office of Mayor. In the case of the death, resignation or

removal of the mayor, the mayor ceasing to reside and remain a registered voter in the city, or other vacancy in the office of mayor, council shall appoint an interim mayor. Until council meets and appoints by a majority vote of its members a qualified person to serve as interim mayor, the acting mayor shall assume the duties of the office. The appointment of an interim mayor shall be made within 60 days of the vacancy.

If the vacancy occurs more than two years and 120 days before the municipal primary election for the next term of that office, the interim mayor shall serve only until his or her successor is elected and qualified at the next regular municipal election. If the vacancy occurs afterward, the interim mayor shall serve until the end of the unexpired term of the former mayor. Any vacancy that results from a recall election shall be filled in the manner provided by Article Nine.

3.9 LOCATION OF OFFICE; FULL-TIME POSITION

The mayor's office shall be located at city hall. The mayor is to serve the city on a full-time basis. While the mayor must devote his or her primary time and attention to the business of the city, holding the office of the mayor does not necessarily preclude limited outside employment, provided that outside employment does not conflict or interfere with carrying out the duties assigned by this charter or general law, or otherwise violate any provision of this charter or general law.

3.10 RIGHT OF MAYOR AND DIRECTORS IN COUNCIL

The mayor and the directors of all departments established by this charter or by legislation shall be entitled to participate in meetings of council. The mayor shall be entitled to introduce ordinances and resolutions and shall be entitled to take part in the discussion of all matters coming before council. The directors of departments shall be entitled to take part in all discussions in council relating to their respective departments.

ARTICLE FOUR. DEPARTMENTS AND OFFICERS

4.1 GENERAL PROVISIONS

There shall be a department of law and a department of finance. Council may, in its discretion, establish additional city departments, offices or agencies to provide and administer city services, including but not limited to public safety, planning and development, human services and public

works, and may prescribe or reassign the functions of all departments, offices and agencies. Notwithstanding council's discretion to prescribe or reassign department functions as set forth in this section, no function assigned by this charter to a particular department, office or agency may be discontinued or assigned to any other unless this charter specifically permits its discontinuance or reassignment.

4.2 DIRECTORS OF DEPARTMENTS

Except as otherwise provided by this charter, the head of each department shall be a director, appointed by the mayor, and shall serve at the mayor's pleasure. Each director shall administer his or her department in accordance with this charter, the applicable ordinances adopted by council, the rules and regulations made by the mayor, and general law, except as general law may be limited by council. Each director may, subject to applicable civil service regulations, appoint, promote, transfer, reduce or remove division heads, officers and employees within his or her department.

4.3 DEPARTMENT OF LAW

The department of law shall be headed by a director of law, who shall be an attorney admitted to practice law in the state, shall be a registered voter of the city, and shall be appointed by the mayor with the approval of council. The director of law shall serve as chief legal adviser to council, the mayor, all boards and commissions, and all city departments, offices and agencies; shall represent the city in all legal proceedings; and shall perform any other duties prescribed by this charter, ordinance, resolution or general law, except as general law may be limited by council.

4.4 DEPARTMENT OF FINANCE

The department of finance shall be headed by a director of finance. The director of finance shall be responsible for the administration of all financial requirements called for by this charter, ordinance, resolution or general law, except as general law may be limited by council. The director of finance shall also be the city auditor.

ARTICLE FIVE. FINANCE

5.1 DIRECTOR OF FINANCE

The director of finance shall have charge of the administration of the financial affairs of the city in accordance with Section 4.4.

5.2 BONDS REQUIRED

Council shall establish the amount of bond to be given by each officer, clerk or employee in the city government, if any be required, and required bonds shall be given with surety. Premiums on official bonds shall be paid by the city.

5.3 FISCAL YEAR

The fiscal year of the city shall begin the first day of January unless otherwise specified by ordinance.

5.4 APPROPRIATIONS

No money shall be drawn from the treasury of the city, nor shall any obligation for the expenditure of money be incurred, except by appropriations adopted by council. Any monies appropriated shall be used for the specified purposes and these purposes may not be changed without authority from council. No money, from whatever source derived, shall be appropriated for use by or at the direction of individual members of council.

5.5 BUDGET DOCUMENT

On or before the second city council meeting in November in each year, the director of finance shall prepare an estimate of the expense of conducting the affairs of the city for the following fiscal year. This estimate shall be compiled from detailed information obtained from the various departments and shall set forth at a minimum:

- (a) an itemized estimate of the expense of operating each department;
- (b) comparisons of proposed current estimates with the corresponding items of expenditures for the last two completed fiscal years and with an estimate of expenditures necessary to complete the current fiscal year;
- (c) reasons for proposed increases or decreases in expenditures compared with the current fiscal year;

- (d) a schedule for each department listing required operations of the department for the next fiscal year and any additional activities desired to be undertaken;
- (e) compensation increases as either additional pay to current employees, or for additional employees;
- (f) an itemization of all anticipated revenue from taxes and other sources;
- (g) the amounts required to pay interest on the city's debt, and for bond retirement funds as required by law;
- (h) the total amount of the outstanding city debt with a schedule of maturities of bond issues and any other long-term financial obligations of the city; and
- (i) any other information as may be required by council.

Upon receipt of the estimate, council shall begin the appropriations process. Council shall hold public hearings upon any proposed appropriation legislation before a committee or the entirety of council. After the public hearings, council, taking the estimate into consideration, shall by temporary or permanent appropriation legislation provide for the funding of the city as provided by general law or except as general law may be limited by council.

5.6 REPORTS

The director of finance shall periodically report on the finances of the city to the mayor, council, the public and any specific persons designated by law, including financial transactions for the fiscal year or any part of the fiscal year and the effect of those transactions on appropriations within each department of the city government.

5.7 CAPITAL PLAN

Annually, after consultation with the mayor and the heads of affected city departments, the director of finance shall prepare and submit to the mayor and council a recommended five-year financial plan for the city's capital needs.

5.8 ASSESSMENTS

(a) No public improvement, any part of the cost of which is to be specially assessed upon the owners of property in the city, shall be made without the approval of council. Before property in the city may be specially assessed for public improvements, council shall establish regulations sufficient to require preliminary legislation declaring the improvements necessary; to ensure the affected owners receive notice of the proposed assessment, an opportunity to examine plans for the improvement, and the ability to be heard in at least one public forum before the assessment is authorized by council; to divide assessed costs equitably among the city and affected property owners; to provide for repayment over an appropriate period of time; and to establish an opportunity for owners to make damage claims arising from the improvements and have those claims heard.

(b) Council may by a two-thirds vote of all members specially assess the cost of a public improvement upon affected property owners. However, if the owners representing a majority of the foot frontage of the lots to be assessed petition council for the improvement and assessment, council may approve the special assessment by a majority vote.

5.9 MUNICIPAL INCOME TAX

Any legislation providing for an increase in the rate of municipal income tax charged on taxable income within the city, or providing for a reduction in the resident income tax credit for residents of the city, shall not become effective until council submits the legislation to the registered voters at a primary or general election occurring more than 60 days after the passage of the legislation, and until the legislation is approved by a majority of those voting on the measure.

5.10 PROPERTY TAX LEVIES

(a) Taxation by Vote of Council. In any calendar year, taxes may be levied upon the tax duplicate without a vote of the people for the current operating expenses of the city, but no such tax shall be levied at a rate exceeding by more than 5.2 mills the rate for these purposes within the constitutional limitation allocated to the city on the 1938 tax duplicate. Except as permitted in this section, all power to tax shall be as defined and limited by general law.

(b) Levy for Police and Fire Pension Fund. Notwithstanding any other provision of this charter, and in addition to all other levies authorized or required by law, but otherwise in the manner provided for the making of

other municipal levies, council shall levy annually, without a vote of the people, outside the constitutional and statutory 10-mill limitation and outside the limitations provided by this charter, a tax upon all real and personal property listed for taxation upon the tax lists and duplicates for each year sufficient in rate to provide all moneys required to meet the city's obligations related to the Ohio Police and Fire Pension Fund and to pay debt charges on securities issued to support the fund.

(c) Levy for Certain Municipal Improvements. Without prejudice to the use of other funds from taxes or other sources available for these purposes, council may levy a tax upon all real and personal property listed for taxation upon the tax list and duplicate at a rate not to exceed two mills outside the levies provided in Section 5.10(a) and (b) to provide a fund for the purpose of financing the reconstruction, expansion, operation and maintenance of a sewage disposal plant and sewer system, and the capital needs of street infrastructure, municipal buildings, parks and recreation facilities.

5.11 CHARTER EXCEPTIONS FOR DEBT INSTRUMENTS

(a) No provision in this charter relating to granting, renewing or extending franchises or other special privileges shall apply to franchises or special privileges given in connection with the issuance of bonds, notes or other debt instruments by the city. Those franchises or other special privileges given in connection with the issuance of bonds, notes or other debt instruments by the city shall instead conform to any applicable provisions of the state Constitution.

(b) No provision in this charter shall require the director of law to prepare or endorse his or her approval of the form and correctness on bonds, notes or other debt instruments of the city, when the city has engaged other counsel as bond counsel to prepare and render approving opinions with respect to these bonds, notes or other debt instruments of the city.

(c) No provision in this charter shall require the director of finance to certify the availability of money related to legislation authorizing or otherwise affecting the issuance or terms of bonds, notes or other debt instruments of the city.

ARTICLE SIX. CIVIL SERVICE COMMISSION

6.1 APPOINTMENT AND TERM OF MEMBERS

The civil service commission is composed of three members who are registered voters of the city, appointed under this article. During their term members of the commission shall not hold any other office or position of employment with the city. Not more than two members shall be of the same political party, as determined by current voter registration, but members may have no party affiliation. The mayor shall appoint two members of the commission and council shall appoint one member of the commission. Each member of the commission shall serve a term of three years and until his or her successor has been appointed and qualified for office. The members of the commission shall be ineligible to be reappointed to succeed themselves for more than one additional three-year term, unless the member is completing a term for which he or she was appointed to fill a midterm vacancy.

6.2 PRESIDENT; SECRETARY

The commission shall designate one of its members as president and may appoint a secretary. The secretary shall not have a vote.

6.3 CLASSIFIED AND UNCLASSIFIED SERVICE

The civil service of the city is divided into the unclassified and the classified service. The unclassified service shall include elected officers; directors of departments; members of all boards or commissions appointed by the mayor and council; the clerk of council and the secretary of the civil service commission; and unskilled labor and hourly personnel. The classified service shall comprise all positions not specifically included in the unclassified service.

6.4 PROCEDURE

(a) The commission shall make, promulgate, prescribe and enforce rules for the appointment, promotion, transfer, layoff, reinstatement, suspension and removal of employees in the classified service, and other rules necessary for the enforcement of the merit system of pay and promotion and for the commission's procedure. The commission shall keep a permanent, public record of its proceedings.

(b) Any member of the commission may subpoena and require the attendance of witnesses, cause the administration of oaths and compel testimony and the production of books, papers and other evidence pertinent to any issue before the commission. If any applicant fails to respond to these re-

quests, the commission may take that failure into account when deciding the applicant's matter.

6.5 SALARIES AND COUNCIL APPROPRIATION

The salaries of the commission shall be set by council, and a sufficient sum shall be appropriated each year to carry out the civil service provisions of this charter.

6.6 SUSPENSION AND REMOVAL OF COMMISSION MEMBER

With written explanation to council and the commission, filed with the clerk of council and the secretary of the commission, the mayor may at any time for cause suspend any commissioner for up to 30 days. Cause may include but need not be limited to neglect of duty or misfeasance or malfeasance in office. The president of council shall call a hearing of council within 30 days of the filing of the mayor's writing. At the hearing the mayor may further explain the cause for the commissioner's suspension, and the suspended commissioner may appear with, without or by counsel in response. At the conclusion of the hearing, council shall by a majority vote of councilmembers present either remove or reinstate the commissioner. For good cause, council may continue the hearing for up to 30 days.

6.7 SALARY RECOMMENDATIONS

On or before July 1 of each year in which a presidential general election is held, the civil service commission shall review and make a written report to council, which report shall be filed with the clerk of council and the office of the mayor, setting forth the commission's recommendations for the salary and other compensation for the offices of mayor and members of council. Council shall place that report on the next docket at a regularly scheduled council meeting. If council takes no action or fails to decline to follow the suggestions within 90 days, the recommendations shall take effect as if council had adopted them by ordinance approved by the mayor. However, no increase in salary under this section shall exceed 10 percent of the salary for the office of mayor or council, unless there has been no increase in salary for that office in the preceding 10 years.

ARTICLE SEVEN. BOARDS AND COMMISSIONS

7.1 GENERAL PROVISIONS

(a) Council may by ordinance create boards and commissions in addition to those created in this charter. No function assigned by this charter to a board or commission may be discontinued or assigned to any other unless this charter specifically permits its discontinuance or reassignment.

(b) All appointments to boards and commissions, including those in other parts of the charter, shall to the extent possible be finalized so that the appointee may attend at least one meeting prior to assuming office.

(c) Any member of a board or commission named specifically in this charter may subpoena and require the attendance of witnesses, cause the administration of oaths and compel testimony and the production of books, papers and other evidence pertinent to any issue before that board or commission. If any applicant fails to respond to these requests, the board or commission may take that failure into account when deciding the applicant's matter.

7.2 PLANNING COMMISSION

(a) Organization. The planning commission is composed of five members who are registered voters of the city. Three members of the commission shall be appointees of the mayor, and two members shall be appointees of council. Each member of the commission shall serve until the expiration of his or her term, which shall be five years, with each term staggered so that one commission member's term expires each year. Members of the commission shall be ineligible to succeed themselves unless the member is completing a term for which he or she was appointed to fill a midterm vacancy. The appointing authority of the commission member may remove that member for cause.

(b) Engineer as Ex Officio Member. A person serving in the capacity of city engineer shall, by virtue of his or her position, be a non-voting member of the commission.

(c) Officers. The commission shall elect its own chairperson and vice chairperson. A majority of the commission shall constitute a quorum to do business. The city's chief planning officer or his or her designee shall be the secretary to the commission and shall be responsible for the preparation of the docket and the minutes for all commission meetings and shall perform all other duties incident to the office of secretary. The secretary shall have no vote.

(d) Administrative Staff. The secretary and his or her staff shall provide all administrative and support services to the commission.

(e) General Plan. The planning commission shall make and adopt a general plan for the development and improvement of the city, and for any area outside of the city that, in the judgment of the commission, bears relation to the planning of the city. No general plan or portions or amendments of the plan shall be adopted by the commission until after a public hearing. The general plan established or amended from time to time by ordinance shall constitute the official plan of the city. The commission shall also make plans and proposals for specific improvements and projects that it deems desirable for the city and its surrounding area and recommend them to the appropriate authority. These plans and proposals shall not become a part of the general plan until adopted by council. The commission may call upon officers and employees of other departments and divisions of the city for assistance in city planning. The commission shall take the initiative in planning for the city and surrounding area. It may make investigations, maps and studies relating to the planning of the community as it deems desirable.

(f) Development; Authority to Contract. The planning commission may recommend to the appropriate public authorities or private agencies programs for the development and improvement of the community, for the enactment of legislation pertaining to that development and improvement, for the building of public structures and improvements and for the financing of those things. Subject to the approval of council, the commission may enter into agreements with other public or private entities to carry forward any of its purposes. In addition to the powers and functions provided in this charter, the commission shall have other powers and functions provided by council. The commission may establish rules and regulations for its own procedure not inconsistent with this section or any ordinances of the city.

(g) Mandatory Referral. No public building, street, park, playground, harbor, dock, wharf, bridge, tunnel, or publicly or privately owned utility shall be authorized or constructed in the city, in whole or in part; nor shall any street be opened, widened, narrowed, relocated or vacated, or its use changed for any purpose whatsoever; nor shall ordinance referring to zoning or other regulations controlling the use or development of land in the city be adopted unless it has first been submitted to the commission for report and recommendation. The commission shall act on any matter within 60 days of its referral unless a longer time is allowed by council.

Any resolution, ordinance or matter referred and disapproved by formal action of the commission shall require a two-thirds vote of all councilmembers for adoption or authorization.

(h) Review of Other Public Plans. If any plan, design or other proposal concerning the character, extent, location or use of any public improvement or public property within the city does not fall within the province of council or other office of the city, then the commission shall review the plan, design or proposal by the state, county, district, school, or other public entity having jurisdiction over the public improvement or property in accordance with general law.

7.3 BOARD OF ZONING APPEALS

(a) Organization. The board of zoning appeals is composed of five members who shall be appointed for a term of five years each. Three members of the board shall be appointees of the mayor, and two members shall be appointees of council. Members of the board shall be ineligible to succeed themselves unless the member is completing a term for which he or she was appointed to fill a midterm vacancy. The appointing authority may remove the appointed member for cause. The planning staff, housing and building staff, and person acting in the capacity of the city engineer shall furnish any technical advice and services as required by the board.

(b) Officers. The board shall elect its own chairperson and vice chairperson. A majority of the board shall constitute a quorum to do business. The city's chief planning officer or his or her designee shall be the secretary to the board and shall be responsible for the preparation of the docket and the minutes for all board meetings and shall perform all other duties incident to the office of secretary. The secretary shall have no vote.

(c) Powers and Duties. The board of zoning appeals shall hear and decide appeals from any regulation, order, decision, requirement, or determination made by administrative officials or agents in the application of ordinances governing zoning in the city. The board shall hear and decide all appeals made for variances in the application of ordinances governing zoning in the city, except that no variance shall be granted unless the board finds:

(1) there exists practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved;

(2) there are special circumstances or conditions applying to the land or buildings and not applying generally to land or buildings in the neighborhood, and that the circumstances or conditions exist so that strict application of the provisions of the ordinances of the city would deprive the applicant of the reasonable use of the land or buildings;

(3) the granting of the variance is necessary for the reasonable use of the land or building and that the variance granted by the board is the minimum variance that will accomplish this purpose; and

(4) the granting of the variance will be in harmony with the general purpose and intent of the ordinances of the city and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The board shall perform other duties and functions as may be imposed upon the board by this charter or by council, and it may establish rules and regulations for its own procedure not inconsistent with this section or any ordinances of the city.

7.4 BOARD OF BUILDING STANDARDS AND BUILDING APPEALS

(a) Organization. The board of building standards and building appeals is composed of five members, who shall be appointed for a term of five years each. Three members of the board shall be appointees of the mayor, and two members shall be appointees of council. Members of the board shall be ineligible to succeed themselves unless the member is completing a term for which he or she was appointed to fill a midterm vacancy. The appointing authority may remove any member for cause. The planning staff, housing and building staff, and person acting in the capacity of the city engineer shall furnish any technical advice and services as required by the board.

(b) Officers. The board shall elect its own chairperson and vice chairperson. A majority of the board shall constitute a quorum to do business. The city's chief planning officer or his or her designee shall be the secretary to the board and shall be responsible for the preparation of the docket and the minutes for all board meetings and shall perform all other duties incident to the office of secretary. The secretary shall have no vote.

(c) Powers and Duties. The board of building standards and building appeals may:

- (1) approve or disapprove materials, types of construction, appliances, devices and designs proposed for use under the building and property maintenance codes;
- (2) make, amend and repeal rules and regulations for carrying into effect all provisions of the building and property maintenance codes, other than those relating to zoning;
- (3) hear and decide appeals from and review upon motion of a member of the board any order, requirement, decision or determination of any administrative official or agency of the city relating to a matter regulated by the building and property maintenance codes, except that matters relating to zoning shall not come within the province or jurisdiction of the board. In taking any action, the board may vary or modify the application of any provision of the building and property maintenance codes, except those relating to zoning, when the enforcement would do manifest injustice, impose unnecessary hardship or be contrary to the intent and purpose of the codes or the public interest;
- (4) review upon the motion of a member of the board any rule, regulation or decision of the board, but no review shall prejudice the rights of any person who has acted in good faith before the decision is reversed or modified;
- (5) exercise with respect to any building situated in the city the same powers as are exercised by the board of building standards under the laws of the state, all as permitted by general law;
- (6) formulate and submit to council changes in and amendments to the building and property maintenance codes that the board determines are desirable;
- (7) establish rules and regulations for its own procedure not inconsistent with this section or any ordinances of the city;
- (8) act as the architectural board of review of the city under all authority granted to that board by the ordinances of the city and general law; and
- (9) perform other duties and functions as may be imposed upon the board by this charter or by council.

7.5 CHARTER REVIEW COMMISSION AND CHARTER AMENDMENTS

(a) In January of 2024 and each 10th year thereafter, nine registered voters of the city shall be appointed as members of a charter review commission. Five members of the commission shall be appointed by council and four members shall be appointed by the mayor. Members of the commission shall not hold any other office or position of employment with the city. The commission shall review the charter and within six months after the appointment of its members may recommend to council, by a two-thirds vote of all the members of the commission, revisions and amendments to this charter. Council may submit any proposed amendments recommended by the commission to a vote of the people in the manner provided under this charter and the state Constitution. Amendments shall be in the form provided by council. (b) Amendments to this charter may be submitted to the registered voters of the city by a two-thirds vote of all councilmembers and, upon petitions signed by 10 percent of the registered voters of the city proposing an amendment, shall be submitted to the voters by council. The submission of a proposed amendment to the registered voters shall be governed by the requirements of Article XVIII, Sections 8 and 9 of the Constitution of the state of Ohio as to the submission of the question of choosing a charter commission; and notice of the proposed amendment may be mailed to the registered voters as provided by the Constitution or notice may be given pursuant to ordinances adopted by council. If any amendment is approved by a majority of those voting on the amendment, it shall become a part of the charter of the city, except that if two or more inconsistent amendments on the same subject are submitted at the same election and each is approved, only the amendment receiving the largest affirmative vote shall become a part of the charter. A copy of the charter or any amendment shall be certified to the secretary of state within 30 days after its adoption by the registered voters.

ARTICLE EIGHT. ETHICS AND TRAINING

8.1 ETHICS

(a) Expectations of Government. The citizens of Lakewood rightfully expect their government of elected and appointed officials, and their employees, to behave legally and ethically following principles of open government. All officials will treat each other with respect and together work to make Lakewood a desirable place to live. The citizens also rightfully expect honesty, respect and fair treatment by all involved in governance. City officials have a responsibility to educate, monitor and support all employees and city representatives in this mission.

(b) Oath of Office. Every elected or appointed officeholder of the city shall, before entering upon the duties of his or her office, take and subscribe to an oath or affirmation, to be filed and kept in the office of the clerk of council, that he or she will in all respects faithfully discharge the duties of his or her office.

(c) Public Ethics. The city shall be governed by the following ethical obligations:

(1) The mayor, councilmembers, director of law and director of finance owe a fiduciary duty to the city. As such, these officials, and the city employees under their supervision, shall be held to the highest ethical standards in all public matters. In the interest of preserving the public trust, these officials shall avoid any perceived conflict of interest or any action likely to give the appearance of impropriety in the execution of their public duties.

(2) Upon taking office, the mayor shall insure that policies governing the ethics of city employees in the execution of their job duties are in place, that these policies are consistent with the ethical requirements of general law, and that these policies are communicated in writing to all city employees.

Nothing in this section shall be construed to prevent council from enacting by ordinance or resolution any rules or policies governing ethics of city employees.

(3) No city official or employee, through any improper use of that person's official position with the city, may affect the hiring of any person, letting of any contract or any other action by the city that may result in that official or employee, or any of the official or employee's immediate family members or close business associates, securing anything of value.

Nothing in this section shall be construed to prohibit a city official or employee from serving as an employment, personal or credit reference for any person.

(4) Any person who has been found guilty by a court of competent jurisdiction of any felony violation of the general law relating to bribery, theft in office, having an unlawful interest in a public contract, soliciting or accepting improper compensation, perjury relating to any official duty, or corrupt practices relating to state or federal elections, shall be ineligible to

hold office as mayor, member of council, director of law or director of finance.

If, while in office, the mayor, any member of council, the director of law or the director of finance is found guilty by a court of competent jurisdiction of any felony violation of the general law relating to bribery, theft in office, having an unlawful interest in a public contract, soliciting or accepting improper compensation, perjury relating to any official duty, or corrupt practices relating to state or federal elections, that person shall, upon the finality of the conviction, immediately forfeit the office held.

The terms used in this section shall be interpreted consistent with their use in the general law. Nothing in this section shall be construed to prohibit council from enacting additional prohibitions or penalties relating to public ethics.

8.2 TRAINING FOR COUNCIL AND MAYOR

The city is committed to the best practices of municipal governance, innovation and administration, including those related to ethics, finances, budgeting, safety forces, infrastructure, human resources, planning and development, and current issues facing Lakewood. To achieve these goals, councilmembers and the mayor shall complete training on the best practices of municipal governance and administration. Training sessions are to be provided for by the city, as determined by council, within three months of a person's election or appointment to the position of councilmember or mayor.

Training shall consist of four contact hours of instruction for new councilmembers and 16 contact hours of instruction for a new mayor. Councilmembers who have previously served on council and any mayor who has previously held the office of mayor of the city are exempt from the requirements of this section.

When training is completed, the clerk of council shall provide each officer with a certificate of completion. The certificate shall be signed by the person designated by council to verify the completion of the training. The signed certificate shall be filed with the clerk of council prior to the expiration of the three-month period of time for the completion of training.

ARTICLE NINE. ELECTIONS, INITIATIVE, REFERENDUM, RECALL

9.1 ELECTIONS

(a) Regular and Special Municipal Elections. General municipal elections for the purpose of the election of officers provided for in this charter shall be held on the first Tuesday after the first Monday in November in each odd-numbered year and shall be known as regular municipal elections. Except for primary elections, all other elections held under the provisions of this charter or as may be required by law shall be known as special municipal elections.

(b) Primary Elections. On the second Tuesday in September prior to each general municipal election, a primary election shall be held for the purpose of nominating persons, without regard to political parties, for election to offices provided for by this charter to be voted for at the next regular municipal election.

The number of candidates for the offices of mayor and each of the four ward councilmembers at any regular municipal election shall be the two persons on the primary election ballot receiving the highest number of votes at the primary election. The number of candidates for the office of councilmember at large at any regular municipal election in the city shall be the six candidates on the primary ballot receiving the highest number of votes at the primary election.

In case there shall not be more than two persons who have filed petitions for the office of mayor or any of the offices of the ward councilmembers, then those persons shall be the candidates at the regular municipal election and the primary for the particular office shall not be held. In case there shall not be more than six persons who have filed petitions for the office of councilmember at large, then those persons shall be the candidates at the regular municipal election and the primary for that office shall not be held.

(c) Election Procedures. Write-in votes for municipal candidates in regular municipal elections shall be permitted only if a duly nominated candidate cannot participate due to death or other disqualification, or if a candidate does not have an opponent, or if no candidate has been nominated. The ballots used in the primary and regular municipal elections shall be without party mark or designation. The names of all candidates shall be placed upon the same ballot and shall be rotated in the manner provided by general law.

(d) Certificate of Nomination when no Primary is Held. In the event a primary election is not held, the county board of elections shall declare each candidate to be nominated, issue appropriate certificates of nomination to them and certify their names in order that they be printed on the official ballots provided for use in the regular municipal election, as if a primary election had been held and each person had been nominated at that election.

(e) Designation of Candidates. Candidates for nominations to elective offices provided for in this charter shall have their names printed on the official primary ballot by filing a declaration of candidacy, meeting all required qualifications and paying any required filing fees.

(f) Declarations of Candidacy. Candidates for the offices of mayor and member of council shall, not later than 4:00 p.m. of the 90th day before the day of the municipal primary election, file a declaration of candidacy. Except as otherwise required by this charter, the general law of the state shall govern declarations of candidacy. Nominations for each elective municipal office shall be made by petition only, on standard forms provided by the county board of elections for the nomination of nonpartisan candidates. Declarations of candidacy for write-in candidates shall be made on standard forms provided by the county board of elections and submitted within a period of time prescribed by the general law of the state.

(g) Ballot Form. Except as otherwise required by this charter, the form of the ballot at primary, special and regular municipal elections shall be determined by the election authorities in accordance with general law.

(h) Nomination and Election of Judges. Candidates for judge of the Lakewood Municipal Court shall be nominated by petition signed by at least 200 registered voters of the city. The petition or petitions when filed shall be accompanied by the written acceptance of the nominee. Each signer of a petition shall sign his or her name and after his or her name designate his or her residence. The petition or petitions shall be filed with the county board of elections as one instrument at least 90 days prior to the date of the election for the office of judge. The names of all nominated candidates shall appear on a nonpartisan judicial ballot in the regular municipal election. There shall not be a primary election to nominate judicial candidates.

9.2 INITIATIVE

(a) Right to Initiative. Any proposed ordinance or resolution on matters that the city is authorized by law to control by legislative action may be submitted to council by a petition signed by registered voters of the city equal in number to at least 5 percent of the total votes cast for the office of mayor at the last regular municipal election at which a mayor was elected.

(b) Form of Initiative Petition. Petitions submitting proposed legislation to council shall be filed with the clerk of council. Signatures to a petition need not all be appended to one paper, but all petition papers circulated regarding any proposed legislation shall be uniform in character and shall contain the proposed legislation in full. There shall appear on the petition the names and addresses of at least five registered voters of the city who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for the purposes set forth in this section.

(c) Signatures to Initiative Petition. Each signer of an initiative petition shall sign his or her name in ink, and shall place his or her residence address on the petition paper after his or her name. To each petition paper there shall be attached an affidavit by the circulator of the petition stating the number of signers to that part of the petition and that each signature appended to the paper is the genuine signature of the person whose name it purports to be, and was made in the presence of the circulator.

(d) Filing of Initiative Petition. All papers constituting an initiative petition shall be assembled and filed with the clerk of council as one instrument. Within 10 days of the filing of a petition the clerk shall transmit all the papers constituting the petition with a certified copy of the text of the proposed legislation to the county board of elections. The board shall examine all signatures on the petition to determine the number of registered voters of the city who signed the petition. The board shall return the petition to the clerk within 10 days after receiving it, together with a statement attesting to the number of registered voters of the city who signed the petition. Upon receipt of the statement from the board of elections, the clerk shall endorse upon the petition a certificate of the result by showing the number of signatures required and the number of registered voters the board of elections has determined signed the petition.

(e) Additional Initiative Signatures. If the clerk's certificate shows that the petition contains insufficient valid signatures in its support, the clerk shall at once notify each member of the committee described in Section 9.2(b) by depositing the notice in the United States mail with postage prepaid and by sending to an email address indicated to be sufficient for notice by

the member of the committee. The committee shall have 15 days after the notice of insufficient valid signatures is sent to file petitions containing additional signatures with the clerk. Within 10 days after the filing of these additional signatures, the clerk shall transmit all the additional petitions to the county board of elections. The board shall examine all signatures on the additional petitions to determine the number of registered voters of the city who signed the additional petitions. The board shall return the additional petitions to the clerk within 10 days after receiving them, together with a statement attesting to the number of registered voters of the city who signed the additional petitions. If the signatures are still insufficient, or if no further petitions have been filed, the clerk shall file the petition in the clerk's office and shall notify, in the manner specified above, each member of the committee of that fact. The final finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

(f) Hearing by Council Committee. When the certificate of the clerk shows the petition and supplemental petition, if any, to be sufficient, the clerk shall submit the proposed ordinance or resolution to council at its next regular meeting and council shall at once read and refer the legislation to an appropriate committee. There shall be at least one public hearing on the proposed legislation before the committee to which it is referred. The committee shall then report the proposed legislation to council with its recommendation, not later than the third regular meeting of council following that at which the proposed legislation was submitted to council by the clerk.

(g) Action by Council. Upon receiving the proposed legislation from the committee council shall at once proceed to consider it and shall take final action on the legislation within 30 days from the date of the committee report.

(h) Power of Council and Committee. If council rejects the proposed legislation or passes it in a form different from that set forth in the petition, the committee of the petitioners may, as provided in this section, require that it be submitted to a vote of the registered voters in its original form, or that it be submitted to a vote of the registered voters with any proposed change, addition or amendment, which was presented in writing either at a public hearing before the committee to which the proposed legislation was referred, or during the consideration of the legislation by council.

(i) Certification; Supplemental Initiative Petition. When legislation proposed by petition is to be submitted to a vote of the registered voters, the committee of the petitioners shall certify that fact and the proposed legislation to the clerk of council within 30 days after council's final action on the proposed legislation and shall also file with the clerk a supplemental petition asking that the proposed legislation be submitted to popular vote. In the event the proposed legislation is in its original form, the supplemental petition must be signed by the number of registered voters of the city whose signatures, added to the number of signatures of those who signed the original petition submitted pursuant to this section, equal 10 percent of the total votes cast for the office of mayor at the last regular municipal election at which a mayor was elected. In the event the proposed legislation is different from its original form, the supplemental petition must contain the proposed legislation in full and be signed by at least the number of registered voters of the city who equal 10 percent of the total votes cast for the office of mayor at the last regular municipal election at which a mayor was elected. In all other respects, supplemental petitions shall be in the form, signed in the same manner and verified by the circulator all as required of original petitions. The sufficiency of any supplemental petition shall be determined, and it may be further supported, in the manner provided for original petitions for proposing legislation to council.

(j) Submission to Registered Voters. When the certificate of the clerk shows the petition and supplemental petition, if any, to be sufficient, the clerk shall certify the fact to council at its next regular meeting. If a primary, special, regular municipal or other general election is to be held not more than six months after the receipt of the clerk's certificate by council, provided the deadline imposed by the county board of elections for filing ballot issues has not passed, the proposed legislation shall then be submitted to a vote of the registered voters. If no election is to be held within that time, council may provide for submitting the proposed legislation to the registered voters at a special election not sooner than 60 days after the receipt of the clerk's certificate by council and not later than the next primary, regular municipal or other general election, whichever of these elections comes first. If no other provision is made as to the time of submitting proposed legislation to a vote of the registered voters, it shall be submitted at the next primary, regular municipal or other general election.

If a majority of the registered voters voting on any legislation proposed under this section shall vote in favor of the proposal, it shall become an ordinance or resolution of the city. If the provisions of two or more pieces

of legislation adopted or approved at the same election conflict, the provisions of the legislation receiving the highest number of affirmative votes shall prevail.

(k) Ballot Form. The ballots used when voting upon any legislation proposed under this section shall state the title of the legislation and be in a form created by the county board of elections in accordance with general law in order to determine whether the registered voters are for the legislation or against the legislation.

(l) Repealing Ordinances. Proposed legislation for repealing any existing legislation in whole or in part may be submitted to council as provided in this section.

(m) Publication, Amendment or Repeal. Ordinances or resolutions adopted as provided in this section shall be published and may be amended or repealed by council as in the case of other ordinances and resolutions.

9.3 REFERENDUM

(a) Right to Referendum. A petition requesting the repeal of an existing ordinance or resolution may be filed with the clerk of council at any time within 40 days after the adoption of any ordinance or resolution by council; the expiration of the time within which it may be disapproved by the mayor; or its passage or adoption notwithstanding the disapproval by the mayor, as the case may be. The petition must be signed by registered voters of the city equal in number to at least 10 percent of the total votes cast for the office of mayor at the last regular municipal election at which a mayor was elected. The ordinance or resolution that is the subject of the petition shall not become operative until the steps in this section have been taken.

(b) Form of Referendum Petition. Petitions seeking a referendum vote on any ordinance or resolution shall be filed with the clerk of council. Signatures to a petition need not all be appended to one paper, but all petition papers circulated with respect to a referendum vote on any ordinance or resolution shall be uniform in character. It need not contain the text of the ordinance or resolution the repeal of which is sought, but shall contain the number assigned to the ordinance or resolution and its full title. There shall appear on the petition the names and addresses of at least five registered voters of the city who shall be officially regarded as filing the petition

and shall constitute a committee of the petitioners for the purpose set forth in this section.

(c) Signatures to Referendum Petition. Each signer of a referendum petition shall sign his or her name in ink, and shall place his or her residence address on the petition paper after his or her name. The signatures to any petition paper need not all be appended to one paper, but to each paper there shall be attached an affidavit by the circulator of the petition stating the number of signers to that part of the petition and that each signature appended to the paper is the genuine signature of the person whose name it purports to be, and was made in the presence of the circulator.

(d) Filing of Referendum Petition. All papers constituting a petition shall be assembled and filed with the clerk of council as one instrument. Within 10 days after the filing of a petition the clerk shall transmit all the papers constituting the petition to the county board of elections. The board shall examine all signatures on the petition to determine the number of registered voters of the city who signed the petition. The board shall return the petition to the clerk within 10 days after receiving it, together with a statement attesting to the number of registered voters of the city who signed the petition. Upon receipt of the statement from the board of elections, the clerk shall endorse upon the petition a certificate of the result by showing the number of signatures required and the number of registered voters the board has determined signed the petition.

(e) Additional Referendum Signatures. If the clerk's certificate shows that the petition contains insufficient valid signatures in its support, the clerk shall at once notify each member of the committee described in Section 9.3(b) by depositing the notice in the United States mail with postage prepaid and by sending to an email address indicated to be sufficient for notice by the member of the committee. The committee shall have 15 days after the notice of insufficient valid signatures is sent to file petitions containing additional signatures with the clerk. Within 10 days after the filing of these additional signatures, the clerk shall transmit all the additional petitions to the county board of elections. The board shall examine all signatures on the additional petitions to determine the number of registered voters of the city who signed the additional petitions. The board shall return the additional petitions to the clerk within 10 days after receiving them, together with a statement attesting to the number of registered voters of the city who signed the additional petitions. If the signatures are still insufficient, or if no further petitions have been filed, the clerk shall file

the petition in the clerk's office and shall notify, in the manner specified above, each member of the committee of that fact.

(f) Procedure. If the referendum petition is found sufficient, or is rendered sufficient by additional signatures as permitted in this section, the clerk shall certify that fact to council and place the ordinance or resolution on the next council docket for reconsideration. Council shall have 30 days within which to reconsider and at its discretion repeal the ordinance or resolution. If on reconsideration the ordinance or resolution is not entirely repealed, or if council takes no final or other action within the 30-day period, council shall submit the ordinance or resolution to a vote of the registered voters. If a primary, special, regular municipal or other general election is to be held not more than six months after the refusal of council to reconsider the ordinance or resolution, provided the deadline imposed by the county board of elections for filing ballot issues has not passed, the ordinance or resolution shall then be submitted to a vote of the registered voters. If no election is to be held within that time, council may submit the ordinance or resolution to the registered voters at a special election not sooner than 60 days after the receipt of the clerk's certificate by council and not later than the next primary, regular municipal or other general election, whichever of these elections comes first. If no other provision is made as to the time of submitting the ordinance or resolution to a vote of the registered voters, it shall be submitted at the next primary, regular municipal or other general election.

(g) Ballot Form. The ballots used when voting upon any ordinance or resolution proposed under this section shall state the title of the ordinance or resolution and be in a form created by the county board of elections in accordance with general law in order to determine whether the registered voters are for the ordinance or resolution or against the ordinance or resolution.

(h) Majority Vote. If a majority of registered voters shall vote against the ordinance or resolution that is the subject of referendum, it shall be deemed repealed.

(i) Enactments not Subject to Referendum. Notwithstanding any provisions to the contrary in Section 9.3(a), (k) or (l) or any other provisions of this charter, ordinances or resolutions enacted for the following purposes shall not be subject to referendum: to appropriate money for any lawful purpose; to create, revise or abolish departments or to provide regulations for their governance; to authorize the appointment of employees in any of

the departments; to authorize or otherwise affect the issuance of bonds, notes or other debt instruments of the city; to authorize a contract for a public improvement or an expenditure of money which contract is to be paid or expenditure is to be made, in whole or part, from the proceeds of bonds, notes or other debt instruments of the city; and to provide for the payment of operating expenses of any department of the city.

(j) Initiated Legislation Subject to Referendum. Ordinances and resolutions submitted to council by initiative petition, as provided in Section 9.2, and passed by council without change, or passed in an amended form and not required to be submitted to a vote of the registered voters by a committee of the petitioners, shall be subject to referendum in the same manner as other ordinances and resolutions.

(k) Referendum of Measures Taking Early Effect. An ordinance or resolution that under Section 2.12 goes into effect earlier than 40 days after its passage and approval by the mayor, or the expiration of the time within which it may be disapproved by the mayor, or its passage notwithstanding the disapproval by the mayor, as the case may be, shall go into effect at the time indicated in the ordinance or resolution but shall be subject to referendum in the same manner as other ordinances and resolutions, except that it shall go into effect at the time indicated in the ordinance or resolution. If the ordinance or resolution is submitted to the registered voters and not approved, it shall be considered repealed and any further action under the ordinance or resolution shall cease; but the repealed ordinance or resolution shall be deemed sufficient authority for payment under the ordinance or resolution of any expense incurred, work done, or material or service furnished previous to the referendum.

(l) Acts Preliminary to Referendum Election. In case a petition is filed requiring that a measure passed by council providing for an expenditure of money or a public improvement be submitted to a vote of the registered voters, all steps preliminary to the actual expenditure or actual execution of a contract for the improvement may be taken prior to the election.

9.4 RECALL

(a) Recall Procedure. Any elected officer provided for in this charter may be removed from office by the registered voters qualified to vote for the office as provided in this section. A petition demanding that the question of removing the officer be submitted to those qualified to vote for the office shall be addressed to council and filed with the clerk of council. The peti-

tion shall be signed by registered voters qualified to vote for the office and equal in number to at least 15 percent of the total votes cast at the last regular municipal election for the office of the officer sought to be recalled, in case the officer was elected by the voters of the entire city. The petition shall be signed by registered voters qualified to vote for the office and equal in number to at least 25 percent of the total votes cast by the voters of the officer's ward at the last regular municipal election for that office, if the officer was elected to a ward position. The question of the removal of any officer shall not be submitted to the registered voters until the officer has served one year of the term during which the person is sought to be recalled or, in case of an officer retained in a recall election, until one year after that recall election.

(b) Recall Petitions. Recall petition papers shall be procured from the clerk of council. Prior to the issuance of petition papers, an affidavit shall be made by one or more registered voters qualified to vote for the officer and filed with the clerk, stating the name and office of the officer sought to be removed. The clerk shall enter in a record maintained by the clerk the name of each registered voter to whom the petition paper was issued and shall certify upon each paper the name of each registered voter to whom the paper was issued and the date of issuance. No petition paper issued under this section shall be accepted as part of a petition unless it bears the clerk's certificate and is filed as provided in this section.

(c) Signatures to Recall Petition. Each signer of a recall petition shall sign his or her name in ink, and shall place his or her residence address on the petition paper after his or her name. The signatures to any petition paper need not all be appended to one paper, but to each paper there shall be attached an affidavit by the circulator of the petition stating the number of signers to that part of the petition and that each signature appended to the paper is the genuine signature of the person whose name it purports to be, and was made in the presence of the circulator.

(d) Filing of Recall Petition. All papers constituting a recall petition shall be assembled and filed with the clerk of council as one instrument within 30 days after the filing with the clerk the affidavit required by Section 9.4(b). Within 10 days after the filing of a petition the clerk shall transmit all the papers constituting the petition to the county board of elections. The board shall examine all signatures on the petition to determine the number of registered voters of the city or ward who signed the petition. The board shall return the petition to the clerk within 10 days after receiving it, together with a statement attesting to the number of registered vot-

ers of the city or ward who signed the petition. Upon receipt of the statement from the board of elections, the clerk shall endorse upon the petition a certificate of the result by showing the number of signatures required and the number of qualified registered voters the board of elections has determined signed the petition. If the clerk's certificate shows that the petition contains insufficient valid signatures in its support, the clerk shall at once notify each person to whom the petition paper was issued pursuant to Section 9.4(b) by depositing the notice in United States mail with postage prepaid and by sending to an email address indicated to be sufficient for notice by any person to whom the petition paper was issued.

(e) Supplemental Recall Petitions. In the event the initial petition contained insufficient signatures, it may be supported by supplemental signatures of qualified registered voters signed in the manner required in Section 9.4(c) appended to petitions issued, signed and filed as required for the original petition within 15 days after the date of the notice of insufficiency by the clerk. Within 10 days after the filing of these additional signatures, the clerk shall transmit all the additional petitions to the county board of elections. The board shall examine all signatures on the additional petitions to determine the number of registered voters of the city or ward who signed the additional petitions. The board shall return the additional petitions to the clerk within 10 days after receiving them, together with a statement attesting to the number of registered voters of the city or ward who signed the additional petitions. If the signatures are still insufficient, the clerk shall notify each person to whom the original petition paper was issued pursuant to Section 9.4(b) in the manner described in Section 9.4(d). The final finding of the insufficiency of a recall petition shall not prejudice the filing of a new petition for the same purpose, provided that no new petition shall be filed by any of the same persons within one year after the final finding of insufficiency.

(f) Recall Election. If a recall petition or supplemental petition shall be certified by the clerk to be sufficient, the clerk shall at once submit the petition with a certificate to council and shall notify the officer sought to be recalled of the recall action. If the officer whose removal is sought does not resign within five days after this notice, council shall order and fix a day for holding a recall election. Any recall election shall be held not less than 60 nor more than 90 days after the petition has been presented to council, whether at a primary, regular municipal or other general election or, if none of these elections shall occur within 90 days after the petition has been presented to council, at a special recall election called by council. The recall election shall be submitted to the registered voters of the entire city

if the officer to be recalled was elected by the voters of the entire city, and the recall election shall be submitted to the registered voters of a single ward if the officer to be recalled was elected by the voters of a single ward. The county board of elections shall publish notice and make all arrangements for holding the recall election, which shall be conducted in all other respects as are special municipal elections.

(g) Ballots. The ballots at any recall election shall be in a form created by the county board of elections in accordance with general law in order to determine whether the officer whose removal is sought shall be recalled from office.

(h) Succeeding Officer. If the incumbent officer is not recalled in a recall election, he or she shall continue in office for the remainder of his or her unexpired term, subject to recall except as provided in this charter. If the incumbent officer is recalled in the recall election, he or she shall be deemed removed from office upon the announcement of the official canvass of that election, and the office shall be filled as in the case of permanent vacancies, except that the recalled officer may not be appointed to fill the vacancy.

ARTICLE TEN. APPROPRIATION OF PROPERTY

10.1 APPROPRIATION

Property within the city may be appropriated for any public or municipal purpose, and subject only to the limitations on appropriations imposed by the state Constitution, appropriation shall be made in the manner provided in this article. By appropriation the city may acquire a fee simple title or any lesser estate, easement or use. Appropriation of property located outside the city shall be made according to the requirements of and in the manner provided by the general law.

10.2 INITIAL RESOLUTION

When it is deemed necessary to appropriate property council shall adopt a resolution declaring its intent, defining the purpose of the appropriation, setting forth a pertinent description of the property, and identifying the estate or interest to be appropriated. At least one reading of the resolution is necessary prior to its adoption.

10.3 NOTICE

Immediately upon the adoption of the resolution required by Section 10.2, the clerk of council shall cause written notice to be given to the owner, person in possession or person having a recorded interest in every piece of land sought to be appropriated, or to his or her authorized agent; and the notice shall be served by a person designated for the purpose and return made in the manner provided by law for the service and return of summonses in civil actions. If the owner, person or agent cannot be found, notice shall be given in accordance with the notice provisions adopted under Section 2.11, and council may then pass an ordinance, by a two-thirds vote of all members of council, directing the appropriation to proceed.

10.4 FURTHER PROCEEDINGS

On the passage of any ordinance directing that an appropriation proceed, the director of law shall apply to a court of competent jurisdiction. The application shall describe as correctly as possible the land or other property to be appropriated, the interest or estate to be taken, the object for which the land is desired, and the name of the owner of each lot or parcel sought to be appropriated, and all the subsequent proceedings with regard to appropriation shall be undertaken in the manner provided by general law for the appropriation of property by municipalities in the state.

ARTICLE ELEVEN. GENERAL PROVISIONS

11.1 CONTINUANCE OF OFFICERS, ORDINANCES AND CONTRACTS

(a) All persons holding office or serving as officials at the time this amended charter goes into effect shall continue serving in the performance of their duties until specific provision shall have been made for the discontinuance of their duties or office. Only when a specific provision has been made to discontinue official duties or an office shall the term of the officeholder or official expire and the office be deemed abolished. The powers conferred and the duties imposed on any officer, commission, board or department of the city under general law shall, if the position is no longer required by this charter, then be exercised and discharged by the officer, commission, board or department upon whom or which are imposed corresponding functions, powers and duties under the charter, by council or under general law.

(b) Except as otherwise provided in this charter, any vacancy that occurs in any appointed position on any board, commission or other body under this

charter, whether during the term or upon the expiration of the term of a member, shall be filled by appointment by the appointing authority who or that appointed the member whose office became vacant. Midterm vacancies shall be filled for the unexpired term of the previous appointee.

(c) All ordinances and resolutions in force on the effective date of this amended charter, to the extent they are not inconsistent with its provisions, shall continue in force until they are amended or repealed.

(d) All contracts entered into by the city prior to the effective date of this amended charter are continued in full force and effect. All public work begun prior to the effective date of this amended charter shall be continued. All public improvements for which legislative steps have been taken under law in force at the time of the adoption of this amended charter may be carried to completion in accordance with the provisions of those laws.

11.2 SEVERABILITY

If any part of this charter shall be held to be invalid or unconstitutional by a court of competent jurisdiction, the order shall not be held to invalidate or impair the validity, force or effect of any of the remaining provisions of the charter unless it clearly appears that the remaining provision is wholly or necessarily dependent for its operation upon the provision held unconstitutional or invalid.

EDWARD GRAHAM, et al.,	)	
	)	CASE NO. CA-17-106094
Plaintiffs/Appellants,	)	
	)	
v.	)	
	)	On Appeal from Cuyahoga County
CITY OF LAKEWOOD, et al.,	)	Court of Common Pleas
	)	Case No. CV-15-846212
Defendants/Appellees.	)	
	)	

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

1. I am the Director of Planning and Development for the City of Lakewood and have served the City in that capacity since December 5, 2016. From 2012 to December 5, 2016, I served the City as a senior planning official.
2. As part of my duties as Director of Planning and Development, I am aware of the real estate transactions that have occurred as a result of the passage of Ordinance 49-15 on December 21, 2015, which authorized the City to enter into the Master Agreement

with the Cleveland Clinic Foundation (“CCF”) and Lakewood Hospital Association (“LHA”).

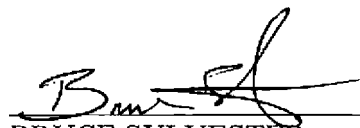
3. On December 21, 2015, LHA’s leasehold of seven homes was terminated and the City regained control over those homes (permanent parcel numbers 314-04-045, 314-04-044, 314-04-043, 314-04-041, 314-04-029, 314-04-031, and 314-04-033).
4. On December 31, 2015, LHA sold the 850 Columbia Road, Westlake, Ohio property to CCF and the proceeds of the sale were paid and/or will be paid to the City.
5. On February 19, 2016, the City sold the land on the southwest corner of Belle and Detroit on which Lakewood Hospital’s parking garage and professional office building resided (including some or all of permanent parcel numbers 314-04-001, 314-04-054, 314-04-053, 314-04-052, 314-04-051, 315-04-050, 314-04-002, 314-04-055, 314-04-003, and 314-04-025) to CCF.
6. On February 23, 2016, LHA conveyed by deed the Curtis Block building (permanent parcel number 314-07-007) and three homes (permanent parcel numbers 314-04-042, 314-04-030, and 314-04-034) to the City.
7. To date and as a result of the Master Agreement, the City of Lakewood has purchased one commercial building and three homes, has regained control over seven homes on which LHA’s leasehold was canceled, and has received the proceeds of a sale of LHA’s property located in Westlake to CCF. The City has also sold a number of parcels to CCF upon which CCF’s new Family Health Center (“FHC”) will be built.

8. As part of my duties as Director of Planning and Development, I am also aware of the status of the construction of CCF's new FHC, which is being built on the southwest corner of Belle and Detroit.
9. After extensive discussion at public meetings held on May 5, May 12, June 2, June 9, July 7, and July 14, 2016, the new FHC was approved by the City's architectural board of review.
10. On September 16, 2016, the City issued a permit to CCF for the demolition of Lakewood Hospital's parking garage and professional office building that resided on the southwest corner of Belle and Detroit.
11. Demolition of Lakewood Hospital's parking garage began in October, 2016 and the garage has been completely demolished.
12. Demolition of Lakewood Hospital's professional office building began in September, 2016 and the building has been completely demolished.
13. On or about March 31, 2017, the City issued a permit to CCF for the construction of the FHC.
14. CCF commenced construction of the FHC on or about April 27, 2017 on the southwest corner of Belle and Detroit.
15. It is anticipated that CCF will complete construction of the FHC in the summer of 2018.
16. A photograph, which fairly and accurately depicts how Lakewood Hospital's professional office building (in the foreground) and garage (to the left of the professional office building) appeared as of September, 2016 when viewed from the

northeast corner of Belle and Detroit looking southwest, is attached as Sylvester Exhibit 1.

17. A photograph, which fairly and accurately depicts the construction of the FHC on the former grounds of Lakewood Hospital's professional office building and garage as of December 6, 2017 when viewed from the northeast corner of Belle and Detroit looking southwest, is attached as Sylvester Exhibit 2.
18. A photograph, which fairly and accurately depicts how Lakewood Hospital's professional office building (in the background on the left) and garage (in the background on the right) appeared as of September, 2016 when viewed from the northwest corner of St. Charles and Detroit looking southeast, is attached as Sylvester Exhibit 3.
19. A photograph, which fairly and accurately depicts the construction of the FHC on the former grounds of Lakewood Hospital's professional office building and garage as of December 6, 2017 when viewed from the northwest corner of St. Charles and Detroit looking southeast, is attached as Sylvester Exhibit 4.

FURTHER AFFIANT SAYETH NAUGHT.


BRYCE SYLVESTER

SWORN TO AND SUBSCRIBED before me and in my presence this 11 day of December,
2017.



JOHANNA SCHWARZ
Notary Public, State of Ohio
Cuyahoga County
My Commission Expires
February 26, 2020


NOTARY PUBLIC

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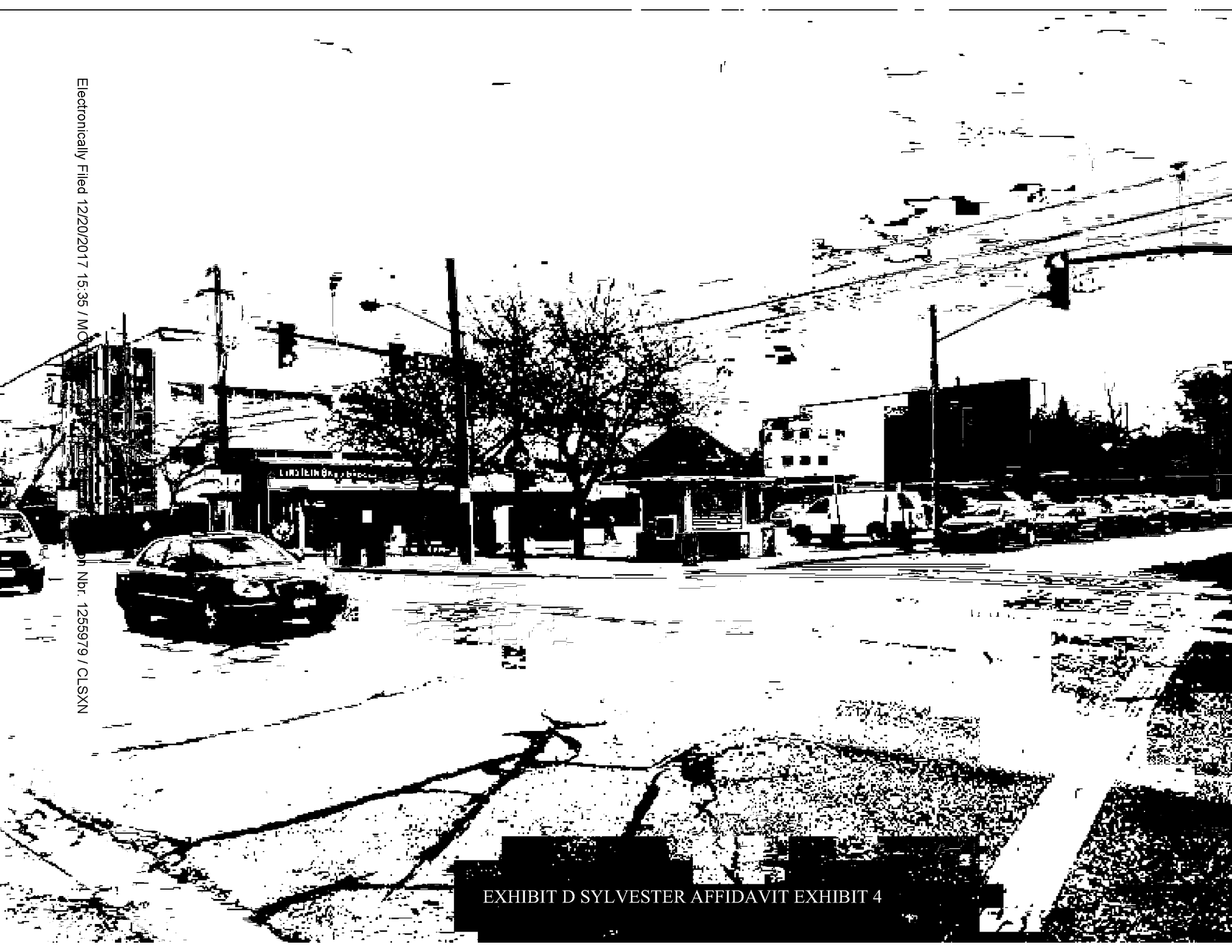
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EXHIBIT D SYLVESTER AFFIDAVIT EXHIBIT 4