

SPECIAL REVIEW & OVERSIGHT COMMITTEE MINUTES

JUNE 18, 2019

A Special Review & Oversight Committee meeting was held on June 18, 2019, at North Royalton City Hall, 14600 State Road. The meeting was called to order at 6:19 p.m.

PRESENT: Committee Members: Chair Dan Kasaris, Vice Chair Paul Marnecheck, Dan Langshaw; **Council:** Larry Antoskiewicz, John Nickell, Gary Petrusky, Cheryl Hannan; **Administration:** Mayor Robert Stefanik, Law Director Thomas Kelly; **Other:** Linda Barath, Anton Krieger, Jeremy Dietrich, Jessica Fenos, Mike Wos, David Nordstrom, Denise Nordstrom.

APPROVAL OF MINUTES

Moved by Mr. Langshaw, seconded by Mr. Kasaris to **excuse Mr. Marnecheck from voting on the October 16, 2018 minutes**. Roll Call: Yeas: 2. Nays: 0. **Motion carried.**

Moved by Mr. Langshaw, seconded by Mr. Kasaris to **approve the minutes of October 2, 2018 (Special), October 16, 2018 (Special) (Marnecheck excused) and May 21, 2019 (Special) Review & Oversight Committee minutes**. Roll Call: Yeas: 3. Nays: 0. **Motion carried.**

UNFINISHED BUSINESS

1. **Section 220.06 Rules of Council, Rule XI Voting**

Mr. Kelly said that this rule reads as follows: Every member present shall vote on any question on the call of either "yeas" and "nays" or "yes" and "no," such to be the option of Council members, unless excused by the unanimous consent of Council. Any member, not being excused, who refuses to vote on any question when the "yeas" and "nays" or "yes" and "no" are being taken, shall be deemed guilty of contempt of Council and may, for such contempt, be censured by a majority vote of Council.

Mr. Kelly said that this is a rule that reaches back to the 1800's and is no longer the favorable position of the law and in fact there is some case law in a federal case out of Wisconsin that suggests that an ordinance requiring Council members to vote yea or nay on questions put to Council is a content based restriction on constitutionally protected free speech. It is the law in the state of Ohio and it does apply to this Council that you are elected almost fundamentally for the purpose of casting your vote. If you fail to cast your vote for any frivolous reason, you have failed in your duty. If you fail in your duty often enough you can be removed from office. Mr. Kelly said that this has never been the case as long as he has been here and does not expect that it will ever be the case. This rule, while well intentioned by the original authors, should be revised. He said that he is requesting that the Law Department be given a little time to put together an amendment to clear this up and to make it compatible with today's law. He said that he will have something to present in time for the regularly scheduled R&O meeting in September, if not before. Mr. Kasaris asked if Mr. Kelly wanted the committee to schedule a special meeting for July that can always be cancelled if the amendment is not ready. Mr. Kelly said that he believes that they will have something to present by then. Mr. Kasaris said that they will schedule a special meeting for July 16, 2019 for the purpose of this topic. If things are not ready to proceed, we can cancel the meeting. Mr. Nickell said that the State of Ohio says we have to vote, but our version of this is very old. Mr. Kelly said it is the coercive nature of the language in our code. Council still has to vote. This is why they were elected. The fundamental reason for your election is to review and exercise your judgement and cast your vote. If you choose not to because of something less than a compelling reason to do so, then you have failed in your duties. If you have a compelling reason to do so, then no one can force you to vote. He said that the conventional wisdom was that an abstention was counted with the majority. He said that this is not correct. There is a case out of the Ohio Supreme Court called Davis v Willoughby from 1952. The interpretation of this language is such that an abstention counts neither for the majority nor the minority; it simply does not count. Therein lies an interesting question. How does this play when you have a 3-3 tie. He said a 3-3 tie does not pass and the abstention vote does not count for either side.

ADJOURNMENT

Moved by Mr. Langshaw, seconded by Mr. Marnecheck to **adjourn the June 18, 2019 Special Review and Oversight Committee meeting**. Yeas: 3. Nays: 0. **Motion carried.**

Meeting adjourned at 6:25 p.m.