

**John Hamilton called the meeting to order** at 5 p.m. after giving the **Invocation** and leading the **Pledge of Allegiance**.

The clerk called **the roll** and the following Commissioners responded: Jeff Smith, Julie Farrar, Pervis Brown, John Hamilton, Diedre Cole, Wesley Poole and Keith Grohe.

**City staff present:** Hank Solowiej – Finance Director, Don Icsman – Law Director, Nicole Ard – City Manager, Kelly Kresser – Commission Clerk and Paul Ricci – Fire Chief.

**Upon motion of Pervis Brown and second of Julie Farrar, the commission voted to hold an executive session regarding pending litigation.**

*Discussion:* Don Icsman said having an executive session is authorized by law regarding imminent litigation and, further, is an option which he advises. He introduced Steve Friedman from Squire, Sanders who will be representing the city regarding the reasonably anticipated litigation. Don Icsman said, ideally, the city should have discussed this last week, but because of recent turnover with the city commission, this did not transpire. He has had some conversations with those who initiated the **charter change petitions** and the law provides for the sufficiency and validity of the petitions themselves. The Board of Elections has certified a sufficient number of signatures. He said the commission does not have a choice but to pass this legislation if the format of the petitions is correct in terms of sufficiency and validity. He said there are some aspects of the petitions which he would like to discuss as he has spoken with Jeffrey Rengel, attorney for the petitioners. Jeff Rengel has indicated he may file a mandamus action based upon the fact the city has had the petitions. Don Icsman recounted the changeover of city commissioners to Jeffrey Rengel yesterday regarding the recent special meeting and swearing-in ceremony held on Sunday. This was sufficient for him to not file this action. Don Icsman said under the law, it is perfectly advisable and lawful to have an executive session to discuss this, but it could be discussed openly if the commission desired to do so.

Don Icsman said in an unrelated matter, there was a question raised about the swearing-in ceremony and the election of officers held on Sunday, January 1. The election for officers was legal and valid. He said what occurred was more of an administrative “passing of the gavel” to the new commission. The agenda was distributed by previous commission President Dan Kaman and the formal acceptance of the bonds and the certificates of election were not legally required. He said key to the meeting was the swearing-in ceremony and the election of new officers and there is no question about who is the new President and Vice President of the city commission. He would not have participated if there was cause for the proceedings to be questioned in any way. Don Icsman said what people perceive cannot be controlled nor can what people perceive as motives and this is not related to the importance of the swearing-in and elections.

**Roll call on the motion: Yeas: Jeff Smith, Julie Farrar, Pervis Brown, John Hamilton, Diedre Cole, Wesley Poole and Keith Grohe, 7. The President declared the motion passed.**

**At 5:09 p.m., John Hamilton announced adjournment of the open session. The commission then went into executive session.**

**At 5:52 p.m., John Hamilton declared the meeting returned to open session.**

Steve Friedman said the city commission has been presented with petitions requesting the city submit proposed charter amendments to the Erie County Board of Elections to be voted upon by the electorate. According to Ohio’s Constitution and the city’s charter, the city is required to act upon these petitions and decide whether to submit them to the Board of Elections. He said the city must first determine if the petitions meet the procedural requirements of Ohio’s constitutional and election laws and the Ohio Revised Code (ORC). The city commission should not judge the substantive merits of the proposed changes (this is for the voters to act on). He said there is a substantive issue in the proposed amendments that will be problematic from a constitutional perspective. The proposed amendment would require an election in November, 2012, for the position of city manager; however Article 17, Section 1 of Ohio’s Constitution provides that state and county elections occur in even numbered years, while municipal elections are to occur in odd numbered years. If this proposed charter amendment passes, it will create a dilemma for the Board of Elections and the city as it would change the city charter to require holding an election in an even-numbered year for a city position which is not in compliance with Ohio’s Constitution. Steve Friedman said he does not know what the court or the Board of Elections would do with this issue if the charter change would indeed pass. The substantive nature of this issue is not for the commission to judge, but may be judged at a later date by a judge or the courts.

The city commission needs only to judge whether or not the petitioners met the procedural requirements of the ORC and obtained the correct number of signatures. If it is determined they did, it is the city commission's job to place the issue on the ballot through the Board of Elections.

Wesley Poole asked what the city commission's options are at this point and Steve Friedman said the timing is very important as Ohio's Constitution requires a vote to occur within 60 – 120 days upon action of the city commission by sending the issue to the Board of Elections. Because there will be a special election taking place on March 6, the commission will need to act within 60 days of that date to be framed on the primary ballot and the city would pay a portion of the costs. This amounts to approximately \$7,000. If the city does not make the March 6 ballot, an ordinance passed at a later date would require a special election for this issue **only** which would cost the city between \$15,000 - \$17,000 as it would not have the benefit of piggybacking with other issues. Wesley Poole asked if the substantive nature of the election would be for a court to determine, regardless of the timing of the election, if the charter change issue were to pass. Steve Friedman said he does not know what the Board of Elections would do in November, 2012, if this issue were to pass because it would cause the charter to be changed requiring an election, but this is inconsistent with Ohio's Constitution. He believes the Board of Elections would look to the courts to make a declaratory judgment. Julie Farrar said it does appear things were done correctly for the commission to consider voting to place this on the ballot, but the issue is if the charter change were to pass, the Board of Elections will not violate Ohio's Constitution and this will become a debate between the Board of Elections and the courts. Julie Farrar said if the city is to pay \$7,000 to piggyback on the March 6 election but then an amendment must later be made to the charter change amendment (if it passes), the city would then have to pay for it to be placed on the ballot a second time. She said her fear is the city having to pay an additional \$15,000 - \$16,000 if this is not done per Ohio's Constitution although she is in favor of voting to place this on the ballot as she is not going to hold up democracy. John Hamilton said he believes the procedures were followed and will be voting "yes".

**ORDINANCE NO. 12-001:** It is requested an ordinance be passed **providing for submission to the electors of the City of Sandusky of proposed amendments to the charter of the City of Sandusky as set forth in a petition submitted to this city commission,** and declaring an emergency.

**Upon motion of Pervis Brown and second of Diedre Cole, the commission voted to pass this ordinance according to Section 14 of the city charter and declaring an emergency. Roll call on the motion: Yeas: Jeff Smith, Julie Farrar, Pervis Brown, John Hamilton, Diedre Cole, Wesley Poole and Keith Grohe, 7. The President declared the motion passed. Roll call on the ordinance: Yeas: Jeff Smith, Julie Farrar, Pervis Brown, John Hamilton, Diedre Cole, Wesley Poole and Keith Grohe, 7. The President declared the ordinance passed.**

**Upon motion of Pervis Brown and second of Julie Farrar, the commission voted to adjourn. The President declared the motion passed and the meeting adjourned at 6:04 p.m.**

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Kelly L. Kresser  
Clerk of the City Commission

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John F. Hamilton  
President of the City Commission