

**COUNCIL MEETING MINUTES  
CITY OF UNIVERSITY HEIGHTS, OHIO  
MONDAY, DECEMBER 19, 2022**

Mayor Michael Dylan Brennan called the meeting to order at 7:15 p.m.

Roll Call:

Present: Mrs. Michele Weiss  
Mrs. Sheri Sax  
Mrs. Barbara Blankfeld  
Mr. John Rach  
Mr. Justin Gould  
Mr. Christopher Cooney  
Mr. Brian King

Also Present: Law Director Luke McConville  
Clerk of Council Kelly Thomas  
Finance Director Dennis Kennedy  
Police Chief Dustin Rogers  
Housing and Community Development Geoff Englebrecht  
City Engineer Joseph Ciuni  
Service Director Jeffrey Pokorny

**Approval of Council Minutes:**

Council Meeting December 5, 2022

There were no corrections or additions to the December 5, 2022 minutes.

**MOTION BY MRS. WEISS, SECONDED BY MR. COONEY to approve the December 5, 2022 Council Minutes. On roll call, all voted “aye.”**

**Additions and Removals from the Agenda; Referrals to Committee**

Mrs. Weiss stated that she would like to add to the agenda a discussion about Council Chambers at the end of the agenda.

**MOTION BY MRS. SAX, MRS. BLANKFELD to add to the agenda a Motion to Ratify. On roll call, all voted “aye.”**

**Comments from Audience**

There were no comments from the audience.

**Reports and Communications from the Mayor, and the taking of action thereon:**

**Mayor’s Report**

There is much that will be covered in the numerous agenda items this evening, so I have just four items.

1. Save the Date: the evening of Wednesday, February 15, 2023 for the State of the City address.
2. Last Friday, Power a Clean Future Ohio held its Clean Energy Champions Awards Luncheon. At that ceremony, PCFO recognized the City of University Heights as a Climate Action Community in recognition of our commitment to reduce greenhouse gas emissions and effectively address climate change. It is an honor to be recognized for the work we have committed to do and begun undertaking, and we are looking forward to living up to that recognition in 2023 and beyond.

3. Hanukkah began at sundown last night. Yesterday evening I had the honor of participating in the annual “Light After Dark” Menorah Parade, an over 2-hour long car parade through Lyndhurst, Beachwood, Shaker Heights, University Heights, and Cleveland Heights. Thank you to the organizers, sponsors, and participants. Happy Hanukkah. And happy holidays.

4. As our website has stated since 2018, “University Heights is an urban suburb that celebrates diversity. Our community’s mosaic is replete with educational and religious institutions, walkable neighborhoods, local eateries, shopping and nearby amenities, offering residents the opportunity to build a life by design, find their forever homes and plant roots.”

This is all to say that University Heights is a diverse and welcoming city. And while we need not share all the same values and opinions to live together harmoniously, we do need to share the common value of mutual respect. Hate has no home in University Heights.

On October 27th of this year, Elon Musk became the owner and CEO of Twitter. We have watched with concern and dismay his management of Twitter over the last few weeks.

A self-described supporter of free speech, Twitter under Elon Musk coddles white supremacists and anti-Semites, while censoring journalists and others based upon Musk’s personal whims and ever-changing arbitrary and capricious criteria. Numerous advertisers have pulled out of supporting Twitter, numerous users have left as well. As a diverse mosaic and a welcoming City, University Heights cannot remain active on this social media platform given its continued downward course.

The City Administration has suspended operation of the City Twitter Account. We will review in the new year whether to resume use of the platform. In the meantime, the City will focus on other platforms, like Facebook and Instagram, and explore other options. Thank you, this concludes my report.

### **Report and Communications from City Council, and the taking of action thereon**

There were City Council reports.

### **Reading and Disposition of Ordinances, Resolutions, Motions and Consideration of Agenda Items:**

- A. Resolution 2022-82 Authorizing a Donation of \$10,000 out of City ARPA Funds to the Cleveland Kosher Food Pantry, and Declaring an Emergency (on emergency)**

Mayor Brennan stated that council unanimously together with the administration wanted to donate \$10,000 to the Cleveland Food Bank and also a \$10,000 donation to the Cleveland Kosher Food Bank.

Mayor Brennan and the entire City Council presented Mrs. Lovano with a check for \$10,000.

### **Added item: Motion to Ratify the Donation of \$10,000 from the City’s ARPA Fund to the Greater Cleveland Foodbank**

**MOTION BY MRS. SAX, SECONDED BY MRS. BLANKFELD to Ratify the Donation of \$10,000 from the City’s ARPA Fund to the Greater Cleveland Foodbank. On roll call, all voted “aye.”**

- B. Donation Presentation from the City of University Heights to the Muriel Weber, Board Co-Chair and Tami Witkes, Pantry Manager, Cleveland Kosher Food Pantry**

- C. Motion to Enter Executive Session for the Purpose of Discussing Personnel Salary Schedule**

**MOTION BY MRS. WEISS, SECONDED BY MR. KING to Enter Executive Session for the purpose of discussing Personnel Salary Schedule. On roll call, all voted “aye.”**

**MOTION BY MR. RACH, SECONDED BY MR. GOULD to return to Regular Council Session. On roll call, all voted “aye.”**

Regular Council Session resumed at 8:02pm.

- D. Motion to extend the Human Resources Contract with Clemans Nelson for a period of twelve months January 1, 2023 – December 31, 2023 in an amount not to exceed \$48,000**

**MOTION BY MRS. BLANKFELD, SECONDED BY MRS. SAX to extend the Human Resources Contract with Clemans Nelson for a period of twelve months January 1, 2023 – December 31, 2023 in an amount not to exceed \$48,000. On roll call, all voted “aye.”**

- E. Motion to Approve Memorandum of Understanding regarding University Square**

Mr. McConville stated that the MOU was a non-binding memorandum that outlined some key deal points. By entering into the MOU, the city will be allowed to apply for ARPA funds which could be used to satisfy some of the MOU deal points. In particular, the discussed the structure for the redevelopment of University Square and the ownership of the garage structure by the City's Community Improvement Corporation (CIC) and a management structure and the calling for an immediate investment of \$2.6 million. Mr. McConville added that a substantial portion would be contributed by Target and Macy's collectively in the amount of \$2.1 million and then with \$500,000 of the City's ARPA funds the garage structure will be immediately brought up to code and all of the code, safety and structural issues that have been identified by engineering consultants will also be addressed. Secondly, as a component of the management structure, the developer would be obligated to maintain the garage structure at its own expense year over year at a level that is not currently required of the current owner of the garage and at a level that the garage has never been maintained at. The idea is that by having ongoing maintenance at this increased level and at the Developer's cost will help to sustain the capital investment that will be made to bring the garage up to code and allow those improvements to have a longer lifespan. Lastly, an obligation on behalf of the Community Improvement Corporation, Target and the Developer to contribute \$50,000 each annually for 10 years to a Capital Reserve Fund that the parties could eventually use when the need arises for long term capital repairs to the garage. As discussed, the use of the CIC as the vehicle for ownership of the garage will provide a layer of liability protection for the City and that the city will not be the owner of that garage structure.

Mayor Brennan added that this Memorandum of Understanding was the product of a lot of work by Mr. McConville, Mrs. Susan Drucker, himself and the various stakeholders in this project. Proceeding with this Memorandum of Understanding will help in turning a corner for the framework in finishing up the negotiations for the redevelopment.

Mr. Gould commented that the University Square project was at a critical phase and he believed that without direct and meaningful intervention by everybody who has a stake in the success of that location, it will fail. And, the fallout and consequences to everyone involved, but in his view particularly the citizens of the City of University Heights are unknown and potentially grave. Mr. Gould added that there was not a solution that would be palatable to him where the city would take ownership of the parking garage. Consistent to the conversations that Council has had as a body, Mr. Gould said that he did not think that there was a member of council who intended for the City to own the parking garage. He also would not find it palatable for the citizens of the City of University Heights, the taxpayers, and the General Fund, which has been built for their benefit to have unknown liabilities as a result of the operation, and ownership of the garage. Mr. Gould said that it was his understand from counsel that this structure would help alleviate some of those concerns around liability by specifically placing this into the name of the CIC, rather than the city would provide some protections to liabilities and limitations to liabilities, that having this owned by the city, by itself would not. In addition to that the City maintains itself as a completely separate entity that reserves all of the rights and privileges that a municipality has to act on blighted or otherwise, violating properties. Mr. Gould stated that he had four issues with the MOU as it was currently written and believed that they should be by this body before they voted on the approval

because there were multiple moving parts as a result of the timeline that they are under and how long those negotiations have been going on. Given that, Mr. Gould stated that he would be inclined to make a motion on these in four parts and entrust the Law Director and the Mayor to come up with an amendment which is consistent with the expressions of counsel through the votes on these motions. The first motion would make is a motion to amend to remove all references to the CIC as quote, wholly owned and quote by the city, second would be to remove the CIC from the definition of the city, third add the University Heights City Beautiful Corporation, as a separately defined entity or lastly, make the CIC a defined but not member entity to the MOU. Then, in the event that the CIC is not an actual entity, who was a party to the MOU, wherever the parties to the MOU would desire that the CIC make reference that the City recommends and defines the desired action rather than making any reference to the City having any control over the CIC or implying that the City has such control, which it does not. Lastly Mr. Gould asked Mr. McConville if his understanding that those amendments were consistent with the legal realities of the distinct entities of the City of University Heights and the City Beautiful Corporation.

Mr. McConville replied that Mr. Gould was correct and that it was his opinion that Council was looking at this creatively from the standpoint of trying to solve a problem that ultimately could have a very positive impact on the entire community. The City has talked about the project publicly where there would be retail tenant market rate apartments, occupancy and vibrancy at the site appeal back of the garage that were results in a courtyard space that the developer refers to as Boulevard will be green space, the site will become more walkable.

Mayor Brennan also noted that this project has been spoken about publicly largely is a phase one followed by a phase two, which has yet to be determined. Phase one is the market rate apartments, the mixed use with the retail on the bottom level. As the garage is pulled back it will leave the green space and Boulevard between Macy's, Target and the new apartments. So, yes, a phase two opportunity is imminent with regard to a retail/entertainment tenant in the former Top's supermarket space. But it that all the stakeholders must act fast. It is the approving of this MOU tonight and it is the remaining stakeholders acting quickly to secure enough progress before the end of this calendar year, in order to give that give the prospective tenant who as we understand has provided a letter of intent to the developer's confidence to continue in that letter beyond the end of this calendar year.

Mrs. Weiss asked Mr. McConville if Mr. Gould's specified comments were doable and if he was comfortable with those comments.

Mr. McConville replied that they were doable and that he was comfortable with them.

Mayor Brennan stated for the record that he had said on the record about his misgivings about the CIC in recent times, but this was exactly the kind of project that is appropriate for the CIC. This is exactly the kind of project that was contemplated, in his view, when the CIC was we created and he did not think that they ever envisioned when they created the CIC, back in 2018, that it would one day, be the owner of the parking garage at University Square. But did contemplate that it would be those kinds of things that the CIC would be involved in.

Mr. Gould added that because this was the first opportunity that the citizens of the city had to hear about this update, he did think it was appropriate to put upon the record the tremendous work that had been put in over the period of over a year to try to find different solutions. One of the first things that the City did was to allow the parties work this out amongst themselves without the intervention of the city just as individuals at that site, trying to find a plan amongst businesses to move the property and the project forward but that failed. Then the City took steps to condemn the property and to seize it by legal action and based on the recommendations and information that was received from counsel it was found that that was likely not the best way forward for the citizens of the city. The City has warded off different iterations of imminent bankruptcy from the holders of the property who would make that parking garage a real problem for the city going forward without any benefit whatsoever. And now presented is an innovative use for the CIC that protects the citizens and provides the opportunity to flourish based on all of the work that has been done, rightfully in Executive Session with the advice of counsel, and also by the administration. Over the past several years, Council has received regular updates as a counsel in Executive Sessions both from directors of the city by the Mayor, Law Director and different attorneys, both within the law department and outside, as well as the stakeholders at that property. Mr. Gould said that it was in his view that this was the last and best opportunity for there to be anything at University Square in the foreseeable future, other than a dilapidated and unusable garage, that is an eyesore, a danger and a huge expense.

**MOTION BY GOULD, SECONDED BY MR. KING to Amend the Memorandum of Understanding regarding University Square based on the recommendation from Mr. Gould with four parts. On roll call, all voted "aye."**

Mayor Brennan commented that he, Mr. McConville and Mrs. Drucker would work together to formulate the inclusion of Mr. Gould suggested four parts into the MOU for review and acceptance by all parties.

**MOTION BY MRS. WEISS, SECONDED BY MRS. SAX to Approve Memorandum of Understanding regarding University Square as amended. On roll call all voted “aye.”**

**F. Motion Authorizing the Finance Director to Execute Payment to the Bureau of Workers’ Compensation in the Amount of \$164,391.00 for coverage for the period January 1, 2023 to December 31, 2023**

Mr. Kennedy stated that this was the amount due for the City’s premium with the Bureau of Workers Compensation for coverage for calendar year 2023.

**MOTION BY MRS. WEISS, SECONDED BY MRS. BLANKFELD to Authorizing the Finance Director to Execute Payment to the Bureau of Workers’ Compensation in the Amount of \$164,391.00 for coverage for the period January 1, 2023 to December 31, 2023. On roll call, all voted “aye.”**

**G. Reconsideration of Ordinance 2022-72 Authorizing the Transfer of Funds from the General Fund (100) to the CIC Fund (800) and Declaring an Emergency (Reconsideration due to Mayor’s Veto)**

Mayor Brennan commented that while there were a number of significant matters of housekeeping that would need to be addressed, still in light of the project that Council has agreed with the MOU and with the CIC in mind to do, he no longer had an objection to going ahead and making this transfer. And, thus encouraged Council to go ahead and reconsider his veto and vote yes to transfer this money.

Mr. McConville clarified that motion was to approve the Ordinance upon reconsideration. That comports with the language in the City’s Charter. Once it is approved, it becomes law pursuant to the emergency.

Mr. Gould stated that this was an entry into a place that was different than they had been before with the CIC and that he thought that the struggles that they had in the past and the disagreements that have turned into opportunities moving forward for innovation, for the benefit of the city. Mr. Gould added that he appreciated the Mayor’s comments regarding his support, given this new place that Council find themselves. But he also thought it was important for the record for there to be an understanding regarding certain statements that were written by cleveland.com regarding the authorities of the Administration in relation to this item, and asked for that law director make public his opinion regarding the abilities of the Administration, given his review of the City Charter to prevent the Finance Director from paying the CIC in conformance with an Ordinance or Resolution from City Council.

Mr. McConville replied that there is language in the Charter that speaks to the Finance Director’s ability to draw checks and warrants for the payment of bills and other amounts owed. And that indicates that the Director of Finance shall do so when directed to do so by Council. Therefore, Council does have the authority to direct the Finance Director to cut a particular check or pay a particular bill.

Mayor Brennan commented that he felt it was appropriate to state that he thought that that was a problem within the Charter. And that it was something that would be appropriately taken up by the Charter Review Commission before it finishes its review of the Charter. Mayor Brennan said that he respected the Law Director’s opinion in the event that that situation should arise again, where there would be a situation where Council wanted to transfer something with the CIC and it was inconsistent with the will the Administration. Currently under this interpretation, neither can neither stop nor can it be their fault if something is transferred in a way that is disagreeable to the public, or is somehow in any way industry, repute, or is unreasonable in the view of any observer. So, with that said the Mayor said he would welcome the Commission taking a look at the issue.

Mr. Rach asked Mayor Brennan if he wanted to withdraw his letter dated December 12, 2022 from the Council packet?

Mayor Brennan replied that he would just comment that on page two, second paragraph where he went over what he believed was the appropriate approach purposes of the CIC and one of them specifically was to create a firewall against liability. And that’s exactly what is being done with the MOU when contemplating having the CIC and as opposed to the city take on the responsibility of the parking garage. The Mayor continued to stated that there are a lot of things that the CIC ought not do. That were this is that the city could properly do as a matter of transparency. But here this is an instance where the CIC is

uniquely able to do something in a way that is superior and advantageous to act as opposed to having to sit again. Mayor Brennan said he stood by what he wrote, the circumstances have changed with respect to the transfer of money that there is a problem correct now that even though there is not a particular purpose for this particular transfer at this time, there is nevertheless a sizable project where it is easy to imagine the CIC drawing on the funds that would be transferred and thus the Mayor no longer had the objection, at the moment of time on December 12, he stood by whatever.

**MOTION BY MRS. WEISS, SECONDED BY MRS. BLANKFELD to Approve Ordinance 2022-72 Authorizing the Transfer of Funds from the General Fund (100) to the CIC Fund (800) and Declaring an Emergency On roll call, all voted “aye.”**

**H. Ordinance 2022-69 Establishing Permanent Appropriations for the Year Ending December 31, 2023 and Declaring an Emergency (on third reading and emergency)**

Mr. Kennedy stated that the budget that was included in the attachment, as part of the council packet reflected the adjustments that the Finance Committee recommended to Council based on several meetings that discuss the Mayor's original budget submission. Everything that was recommended for change was included in this schedule.

Mr. Rach state for the record that this was a really good budget and that it only had a slight deficit. It mostly takes into account a couple of vehicle purchases that needs to be done in the year 2023; mainly the ambulance which would come online in 2024, but has to have a purchase order issued, so really it will just be an accounting measure that shown for 2023. Mr. Rach noted that no projects, no personnel and no capital vehicles equipment were rejected from the Mayor's request.

**MOTION BY MRS. WEISS, SECONDED BY MRS. BLANKFELD to Approve Ordinance 2022-69 Establishing Permanent Appropriations for the Year Ending December 31, 2023 and Declaring an Emergency. Roll call on the suspension of the rules, all voted “aye.” Roll call on passage, all voted “aye.”**

**I. Ordinance 2022-74 Authorizing Temporary Appropriations for Current and Other Expenditures of The City of University Heights, Ohio for the Period Commencing January 1, 2023 and Ending December 31, 2023 and Declaring an Emergency (on second reading and emergency)**

Mayor Brennan asked for a motion to remove item I Ordinance 2022-74 Authorizing Temporary Appropriations for Current and Other Expenditures of The City of University Heights, Ohio for the Period Commencing January 1, 2023 and Ending December 31, 2023 and Declaring an Emergency from the agenda.

**MOTION BY MR. GOULD, SECONDED BY MR. KING to remove Ordinance 2022-74 Authorizing Temporary Appropriations for Current and Other Expenditures of The City of University Heights, Ohio for the Period Commencing January 1, 2023 and Ending December 31, 2023 and Declaring an Emergency from the Council agenda. On roll call, all voted “aye.”**

**J. Resolution 2022-77 Requesting the County Budget Commission to Advance Taxes from the Proceeds of Tax Levies for the Period January 1, 2023 to December 31, 2023 Pursuant to Section 321.24, Ohio Revised Code and Declaring an Emergency (on emergency)**

Mr. Kennedy reported that this legislation was an annual statutory requirement. Cuyahoga County collects taxes, both in the first half and the second half. Those bills go out and are partially settled in the month of January and February, and again usually in the month of July and August. This Resolution will ask the County to do is to advance the city their fair estimate of what the city will be credited for before the final settlement. Without this request being filed with the county the city would not have access to property tax monies for the first half or the second half until the final settlement of each one of those tax collections.

**MOTION BY MRS. WEISS, SECONDED BY MR. GOULD for the Approval of Resolution 2022-77 Requesting the County Budget Commission to Advance Taxes from the Proceeds of Tax Levies for the Period January 1, 2023 to December 31, 2023 Pursuant to Section 321.24, Ohio Revised Code**

**and Declaring an Emergency (on emergency). Roll call on the suspension of the rules, all voted “aye.” Roll call on Passage, all voted “aye.”**

**K. Ordinance 2022-78 Authorizing the Mayor to Enter into a Settlement Agreement with the Aleksander Shul and Related Parties and Declaring an Emergency (on emergency)**

Mr. McConville stated that the City had been negotiating for several months with the Alexander Shul for a settlement agreement. The settlement agreement would encompass the settlement of the two pending lawsuits. There is a suit in the Cuyahoga County Court of Common Pleas, which the city sued the Alexander Shul and obtained injunctive relief and a suit in which the Alexander Shul filed counterclaims and then there was a suit brought by the Alexandria Shul, in Federal Court, that case is very similar to the counterclaim action that they have in the Court of Common Pleas that adds claims that challenge the constitutionality of the City Code Chapter 1274. The Alexander Shul went through the Planning Commission process last November and obtained approval for a special use permit that included nine or ten separate conditions. The proposed settlement agreement with the Alexander Shul would cause the Alexander Shul to enter into a development agreement that would incorporate each of those conditions and also cause the Alexander Shul to post a significant bond for construction of a building on this site. Their intent is to raise the structure that is there currently and construct a new shul structure that would be used for assembly use only. The agreement also includes provisions that indicate that the Alexander Shul would not have to go through any additional administrative bodies' approval process, meaning they would not be in front of the Planning Commission, Board of Zoning Appeals or ARB in connection with their project. They will be subject to administrative review, for all the kinds of things that would be reviewed by those boards. Ultimately, the Alexander Shul's time period to get the project done would start ticking once those administrative approvals have been granted. That is something that they negotiated for, and that the administration, in negotiating was willing to concede for purposes of the agreement. The parties will submit a joint motion as part of the settlement agreement to the Shaker Heights Municipal Court in order to suspend the fines and that particular action. The settlement agreement itself will remain under the jurisdiction of the Federal Court judge. So, if the parties have any issues going forward in connection with the construction, or with any of the approvals, they would have access to the court to cause the respective parties to meet their obligations under the agreement.

Mr. McConville had also noted that he received an email from a member of council about a desire to go into Executive Session.

Mr. Gould asked Mr. McConville how would a switch from administrative bodies or the review boards to an Administrative Review process affect the iterations of a project that may come before council for final approval.

Mr. McConville There would not be any appearance before Council. Essentially, the agreement calls for the Alexander Shul to submit construction drawings to the city and provides the city with the opportunity to review those administratively in order to provide comments and work those construction drawings to a point that the administration's comfortable to say permits can be pulled. Part of the agreement and component of the agreement is that council essentially waives the right for further administrative review before its bodies, which in some instances, not all, but certainly in a Planning Commission setting would include referral back or recommendation up to city council.

Mr. Gould asked the dollar amount that was currently exist in the form of a fine at Shaker Heights Municipal Court.

Mr. McConville replied that all was suspended but \$65,000 so he would believe the total was approximately \$1.5million.

Mr. Cooney asked who would be a part of the administrative review.

Mr. McConville said that he would assume the Mayor, Police and Fire Chiefs, the Building Department Head and perhaps the City Engineer.

Mr. Gould said that his problem with this was that by this agreement you are taking from public view, a process where all of those boards and commissions create a public record. Otherwise the people that are living around this home, are going to understand the decisions by those bodies, by a way that they have proved through their elected officials. There is an expectation for individuals who live in this city that if

they are going to have these things go on that they would have this view of things. At every iteration of this agreement that has been brought before us, this has not been a part of it. There wasn't even an inkling that removing this from public view was going to be the way forward or was a potential that was even appointed negotiation. And furthermore, moreover, in previous iterations, one of the benefits of the settlement was to then go back and do things the way that everyone has to do them, which is the quote unquote, right way. Mr. Gould said that that was always his expectation and that we were very close with only two points, quote, unquote, of negotiation remaining; the issue of the apology, and the issue of the statements mutually made by the parties. And then there was one other issue which was never brought to light about this being that problem.

Mr. McConville replied that his recollection was that it was mentioned in executive session and that he would prefer to provide additional information regarding that in executive session.

Mr. Gould stated that he did not want to force Mr. McConville to put everything into the public forum, but there is an appropriate conversation regarding the negotiations and the desires of the parties around this point that he believed should be placed on the public record. We should not this settlement agreement from the public view or take away from the public their opportunity to view without a very clear understanding for them as to why this is the appropriate negotiated item.

Mr. McConville stated that that was a deal breaking point for them and they made that clear. Within the last three to four weeks, there were numerous iterations of the agreement that went back to them saying, that the city agreed that they did not have to go through the Planning Commission process again, because they had gone through that to the point of obtaining a special use permit already. But that they would have to go through our BZA and ARB Boards. They kept crossing it out, the city kept putting it back in. Mr. McConville added that it was his understanding they have a level of distrust of the city's processes, and that they do not want to be sent from board to board, or have their project unduly delayed by approvals not being given or alternatively, to have the Settlement Agreement completely disrupted because a variance isn't given, or an approval that they need isn't given. So, they feel as though they're negotiating for a settlement agreement that they want to have implemented, and that they don't have adequate assurances of that happening without the Federal Court being able to intervene and oversee any approval process. So that is the basis of their argument. When it became clear to us that in order to be in a position to put an agreement before you, this was something that the city was going to have to waive. And that is why it is before council. The Administration has spoken extensively with Mark Landis, our legal counsel from Isaac Wales and his opinion was that it should waive this because he did not think that it should be something that hampers the parties from reaching a final agreement and the Administration is relying on his judgment in part, and also bending to the practical necessity.

Mrs. Weiss stated that she thought having administrative review was good and doable, as opposed to having the regular reviews for the negotiation piece. She did think that it could be possible to add an architect, and possibly maybe a BZA a member to the Administrative Review team so that there would be experienced committee members on the administrative review, and that wouldn't deviate from the from the written settlement.

Mr. Rach said that he felt that review could happen administratively as long as there is somebody with expertise, registered with the State of Ohio to have their eyes on the understanding that this project fits within the field of the neighborhood. We are not talking about changing the permitted use group, we are just talking about what the building will look like for and understanding the community.

Mr. McConville stated that he wanted to make it clear that he did not have any disagreement with that whatsoever.

Mr. Gould added that he just did not want the Mayor to be placed in any type of position when it comes to this decision.

Mayor Brennan said that he appreciated Mr. Gould's comment and added Mr. McConville's comments with respect to the city's position versus their position was an accurate recitation of what was going on. This was not the city's first choice. It is not typical that the city would go through and approve a project without going through the standard boards. At the same time, Mayor Brennan said he appreciated the Aleksander Shul's sensitivity with their prior experience before our boards and not wanting to see the settlement derailed and neither does the city. Mayor Brennan added that he was confident that through the review and that the administration will call upon the expertise of that they need to ensure that there is a project that is appropriate for the street, appropriate for the community and within the confines of the settlement agreement.



Mr. Gould noted that the City's Charter very specific mentions two boards and commissions; Board of Zoning Appeals, and the Planning Commission. In Mr. Gould's view, or review of those charter provisions, it appears that the powers and processes of both of those bodies are to be determined by council by ordinance and therefore, this body assenting to the bypass of those is not in violation of the charter.

Mr. McConville stated that Mr. Gould's reciting of the language in the charter that relates to Planning and BZA were correct. There is broad discretion left to council to enact ordinances that create regulations that determine what, how and the processes used for items coming before those boards as well as timeframes and so forth. Based on the space that exists in the charter, and the authority that is left to counsel, our legal conclusion was that council has the authority for purposes of a settlement agreement to waive those provisions.

Mr. Gould asked Mr. McConville if this needed to be done based on his negotiations and conversations on emergency basis or could this be on first reading because he may have issue with it being on emergency basis.

Mr. McConville stated that the answer is somewhat nuanced. The city has made an offer of judgment in connection with this suit and under Rule 68 of the Federal Rules of Civil Procedure, we have continued to mutually petition the court for extension of the Rule 68 deadline, which we have to do once every two weeks. The current Rule 68 extension is due to expire the end of this week or beginning of next. If our opposing party agrees to another Rule 68 extension, we will have another two weeks and can bring this back before the body on second reading. Mr. McConville said that he thought that would be likely, but that he could not predict exactly. Although the other party understood that this would be placed for consideration and possible approval this evening.

Mayor Brennan said that based on his impression from the city's outside legal counsel that the court really wanted this wrapped up and not have to grant any more extensions.

Mrs. Weiss commented that this is a settlement agreement and that this meeting has been posted publicly. Nobody was in the audience and made any public comment at the beginning of this meeting. Mrs. Weiss felt that council should somehow put into their vote that an architect would be part of the Administrative Review and that having the Engineer and Building Department could deal with some of the BZA issues. But there is not an architect on that administrative review and she would like to see that in there. But in her mind, this was urgent and on many different levels she was ready to vote on this today.

Mr. Cooney voiced his concern that council required the Service Director to get drawings for a City Hall entranceway to go through ARB. There is a project from John Carroll University, that council actually did not pass because of some concerns about first responders' access; that project had gone through the Planning Commission, ARB and BZA. And, simply through a threat of a lawsuit, this may encourage any resident or anybody within the city versus University Heights, to say we want to not engage in the normal design review process and go to administrative review.

Mr. McConville clarified that the parties will have to have submitted construction documents that have been reviewed and approved by the city before any permit would be issued.

Mr. Cooney noted that the language in the MOU was very loose. It draws concern about any potential project coming down the road, any current project that is happening right now as to a path where they may want to choose that they would not want to go through the Planning Commission, BZA, or the ARB. This sets a precedent and opens up a door. There have been many issues with regard to this particular project over the last couple of years that has simply unfortunately gone through the courts.

Mayor Brennan replied that while he understood Mr. Cooney's concern he did not think that though this may be described as a playbook or roadmap, he did not think that most would necessarily want to repeat this process to be involved in three lawsuits in three different courts plus an appeal just to avoid a trip to the ARB.

Mr. Gould commented that there was a lot for him to process for his vote. Mr. Gould stated that he understood that there is really no other option and that, given the advice of counsel, this is the best way forward. But when you are talking about a change that is this significant, asking for a period where the citizens get to actually see the document that council will vote on, Mr. Gould did not think waiting to vote at the next meeting was unreasonable. Council is criticized sometimes internally and externally for doing everything on emergency. If there was a real reason to do this on emergency, if Mr. McConville comes to Council on Friday and said that the court is not going to give an extension and that Council has to do it

now or it's not getting done, then there is an emergency meeting of this council and it will vote on with that information. But that is not where council is right now. Mr. Gould said he thought it was wrong, on an issue that was this significant that the citizens get a couple of days' notice and a summary posted online and they do not get to see the actual thing that council is looking at with all of these provisions in it.

Mrs. Sax commented that it sounded to her that because of the long period of time, it came down to an issue of confidence and asked if there was anything that could restore confidence to the Aleksander Shul to go through a regular process, even if it's expedited with lined up special meetings over a period of four to six weeks, which in and of itself is an exception. Because even with the best of intentions on the administration's and director's part something could still slip through the cracks, whether it's structurally or whether it's safety.

Mayor Brennan replied that they had been at this for many months. And, that it was heartening to hear Mrs. Sax, Mr. Cooney and Mr. Gould because they as well said those things and also that this deserves to be in the public. The ARB and the BZA all make decisions sometimes that are different than what Mayor Brennan said he would do. But, that is part of why the city has those bodies. Mayor Brennan added that he has not always agreed with every decision of the ARB or the BZA, and was really not here nor there, except to say that, when you have a group of people that are all working together to move the city forward, and they are all doing it in good faith it is nice to be able to lean on those experts who are dedicated citizens that serve on the BZA and ARB to say we like this, we don't like this here, we see this issue. There is an old lawyer saying about compromises and what a good resolution is. If everybody is equally unhappy with things in a particular settlement or solution; then it must be a good settlement because everybody had to give up things that they did not want to give up. This is was not something Mayor Brennan wanted to give up, but it was the overall eye on the prize to try to find a way to resolve this issue.

Mrs. Weiss added that anyone who knows her, knows that processes and doing things the right way with the city's government was something that she stood for. But there needs to be a step taken back and as the mayor said, this is a settlement of a very unique lawsuit and it is not setting a precedent. Mrs. Weiss said that the community that lives around that home over 95% are in favor of this and that there would not be opposition to this. But everyone has to remember how this fractured our city and we need to settle this, and we need to move on. Again, an administrative review, proper permitting processes, and proper inspections is the way that is needed to move forward and put this to rest.

Mr. Gould said that he thought that this settlement agreement was the best offer the city was going to get. However, when you have a matter, that fractures the city you need to be intentional about the way you implement the solution to that. Mr. Gould said that he wanted to put on the record, that he took issue with some of the allegations that were made in the past, in light of this resolution. Mr. Gould said that in two weeks' time he would probably vote for this but that he would not vote for an emergency tonight, and that neither would he vote to pass it tonight. As a compromise he would vote to amend the ordinance and allow that it be moved for consideration on or after January 3, 2023.

Further discussion was had before going into executive session.

**MOTION BY MR. COONEY, SECONDED BY MRS. SAX to enter into executive session to discuss pending and current legal matters. On roll call, all voted "aye."**

Executive Session was entered into at 9:56pm.

**MOTION BY MR. KING, SECONDED BY MRS. WEISS to resume regular council session. On roll call, all voted "aye."**

Regular Council Session was re-enter at 10:29pm.

**MOTION BY MRS. WEISS, SECONDED BY MRS. BLANKFELD to Approve Ordinance 2022-78 Authorizing the Mayor to Enter into a Settlement Agreement with the Aleksander Shul and Related Parties and Declaring an Emergency. Roll call on the suspension of the rules, all voted "aye," except Mr. Gould and Mr. Cooney who voted "nay." Roll call on passage, all voted "aye," except Mr. Gould and Mr. Cooney who voted "nay."**

Mayor Brennan stated that with a vote of 5 to 2 the motion carried.

**L. Ordinance 2022-79 Authorizing the Advancement of Funds from the General Fund (100) to the Street Improvement Fund (200) and the Advancement of Funds to the General Fund (100) from the BCI/FBI Fee Fund (214) and ODNR Grant Fund (242) and Declaring an Emergency (on emergency)**

Mr. Kennedy stated for everyone's general knowledge that an advance from one fund to another was really a loan. It is done under the expectation that the fund that is receiving the advancement will repay the originating fund when they have the opportunity based on revenue receipts.

**MOTION BY MRS. WEISS, SECONDED BY MRS. SAX approving Ordinance 2022-79 Authorizing the Advancement of Funds from the General Fund (100) to the Street Improvement Fund (200) and the Advancement of Funds to the General Fund (100) from the BCI/FBI Fee Fund (214) and ODNR Grant Fund (242) and Declaring an Emergency. Roll call on the suspension of the rules, all voted "aye." Roll call on passage, all voted "aye."**

**M. Ordinance 2022-80 Enacting Codified Ordinance Chapter 214 Entitled "Prohibited Campaign Contributions" and Declaring an Emergency (on emergency)**

Mrs. Weiss reported that this came up for discussion in a Finance Committee meeting and also during a Charter Review Commission meeting. The ordinance is for transparency reasons, where a vendor of the city cannot donate to an elected official's campaign. It enables the city to be more transparent with the residents in terms of contracting and bidding.

Mayor Brennan commented and suggested that there would be a lot to unpack as far as the effect this would have on the Finance Department with regard to the administrative work that would have to be done to enforce the ordinance as it is written. Mayor Brennan also felt that there were other aspects with regard to campaign finance, that they might also want to take a look at and suggested that it would be appropriate to refer this matter to committee for further review and consideration and that a motion be made to that effect.

Mrs. Weiss commented that this ordinance has a \$5,000 threshold and that the city did not have many large contracts with vendors. So, she was not sure how much work the financial department would have to have to deal with. This is good practice and the ordinance is pretty straightforward.

Mayor Brennan asked Mr. Kennedy if he knew the number of vendors that are \$5,000 or more in a given year?

Mr. Kennedy replied that he did not have that with him but that he could run a report that sorts the payments by their criteria to give an idea of the number of vendors.

Mayor Brennan stated that anytime the city would have a vendor who has \$5,000 or more that, in addition to getting tax forms, they would be asked to identify and submit all of the interested parties. That is a substantial ask, and could also be viewed as intrusive at some times. But regardless of that, it is a big thing to keep track of, and it does create a fair amount of burden on candidates to acquire that information and cross reference their donors to know that they are not inadvertently committing a misdemeanor by accepting money or for or, you know, a donor by giving them money.

Ordinance 2022-80 was referred to the Finance Committee for further discussion.

**N. Ordinance 2022-81 Amending Ordinances 2022-15, 2022-19, 2022-28 and 2022-57 Authorizing Permanent Appropriations Current and Other Expenditures of the City of University Heights, Ohio for the Period Commencing January 1, 2022 and Ending December 31, 2022 and Declaring an Emergency (on emergency)**

Mr. Kennedy stated that this was an annual procedure that related to the city's filings with Cuyahoga County Budget Commission. This is necessary for us to file with the County along with the City's final fund balances and final revenue reports. Which will be provided to council the first week of January in order to review the city's final financial numbers for 2022.

**MOTION BY MRS. WEISS, SECONDED BY MR. KING to Approve Ordinance 2022-81 Amending Ordinances 2022-15, 2022-19, 2022-28 and 2022-57 Authorizing Permanent Appropriations Current and Other Expenditures of the City of University Heights, Ohio for the Period Commencing January 1, 2022 and Ending December 31, 2022 and Declaring an Emergency. Roll call on suspension of the rules, all voted “aye.” Roll call on passage, all voted “aye.”**

- O. Motion to Authorize the Mayor to Extend the Current Contract of City Engineer Joseph R. Ciuni, GPD Group for an additional Sixty (60) Days until March 2, 2023**

Mayor Brennan stated that previously there was a motion before council for the renewal of the contract. And after the first reading, there were some changes that GPD group requested and the administration has been in negotiations with GPD Group for the changes. Also, at the previous Council meeting it was suggested that this be referred to Economic Development committee, Mayor Brennan said that he did not disagree with the idea for committee review but that he did not necessarily understand the relation to the Economic Development committee in this particular contract but rather the Committee of the Whole. Being that aside, Mayor Brennan said he would want to afford time for which ever committee consideration with regard to an extension and the reviewing of the changes that GPD has requested without having to accelerate to force a vote. It has been suggested that the requested extension would be appropriate.

**MOTION BY MR. RACH, SECONDED BY MRS. SAX Authorizing the Mayor to Extend the Current Contract of City Engineer Joseph R. Ciuni, GPD Group for an additional Sixty (60) Days until March 2, 2023. On roll call, all voted “aye.”**

- P. Motion to Accept the Bid from Nerone & Sons, Inc. as the lowest and best bid for the 2023 – 2025 Emergency Sewer Repairs and Entering into Contract with the same for an amount not to exceed \$260,025 for 2023; ~~\$273,090~~ \$266,890 for 2024 and ~~\$289,685~~ \$272,835 for 2025**

Mr. Ciuni reported that this was the annual contract that the city has been contracting for at least 10 years or more and noted that he made corrections to the bid prices in years 2024 and 2025 due to errors found in the bidder’s calculations, the revised bid amounts did not affect the bid status. The intent of the project is to provide construction services to the city. The project essentially will be a service contract on an as needed basis as determined by the Service Director. The contractor services will be required when the work is contemplated to be beyond the capabilities of the city’s Service Department or when city forces cannot respond to the need in a timely manner. The work generally consists of pavement removal of a miracle basement concrete curb and walk removals, sewer repairs, catch basin repairs, items of that sort, that need to be done in a timely manner. The way the contract was written is that it was bid where 2023 is guaranteed and years 2024 and 2025 are optional years of renewal should the contractor be successful or be satisfactory to the Service Director and respond in a timely manner. At that point the Service Director would come back to City Council and recommend year two and year three of the contract for approval. Again, years two and three are the city's option and not guaranteed.

Mr. Pokorny stated that Council only had to approve one year tonight and as Mr. Ciuni indicated, there is contract requirement that they come back to renew each additional year.

**MOTION BY MRS. SAX, SECONDED BY MR. KING to Accept the Bid as amended from Nerone & Sons, Inc. as the lowest and best bid for the 2023 – 2025 Emergency Sewer Repairs and Entering into Contract with the same for an amount not to exceed \$260,025 for 2023. With the option for years 2024 and 2025 in the amounts of \$266,890 for 2024 and \$272,835 for 2025. On roll call, all voted “aye.”**

- Q. Motion to Accept the Bid from AAA Flexible Pipe Cleaning as the lowest and best bid for the 2023 – 2025 Catch Basin, Inlet, Sewer Cleaning & Televising Program and Entering into Contract with the same for an amount not to exceed \$94,280 for 2023; \$102,780 for 2024 and \$105,880 for 2025**

Mr. Ciuni said that this was also a three-year contract. The first year is guaranteed the next two are not the low bidder they're three bids and this one low bidder is AAA Flexible Pipe Cleaning. The project includes the cleaning of catch basins inlets, cleaning the sewers and then Televising the sewers after cleaning. Mr. Ciuni recommend awarding the contract to AAA for year one with the optional years of years two and three.

Mr. Cooney asked if for this type of service, will this be something that long term to be conservative, we had the training and the equipment to do in house as opposed to subcontractors?

Mr. Pokorny replied that proven over the past several years to be the best method and that it is most economical. Otherwise the city would have to purchase additional specialized equipment and hire staffing.

Mr. McConville clarified that the motion would be to accept the bid at the unit prices set forth are in for an amount during 2023 not to exceed 300,000.

**MOTION BY MR. RACH, SECONDED BY MRS. SAX to Accept the unit Bid prices from AAA Flexible Pipe Cleaning as the lowest and best bid for the 2023 – 2025 Catch Basin, Inlet, Sewer Cleaning & Televising Program and Entering into Contract with the same for an amount not to exceed \$300,000 during 2023. On roll call, all voted “aye.”**

#### **R. Discussion regarding Changing the Location for City Council Meetings**

Mr. Gould stated that at the last meeting there was a discussion regarding the transfer of the location for Council meetings from this location to back to council chambers at City Hall. Mr. McConville had had previous conversations with Mayor Brennan regarding the application of certain Federal laws to specifically the public meeting laws, federal disability laws related to access to the council chamber space. The discussion, as Mr. Gould recalled surrounding returning to City Hall, and the potential even if it was not required to have a viewing location where individuals who were not able to access that space, if there was a malfunction with the chair lift would be able to view and interact with the meeting happening live in another location. So first, are there any concerns regarding the ADA, or otherwise, in relation to the change of a meeting from this location to City Hall?

Mr. McConville stated that he had not had an opportunity to update his own research on that issue and wanted to be able to do that. Mr. McConville said that it was his understanding, and he thought he had conveyed that to Mr. Gould during an earlier conversation is that the ADA does not apply to buildings that were built prior to its enactment and those buildings are essentially considered to be grandfathered. Mr. McConville said he would also want to research the issue of whether creating a viewing room would sufficiently address an ADA issue, whether it would be considered a reasonable accommodation and that may depend on the ability of an individual in that viewing room to participate during the public comment portion of the meeting. There have been discussions with Mrs. Weiss and the Administration for other potential for alternatives that might also be of interest to council.

Mayor Brennan commented that council would recall that at the last meeting, they approved proceeding with the eminent domain filing with regard to the YABI property and reported that he and Mr. McConville have a circulated a draft complaint for that which could be potentially filed before the end of the calendar year. In previously walking the premises the front door of the building has a step but also has a ramp and then once you're inside, to the left without any steps and seemingly accessible with doorways sufficiently wide enough leading to a coat room followed by the sanctuary that could potentially be a meeting room. It is possible that the YABI property could be in the city's possession in a relatively short period of time. Mayor Brennan suggested that it might do better to stay where at Wiley and work towards setting up YABI as a temporary space for meetings until such time as we're ready to redevelop. Mayor Brennan added that at the same time, he would be remiss if he did not reveal or report that after it was in cleveland.com that the city was looking at moving back to council chambers that he heard from representatives of Maximum Accessible Housing of Ohio. Their Executive Vice President Beth Glass and one of their outreach coordinators Maura Lane came out to City Hall; viewed the council chambers, viewed the stairwell and viewed the chairlift. Mayor Brennan said that they attempted to operate the chairlift and it did malfunction while he was in it. Mayor Brennan stated that he would discourage returning to council chambers, as lovely of a room as it is he did not think it would be a move in the right direction. Nothing has been done in the last three years to make that facility more accessible though that has not been for not looked into it. The city did go out to bid at one time to try to find somebody else who might do a chairlift and the only bidder ultimately was the same company, which was at the time having difficulty making the then current chairlift work so there was not a lot of faith in having a successful

outcome. Mr. Ciuni had also had companies come out to take measurements but bids were not received from them.

Mrs. Weiss asked if council could continue the discussion when Mr. McConville has more information about the accessibility laws and separate meeting room.

Mr. McConville replied that he would have information prior to the next council meeting for council to review and have a more meaningful discussion.

Mr. Gould asked Mr. McConville if he would maybe issue a memo or release and be prepared to discuss more comprehensively, not only the ADA issue, if there is an issue with ADA, the amelioration of that issue through the use of the viewing room. And then logistically the action council would need to take to make that transition through legislation or otherwise to the new location, given the powers vested in it by the Charter and delegated elsewhere in the Ordinances of the city.

**S. Notice of Resignation of James Hux from Charter Review Commission and Appointment by Councilmember Gould of Therese Marshall to Charter Review Commission**

Mr. Gould stated that he received notification through the City Prosecutor who is assisting with the Charter Review process and is acting as legal counsel for that body that Mr. Huck's had resigned his position with the Charter Review Commission. Mr. Gould said that he had asked Teres Marshall to step up into that position. Miss Marshall is a veteran of the United States Navy and holds two master's degrees, which she advanced through an advanced education degree as well. She was a former public-school teacher and is now retired. She had a career in public service as a postal carrier as well. She has been active in the Northcliff neighborhood and participated in the creation of various community events. Miss Marshall will be an excellent addition with her perspective and experience to the Charter Review Commission and recommend her as the replacement to Mr. Huck's position.

Mayor Brennan asked Mr. McConville what needed to be done at this point with regard to the appointment.

Mr. McConville replied that there was no action needed to be taken in regards to the appointment as Mr. Gould has made it.

**T. Motion to Enter Executive Session for the purpose of Discussing Legal Proceedings, Personnel and Real Estate Matters**

No executive session was needed.

**Director's Reports**

There were no director reports.

**Standing Council Committees:**

**Economic Development – Mr. Rach**

Mr. Rach stated that the Zoning review meeting is scheduled for January 25 at 6pm at John Carroll University in the Jardine Room.

A poll will be done to hold a committee meeting in January.

**Finance Committee – Mrs. Weiss**

Mrs. Weiss stated that there is a doddle poll for a Finance meeting in January.

**Service Committee – Mrs. Sax**

The Service Committee meeting wil be January 4, 2023 at 6pm.

There were no other Council Committee reports.

**Reports of special committees, and the taking of action thereon**

None

**Unfinished and miscellaneous business**

None

**MOTION BY MRS. SAX, SECONDED BY MR. RACH to adjourn the meeting. On roll call, all voted "aye."**

There being no further business, the meeting was adjourned at 11:28pm

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Michael Dylan Brennan, Mayor

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Kelly M. Thomas, Clerk of Council