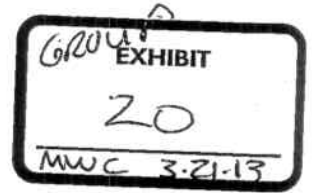


Martin (ATTY)  
STARTS LIST  
2 WEEKS AFTER Elected



**Potential Charter Violations:**  
**Mayor Adam Paul**

1. On May 1, 2012, Mayor Paul directed Ellisville Police Officer Kelly Murray to remove resident Katie James from the Ellisville Elementary auditorium following a meeting of the Ellisville City Council.

**Charter Section 3.5(c):** "Except for the purpose of inquiry, information, or investigation as established by Article Three, Section 3.11, of the Charter, the Mayor or Council Members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. Neither the Mayor nor Council Members shall give any orders to any such officer or employee, either publicly or privately."

(Also used profanity during closed session—creating a "shit storm".)

2. On May 7 and May 8, 2012, Mayor Paul contacted Chief Felgate and Sgt. Walker requesting (a) that he be issued a gun and a badge and (b) use of the City's message boards for private events.

**Charter Section 3.5(c):** "Except for the purpose of inquiry, information, or investigation as established by Article Three, Section 3.11, of the Charter, the Mayor or Council Members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. Neither the Mayor nor Council Members shall give any orders to any such officer or employee, either publicly or privately."

3. On May 18, 2012, Mayor Paul contacted City Manager Bookout, asking him to advertise on the city's message boards certain "community events" being held at a private business.

**Charter Section 4.1(a and b):** Providing that the mayor shall have "no additional duties other than those specified" in the Charter, and detailing those duties, which do not include the authority to direct the city manager in the performance of his administrative duties.

**Charter Section 5.4:** Detailing the powers and duties of the city manager, which provide that the manager "shall be responsible to the Council for the administration of all operations" placed in his charge.

4. On May 24, 2012, Mayor Paul contacted Jennifer Kaniecki, relocation specialist for Sansone, concerning the benefits to be afforded the residents of the Clarkchester Apartments.

**Charter Section 12.3(d)(1):** "The Mayor . . . shall not meet or confer with any person, business entity, or any agent of either, regarding any application or

petition which such person, business entity, or agent has filed with the Council . . . except by way of a lawful public meeting requested by such person, business entity, or agent requesting the meeting . . . .”

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city manager in the performance of his administrative duties.

**Charter Section 5.4:** Detailing the powers and duties of the city manager, which provide that the manager “shall be responsible to the Council for the administration of all operations” placed in his charge.

5. On June 12, 2012, Mayor Paul contacted Administrative Assistant Bragdon and requested that she provide him with a personalized City of Ellisville letterhead, in a writable electronic format, for his use.

**Charter Section 3.5(c):** “Except for the purpose of inquiry, information, or investigation as established by Article Three, Section 3.11, of the Charter, the Mayor or Council Members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. Neither the Mayor nor Council Members shall give any orders to any such officer or employee, either publicly or privately.”

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city manager in the performance of his administrative duties.

**Charter Section 5.4:** Detailing the powers and duties of the city manager, which provide that the manager “shall be responsible to the Council for the administration of all operations” placed in his charge.

6. On June 13, 2012, Mayor Paul reprimanded City Manager Bookout for asking the Council if they were available for a special meeting, claiming that it was his prerogative under the City Charter, and instructed City Manager Bookout in the future to “reach out to me first regarding administrative city issues so that I, as Mayor, can issue the special meeting request”, concluding with the admonishment that “[i]f you are unsure please ask me”.

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city manager in the performance of his administrative duties.

**Charter Section 5.4:** Detailing the powers and duties of the city manager, which provide that the manager “shall be responsible to the Council for the administration of all operations” placed in his charge.

7. On June 13, 2012, Mayor Paul instructed City Clerk Demeter to prepare an ordinance for the June 20 meeting of the City Council calling for the recall elections of Council Members Anglin and Pieper on October 2, 2012, despite the fact that the recall petitions had not been circulated or certified by the clerk as containing sufficient signatures.

**Charter Article IX, including Section 9.7:** Provides a process for the recall of a sitting council member, including the filing and verification of petitioners’ affidavits, the collection of signatures, and the certification of the signatures by the City Clerk. “When a recall petition has been certified to the Council as sufficient by the City Clerk, the Council shall at its next meeting after receipt of such certification fix a date for holding the election . . . .”

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her duties, especially when the instruction requires the preparation of an ordinance in violation of the City Charter.

**Charter Section 3.7:** Detailing the duties of the city clerk, which provide that the clerk “shall be responsible to the Council”.

8. On June 13, Mayor Paul requested the City Clerk to prepare stationary for his use.

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her duties, especially when the instruction requires the preparation of stationary in violation of the procedures adopted by the City Council.

**Charter Section 3.7:** Detailing the duties of the city clerk, which provide that the clerk “shall be responsible to the Council”.

9. On July 18, Mayor Paul requested the City Clerk to provide a copy of the City Attorney’s contract and bills and to conceal the request from the City Council.

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her duties, especially when the instruction requires (a) the transmission of information

to the exclusion of the City Council, and (b) the preparation of information by the finance director.

**Charter Section 3.7:** Detailing the duties of the city clerk, which provide that the clerk “shall be responsible to the Council”.

**Charter Section 3.5(c):** “Except for the purpose of inquiry, information, or investigation as established by Article Three, Section 3.11, of the Charter, the Mayor or Council Members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. Neither the Mayor nor Council Members shall give any orders to any such officer or employee, either publicly or privately.”

10. On July 18, Mayor Paul continuously permitted public comment to exceed the time limitations prescribed by the Council for its public hearings, thus lengthening the public hearing and jeopardizing the Council’s ability to timely attend to all the business of the City.

**Charter Section 4.1(b)(1):** Providing that the mayor shall “[p]reside as Chairman of meetings of the Council”.

11. On August 1, Mayor Paul published in the “comments” section of the Ballwin-Ellisville Patch a statement suggesting that a Sports Authority might be going into the vacant Gordman’s site—leaking confidential information?

12. On August 8, 2012, Mayor Paul was seen at the Phillips 66 gas station on Manchester, where he purchased apple juice, a small bottom of Jim Beam bourbon, mixed the two, and then road off on his bicycle.

**Code Section 342.060.A:** “No person shall knowingly transport in a vehicle operating on a public highway, street or alley any alcoholic beverage except in the original container which shall not have been opened . . . .”

13. On August 11, Mayor Paul sent a detailed e-mail to Kate Demeter directing the production of various information from the finance director and the city manager relating to the Wal-Mart TIF project and the 2012 budget.

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her duties, especially when the instruction requires the finance director and the city manager to prepare and produce information and explanations that have already been made available to the public, generally, and to the council, specifically.

**Charter Section 3.7:** Detailing the duties of the city clerk, which provide that the clerk “shall be responsible to the Council”.

**Charter Section 3.5(c):** “Except for the purpose of inquiry, information, or investigation as established by Article Three, Section 3.11, of the Charter, the Mayor or Council Members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. Neither the Mayor nor Council Members shall give any orders to any such officer or employee, either publicly or privately.”

14. On August 14, Mayor Paul e-mailed the City Clerk, informing her that he did not want to appoint “Mr. Checkett” to the Planning and Zoning Commission and asking her to “advise what needs to be done or what powers I have regarding this”. Mayor Paul also asked the City Clerk to confirm that he could lawfully refuse to nominate the City Attorney for reappointment.

Mayor Paul’s e-mail again imposed on the City Clerk duties inconsistent with the scope of duties provided by the Charter, and he asked the City Clerk for legal advice in violation of the City Charter, placing the City Clerk in a compromising position.

**Charter Section 3.7:** Detailing the duties of the city clerk, which provide that the clerk “shall be responsible to the Council”.

**Charter Section 3.8(b):** Providing that the City Attorney “shall be the chief legal officer of for the City and shall have such duties as may be assigned by law and the Council.”

15. Mayor Paul’s August 14 e-mail also admitted that he had spoken with “at least 4 experienced municipal attorneys “ about interviewing for the city attorney position and that he had “prescreened” three attorneys to be invited to a “town hall meeting” to discuss the merits of hiring a new city attorney. He stated that he would “release the costs of each attorney present to the pubic/press to allow the public to informally review the following day for those who couldn’t attend the meeting”, and he went on to state that he would “have Kate work with me to ensure the proper filing and format of town hall meetings have been addressed. If need be, I will announce the meeting details in The Trailblazer on the Mayor’s Corner due on August 15<sup>th</sup> to reach the entire pubic (*sic*) audience.”

**Charter Section 12.3(d)(1):** “The Mayor . . . shall not meet or confer with any person, business entity, or any agent of either, regarding any application or petition which such person, business entity, or agent has filed with the Council . . . except by way of a lawful public meeting requested by such person, business entity, or agent requesting the meeting . . . .”

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which



do not include the authority to direct the city clerk in the performance of her administrative duties.

**Charter Section 3.8(a):** Providing that the City Council “shall appoint” the City Attorney and that the City Attorney “shall serve at the pleasure of the Council.”

**Charter Section 3.8(b):** Providing that the City Attorney “shall be the chief legal officer of for the City and shall have such duties as may be assigned by law and the Council.”

16. On August 14, and again on August 15, Mayor Paul e-mailed the City Clerk, directing her to remove an item from the regular meeting agenda of August 15 based on his erroneous interpretation of the city code. This required the diversion of the City Clerk and the City Attorney from other business and the commitment of significant time and effort to respond to the mayor’s erroneous and ill-founded order.

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her duties, especially when the instruction requires the preparation of stationary in violation of the procedures adopted by the City Council.

**Charter Section 3.7:** Detailing the duties of the city clerk, which provide that the clerk “shall be responsible to the Council”.

**Charter Section 3.8(b):** Providing that the City Attorney “shall be the chief legal officer of for the City and shall have such duties as may be assigned by law and the Council.”

17. After closed session of, and prior to, the special meeting of the City Council on August 16, the City Attorney advised Mayor Paul that the Charter required that he sign the resolution permitting the nomination of city officers by members of the City Council. To date, Mayor Paul has failed to sign the resolution.
18. On or about 10/30/12, Ed O’Reilly called City Clerk Demeter, saying “I’ve heard that the City Council is extending the severance benefits of the City Manager. Is that true?” This issue was discussed only in closed session, and the only friend of O’Riley on the council is Mayor Paul.
19. Used profanity in written e-mail communication (“better have our shit in order”)
20. November 7, 2012—Paul goes off on the zoning code amendments and the Bookout severance extension, attacking staff and council members for incompetence and cronyism. Also used profanity (“shitty” in closed session)

21. November 9, 2012—Paul directs the City Clerk to include additions to the minutes for 11/7/12 noting his multiple (and nonsensical) objections. No authority to do so.
22. Nov. 12, 2012—Paul again chastises/directs the City Clerk.
23. Paul directs the City Clerk to post e-mail communications on the city's website.

TC/Adam Paul, 5/02/12 @ 9:40 a.m.

AP called and asked about the City's responsibility to pay for the TIF debt if the project fails. I explained, again, that (a) the statute provides that the debt will be paid by the project revenues, unless the city agrees to back the debt, and (b) the city has not agreed to back the debt, and in fact, has expressly agreed not to back it. I referred to the statute identified in the powerpoint and the specific section of the redevelopment agreement.

After that, I suggested that if the TIF was approved, he exert some leadership and publicly suggest that his followers should NOT recall the council members who supported the TIF. He said that it was beyond him, that anything he said would be a charter violation, and that "that confidential memorandum really fanned the flames" for recall.

He then went on with lengthy comments about why the project was not "moral", because of the displacement of residents, not good for the region, and not good for the future commercial development of the city. He circled back to the recall issue, saying this would be "World War III".

At this point he came back to the referendum issue, saying that he understands the legality of the situation, but it was taking away power from the people. He said that when these people found out about referendum not being lawful, "all hell is going to break loose." I asked about the memorandum, and how did that "fan the flames"? He immediately said "I haven't shared that memorandum with anybody". I suggested that the petitioners' group already knew about the referendum not being appropriate, as all they were talking about in the press was initiative and recall. He said he didn't know—he hadn't talked to anyone and couldn't talk to anyone (because it would be a charter violation), but Liz Schmidt was very bright—"she's read the charter and was pulling cases . . ."

He also said the petitioners' group was backed by "big money . . . people from Ballwin . . ."



EXHIBIT  
20B

**THIS DOCUMENT CONSTITUTES A PRIVILEGED COMMUNICATION BETWEEN A GOVERNMENTAL BODY AND ITS ATTORNEY AND MAY BE MAINTAINED AS A CLOSED RECORD IN ACCORD WITH THE PROVISIONS OF §610.021(1) RSMo. 2010.**

MEMORANDUM

To: Ellisville City Council  
From: Paul Martin  
Date: April 20, 2012  
Re: Referability of Sansone/Wal-Mart TIF Ordinances

Introduction

In light of the several comments made at Wednesday’s council meeting alluding to use of the referendum power, I thought it appropriate to examine whether the Sansone/Wal-Mart TIF Ordinances are referable to the voters under both Chapter 9 of the Ellisville Charter and Missouri case law. Unequivocally, they are not subject to referendum, because: (1) the Charter excludes from the referendum process certain subjects included in the TIF Ordinances, (2) the TIF Ordinances are administrative rather than legislative in nature, and (3) Missouri’s TIF statute prohibits referenda on tax increment financing.

I. The City Charter Exclusions.

Section 9.1(b) of the Ellisville City Charter provides that the City’s electorate shall, by timely referendum petition, have the power to require reconsideration by the City Council of “any adopted ordinance”, and if the Council fails to repeal an ordinance so reconsidered, the voters may “approve or reject it at a City election.” Section 9.1(b) goes on to state that the referendum power “shall not extend to the budget or capital program . . . any ordinance levying a special assessment or providing for the issuance of special tax bills or any ordinance relating to zoning, the appropriation of money, or the levy of taxes.” The TIF Ordinances encompass several of these prohibited categories, the legal effect of which is to exclude the TIF Ordinances from the referendum power.

A. The TIF Ordinances approve a redevelopment project and agreement and authorize the use of tax increment financing for those purposes. The ordinances anticipate the collection and redistribution of payments in lieu of taxes (or “PILOTs”, those new property and sales tax revenues generated by the construction and operation of the project), as well as the collection of approximately \$600,000 in new sales taxes that will be deposited to the City’s general revenue fund. In that the collection and redistribution of both the new taxes and PILOTs will affect the

City's financial status for the foreseeable future, there is little question that the TIF Ordinances impact the City's future budgets and further "relate to" the appropriation of money and the levy of taxes.

B. Moreover, more than 20 years ago, the Supreme Court of Missouri, in finding the TIF statute's redistributive financial framework lawful, held that PILOTs constituted "special assessments" rather than taxes. The Court based this conclusion on the fact that PILOTs are collected and redirected for the payment of improvements to the property charged for the assessments rather than being deposited to the government's general revenue fund. Tax Increment Financing Commission of Kansas City v. J.E. Dunn Construction Co., Inc., 781 S.W.2d 70, 76-8 (Mo. banc 1989). Since the Missouri Supreme Court has held that PILOTs are special assessments, and since the TIF Ordinances levy PILOTs, the ordinances are not referable under the Charter.<sup>1</sup>

C. The TIF Ordinances likewise affect the City's capital program and further relate to the City's zoning of the project area. The TIF Ordinances require the dedication of a trail extension and the deposit of \$50,000 for a trail maintenance fund, and they also contemplate the future dedication of property for a pedestrian bridge over Manchester Road and the construction of road, access, and aesthetic improvements. The TIF Ordinances further contemplate and facilitate the use of the project land in compliance with the City's zoning laws, the Comprehensive Plan, and the Great Streets initiative. All of these subjects can be characterized as involving long-term capital public improvements and relating to zoning.

Because the TIF Ordinances address several subjects that the City Charter excludes from the referendum process, they are not referable to the voters for their consideration.

## II. The TIF Ordinances Are Administrative And Not Referable.

The powers of initiative and referendum are legislative in nature, as they allow the voters to enact or repeal laws as a last resort to the legislative branch of government. While voters have traditionally enjoyed the power to pass or repeal laws independently of the governing body, the power has not been extended to administrative and executive decisions, because such initiatives and referenda "could result in chaos and the bringing of the machinery of government to a halt". State ex rel. Whittington v. Strahm, 374 S.W.2d 127, 130 (Mo. banc 1963).

Consequently, only legislative matters are appropriate for initiative or referendum. "A proposal is legislative if it is permanent or general in character and administrative if temporary or special in character. . . . [A] proposal is legislative if it prescribes a new policy or plan, administrative if it merely pursues or executes a plan or policy already adopted by the legislative body itself or some power superior to it. State ex rel. Gateway Green Alliance v. Welch, 23 S.W.3d 861, 863-4 (Mo. App. 2000).

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<sup>1</sup> Further, since PILOTs are special assessments, and since the TIF Ordinances direct their collection, the TIF Ordinances arguably effects the issuance of special tax bills.

The TIF Ordinances are not general or permanent. They approve a specific redevelopment project at a specific location, approve a specific contract for the project, and establish a financing scheme tailored to the project, which by law cannot exceed 23 years. Neither do the TIF Ordinances prescribe a new policy or plan. Instead they implement an existing policy or plan—specifically tax increment financing, a tool created by the Missouri legislature by virtue of the TIF Act—to approve and implement a specific redevelopment project. In other words, the TIF Ordinances implement a specific and unique redevelopment project; they do not adopt a general policy or law that will regulate or enable future redevelopment projects within the City.

This distinction is illustrated by the Strahm case, cited above. In Strahm, the council of Kansas City introduced an ordinance declaring the fluoridation of the city's water supply to benefit the public health and welfare. The ordinance also authorized a contract for the first-time implementation of a fluoridation program. The ordinance was never voted on, because of public opposition to the plan, but later the council passed an ordinance simply approving the purchase of fluoridation equipment. Kansas City citizens challenged the "purchasing" ordinance through the referendum process set out in the city's charter. While the citizens had gathered enough signatures for their petition, the city clerk refused to call a referendum election. The citizens sued the city clerk, asking the court to order the clerk to call the referendum election. The city clerk responded, arguing that the purchase of equipment was an administrative, rather than a legislative, act, and consequently was not subject to the referendum power. Strahm, 374 S.W.2d at 127-130.

The Missouri Supreme Court disagreed, finding the Kansas City ordinance legislative in nature and referable to the voters under the city's charter provision. While on its face the ordinance "appeared to be a routine ordinance for the purchase of equipment," the Court noted that the effect of the ordinance was to implement, for the first time, the policy and practice of fluoridating the city's water supply. Strahm, 374 S.W.2d at 131. Because the effect of the fluoridation ordinance was to establish a new policy of general application, it was deemed appropriate for referendum.

Unlike Strahm, the TIF Ordinances do not establish a new policy of general application; instead they approve *one specific redevelopment project*, and they authorize the use of tax increment financing for that project. In doing so they implement an existing policy or plan, Missouri's TIF Act, a statute adopted by Missouri's general assembly as a tool to enable local governments to redevelop blighted and underperforming properties. Under these facts, the TIF Ordinances are administrative in nature and are not subject to the electorate's referendum power.

### III. The TIF Act Prohibits Referenda.

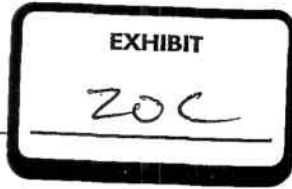
Section 99.865 of the TIF Act provides for the financing of TIF obligations and states: "No referendum approval of the electors shall be required as a condition to the issuance of obligations pursuant to [the Act]." On the strength of this provision, the Missouri Court of Appeals invalidated a proposed initiative petition that would have made the approval of TIF financing by a city council contingent on a two-thirds majority vote of the electorate. State ex rel. Hazelwood Yellow Ribbon Committee v. Klos, 35 S.W.3d 457 (Mo. App. 2000). The Court's

reasoning was that the initiative petition would have established a local law that contradicted the TIF Act, and as such the initiative exceeded the city's authority and was unconstitutional.

Here, there is no functional difference between Hazelwood's initiative petition and a possible Ellisville referendum. While the Hazelwood initiative, on its face, required a referendum as a condition to TIF financing, the Ellisville referendum, which would be a condition to the TIF financing, would still be legally required if the minimum number of petition signatures were timely submitted to the city clerk. In other words, the electorate's timely and effective pursuit of a referendum would, all other things being equal, require an election to determine whether the TIF Ordinances should be repealed. Thus "referendum approval of the electors" would be required as a condition to the issuance of any TIF financing instruments, in direct contradiction of Section 99.865 of the TIF Act. Since the City, whether acting through the Council or the voters, may not exercise a power denied by state statutes, a referendum of the TIF Ordinances would unconstitutionally exceed the scope of the City's legislative authority.

### Conclusion

Because the Ellisville Charter excludes from the referendum process certain subjects included in the TIF Ordinances, because the TIF Ordinances are administrative rather than legislative in character, and because Missouri's TIF statute prohibits referenda on tax increment financing, the TIF Ordinances are not subject to referendum.



Paul Martin <paul@paulmartinpc.com>

Attached

1 message

Paul Martin <paul@paulmartinpc.com>  
To: Matt Pirrello <mpirrello@brick.net>

Thu, Dec 6, 2012 at 2:19 PM

Draft only. What do you think?

THIS IS A CONFIDENTIAL COMMUNICATION FROM THE LAW FIRM OF:

Paul Martin, P.C.  
9322 Manchester Road  
St. Louis, Missouri 63119  
(314) 961-0097 x. 12 (Office)  
(314) 805-8800 (Direct)  
(314) 961-0667 (Fax)

We are required to obtain client consent to communication by E-mail. Please note that there is a risk that such communications may be intercepted as they travel through the Internet or any network to which you are connected or from your own computer. Communications could be randomly intercepted by a disinterested person or intentionally intercepted by an interested person. We understand that you consent to communication by E-mail. If this is incorrect, please let us know immediately.



Paul Martin <paul@paulmartinpc.com>

**Duh!**

11:46 AM PST


**Paul Martin** <paul@paulmartinpc.com>  
To: Matt Pirrello <mpirrello@brick.net>

Thu, Dec 6, 2012 at 2:20 PM

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 **Complaint.doc**  
55K



Dear Ms. Demeter:

Please accept this letter as my complaint that Mayor Adam Paul has violated various provisions of the Ellisville City Charter and has also committed other acts calling into question his qualifications to serve as the Mayor of Ellisville. Specifically, on my personal knowledge and with information from others, I charge Mayor Paul with the following:

1. After a meeting on April 4 (?), 2012, Mayor Paul, without provocation, verbally abused resident Katie James and directed Ellisville Police Officer Kelly Murray to remove the resident from the Ellisville Elementary auditorium.

**Charter Section 3.5(c):** "Except for the purpose of inquiry, information, or investigation as established by Article Three, Section 3.11, of the Charter, the Mayor or Council Members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. Neither the Mayor nor Council Members shall give any orders to any such officer or employee, either publicly or privately."

2. During a closed session of the City Council immediately preceding the April 4 (?), 2012 meeting, Mayor Paul addressed the Council by the use of profanity, specifically accusing the Council of creating a "shit storm" by supporting the Wal-Mart redevelopment project. After the May 1 meeting, Mayor Paul,
3. On May 1, 2012, Mayor Paul, while officially representing the City, appeared at the West County Honda ribbon-cutting in an intoxicated condition, admitting to the director of the West County Chamber of Commerce that he had a few too many drinks.
4. On a date unknown, but prior to May 2, 2012, Mayor Paul shared a confidential legal opinion from the City Attorney with a person or persons unknown.

**Ellisville Code Section 125.050.D.2:** Providing that breach of the confidentiality of closed information is ground for removal from office.

5. On May 7 and May 8, 2012, Mayor Paul contacted Chief Felgate and Sgt. Walker, requesting (a) that he be issued a gun and a badge and (b) that a business owner be allowed to use the City's message boards to advertise for private events.

**Charter Section 3.5(c):** "Except for the purpose of inquiry, information, or investigation as established by Article Three, Section 3.11, of the Charter, the Mayor or Council Members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the

City Manager. Neither the Mayor nor Council Members shall give any orders to any such officer or employee, either publicly or privately.”

**Charter Section 4.1(a and b):** The mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to request or direct the use of City property for private functions.

6. On May 18, 2012, Mayor Paul contacted City Manager Bookout, asking him to advertise on the city’s message boards certain “community events” being held at a private business.

**Charter Section 4.1(a and b):** The mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city manager in the performance of his administrative duties or to request or direct the use of City property for private functions..

**Charter Section 5.4:** Describing the powers and duties of the city manager, which provide that the manager “shall be responsible to the Council for the administration of all operations” placed in his charge.

7. On May 24, 2012, Mayor Paul contacted Jennifer Kaniecki, relocation specialist for Sansone Development Company, concerning the benefits to be afforded the residents of the Clarkchester Apartments.

**Charter Section 12.3(d)(1 & 2):** Providing that “The Mayor . . . shall not meet or confer with any person, business entity, or any agent of either, regarding any application or petition which such person, business entity, or agent has filed with the Council . . . except by way of a lawful public meeting requested by such person, business entity, or agent requesting the meeting . . .”, and further providing that the violation of this provision constitutes a forfeiture of office.

**Charter Section 4.1(a and b):** The mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to discuss relocation policy with a developer in the absence of approval or direction of the City Council.

**Charter Section 5.4:** Detailing the powers and duties of the city manager, which provide that the manager, not the Mayor, “shall be responsible to the Council for the administration of all operations” placed in his charge.

8. On June 12, 2012, Mayor Paul contacted Administrative Assistant Bragdon and requested that she provide him with a personalized City of Ellisville letterhead, in a writable electronic format, for his use.

**Charter Section 3.5(c):** “Except for the purpose of inquiry, information, or investigation as established by Article Three, Section 3.11, of the Charter, the Mayor or Council Members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. Neither the Mayor nor Council Members shall give any orders to any such officer or employee, either publicly or privately.”

**Charter Section 4.1(a and b):** The mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the City’s administrative assistant in the performance of her duties.

**Charter Section 5.4:** Detailing the powers and duties of the city manager, which provide that the manager “shall be responsible to the Council for the administration of all operations” placed in his charge.

9. On June 13, 2012, Mayor Paul reprimanded City Manager Bookout for asking the Council if they were available for a special meeting, claiming that it was his prerogative under the City Charter, and instructed City Manager Bookout in the future to “reach out to me first regarding administrative city issues so that I, as Mayor, can issue the special meeting request”, concluding with the admonishment that “[i]f you are unsure please ask me”.

**Charter Section 4.1(a and b):** The mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city manager in the performance of his administrative duties.

**Charter Section 5.4:** Detailing the powers and duties of the city manager, which provide that the manager, not the Mayor, “shall be responsible to the Council for the administration of all operations” placed in his charge.

10. On June 13, 2012, Mayor Paul directed City Clerk Demeter to prepare an ordinance for the June 20 meeting of the City Council calling for the recall elections of Council Members Anglin and Pieper on October 2, 2012, despite the fact that the recall petitions had not been circulated or certified by the clerk as containing sufficient signatures.

**Charter Article IX, including Section 9.7:** Provides a process for the recall of a sitting council member, including the filing and verification of petitioners’ affidavits, the collection of signatures, and the certification of the signatures by the City Clerk. “When a recall petition has been certified to the Council as sufficient by the City Clerk, the Council shall at its next meeting after receipt of such certification fix a date for holding the election . . . .”

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her duties, especially when the instruction requires the preparation of an ordinance in violation of the City Charter.

**Charter Section 3.7:** Detailing the duties of the city clerk, which provide that the clerk “shall be responsible to the Council”.

11. On June 13, Mayor Paul requested the City Clerk to prepare stationary for his use.

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her duties, especially when the instruction requires the preparation of stationary in violation of the procedures adopted by the City Council.

**Charter Section 3.7:** Detailing the duties of the city clerk, which provide that the clerk “shall be responsible to the Council”.

12. On July 18, Mayor Paul requested the City Clerk to provide a copy of the City Attorney’s contract and bills and to conceal the request from the City Council.

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her duties, especially when the instruction requires (a) the transmission of information to the exclusion of the City Council, and (b) the preparation of information by the finance director.

**Charter Section 3.7:** Detailing the duties of the city clerk, which provide that the clerk “shall be responsible to the Council”.

13. On July 18, Mayor Paul continuously permitted public comment at a public hearing to exceed the time limitations prescribed by the Council’s rules, thus lengthening the public hearing and jeopardizing the Council’s ability to timely attend to all the business of the City.

**Charter Section 4.1(b)(1):** Providing that the mayor shall “[p]reside as Chairman of meetings of the Council”.

14. On August 1, Mayor Paul published in the “comments” section of the Ballwin-Ellisville Patch a statement suggesting that a Sports Authority might be going into the vacant Gordman’s site. This information had not been made available to the public and was released without the knowledge or approval of the City Council.

15. On August 8, 2012, Mayor Paul was at the Phillips 66 gas station on Manchester, in the City of Ellisville, when he purchased apple juice, a small bottom of Jim Beam bourbon, mixed the two, and then road off on his bicycle.

**Code Section 342.060.A:** “No person shall knowingly transport in a vehicle operating on a public highway, street or alley any alcoholic beverage except in the original container which shall not have been opened . . . .”

16. On August 14, Mayor Paul e-mailed the City Clerk, informing her that he did not want to appoint “Mr. Checkett” to the Planning and Zoning Commission and asking her to “advise what needs to be done or what powers I have regarding this”. Mayor Paul also asked the City Clerk to confirm that he could lawfully refuse to nominate the City Attorney for reappointment.

Mayor Paul’s e-mail again imposed on the City Clerk duties inconsistent with the scope of duties provided by the Charter, and he asked the City Clerk for legal advice in violation of the City Charter, placing the City Clerk in a compromising position.

**Charter Section 3.7:** Detailing the duties of the city clerk, which do not include providing legal analysis or advise and which further provides that the clerk “shall be responsible to the Council”.

**Charter Section 3.8(b):** Providing that the City Attorney “shall be the chief legal officer of for the City and shall have such duties as may be assigned by law and the Council.”

17. Mayor Paul’s August 14 e-mail also admitted that he had spoken with “at least 4 experienced municipal attorneys “ about interviewing for the city attorney position and that he had “prescreened” three attorneys to be invited to a “town hall meeting” to discuss the merits of hiring a new city attorney. He stated that he would “release the costs of each attorney present to the pubic/press to allow the public to informally review the following day for those who couldn’t attend the meeting”, and he went on to state that he would “have Kate work with me to ensure the proper filing and format of town hall meetings have been addressed. If need be, I will announce the meeting details in The Trailblazer on the Mayor’s Corner due on August 15<sup>th</sup> to reach the entire pubic (*sic*) audience.”

**Charter Section 12.3(d)(1):** “The Mayor . . . shall not meet or confer with any person, business entity, or any agent of either, regarding any application or petition which such person, business entity, or agent has filed with the Council . . . except by way of a lawful public meeting requested by such person, business entity, or agent requesting the meeting . . . .”



**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her administrative duties or the authority to replace the City Attorney.

**Charter Section 3.8(a):** Providing that the City Council “shall appoint” the City Attorney and that the City Attorney “shall serve at the pleasure of the Council.”

18. On August 14, and again on August 15, Mayor Paul e-mailed the City Clerk, directing her to remove an item from the regular meeting agenda of August 15 based on his erroneous interpretation of the city code. This required the diversion of the City Clerk and the City Attorney from other business and the commitment of significant time and effort to respond to the mayor’s erroneous and ill-founded order.

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her duties, especially when the instruction requires the preparation of stationary in violation of the procedures adopted by the City Council.

**Charter Section 3.7:** Detailing the duties of the city clerk, which provide that the clerk “shall be responsible to the Council”.

**Charter Section 3.8(b):** Providing that the City Attorney “shall be the chief legal officer of for the City and shall have such duties as may be assigned by law and the Council.”

19. On a date unknown, but at a meeting during the summer of 2012, Mayor Paul admitted to the City Manger that he was drinking vodka, mixed with an energy drink, during the meeting.
20. After closed session of, and prior to, the special meeting of the City Council on August 16, the City Attorney advised Mayor Paul that the Charter required that he sign a resolution, adopted on August 15, 2012, permitting the nomination of city officers by members of the City Council. Mayor Paul failed to sign the resolution until August 31, 2012.

**Charter Section 4.1(b)(4):** Requiring the mayor to execute City resolutions.

21. On or about October 30, 20112, Ed O’Reilly called City Clerk Demeter, saying “I’ve heard that the City Council is extending the severance benefits of the City Manager. Is that true?” This issue had been discussed by the Council only in its closed session of October 24. On information and belief, Ed O’Reilly is a friend of Mayor Paul, and no member of the Council other than Mayor Paul would have disclosed this information to Mr. O’Reilly.



**Ellisville Code Section 125.050.D.2:** Providing that breach of the confidentiality of closed information is ground for removal from office.

22. On November 3, 2012, Mayor Paul used profanity in an e-mail communication to the City Attorney, claiming that the City “better have our shit in order” in response to litigation filed against the City by Thomas Debold.
23. On November 7, 2012, Mayor Paul vehemently criticized legislation amending the zoning code amendment and the City Manager’s employment contract, attacking staff and council members for incompetence and cronyism. At a closed session immediately preceding the meeting, Mayor Paul again used profanity (“shitty”) in discussing the legislation.
24. On November 9, 2012, Mayor Paul directed the City Clerk by e-mail to revise the draft minutes of the November 7 meeting by adding his comments objecting to the City Manager employment contract legislation.

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the City Clerk in the performance of her duties, specifically the preparation of the Council’s meeting minutes.

**Charter Section 3.7:** Detailing the duties of the city clerk, which do not include revising the Council’s meeting minutes at the direction of the Mayor, and which further provides that the clerk “shall be responsible to the Council”.

25. After responding to the Mayor that the appropriate way to amend the draft minutes was by motion and vote of the City Council, the City Clerk asked the Mayor if he wanted her to forward his proposed revisions to the Council for that purpose, and he responded yes. On November 12, 2012 the City Clerk did so, by forwarding the e-mail string that included the Mayor’s revisions. Mayor Paul then responded by chastising the City Clerk for doing exactly what the Mayor requested:

“Kate, please don't forward our email conversations in the future to the rest of the council. That is unprofessional and inappropriate. I ask you to do something, please do it. I don't need you telling me to take a high road or demonstrating to the council that you asked me to take the 'high road'. Why is this 9 people vs the mayor? Do your job and I will do mine.”

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the City Clerk in the performance of her duties, to review the Clerk’s job performance, or to treat the City Clerk as a subservient employee.

**Charter Section 3.7:** Detailing the duties of the city clerk, which do not include being subjected to the direction or authority of the Mayor and which further provides that the clerk “shall be responsible to the Council”.

26. On November 13, 2012, Mayor Paul directed the City Clerk to post an e-mail from me on the City’s website, claiming (erroneously) that I had violated the Sunshine Law by sending the e-mail without first posting a notice.

**Charter Section 4.1(a and b):** Providing that the mayor shall have “no additional duties other than those specified” in the Charter, and detailing those duties, which do not include the authority to direct the city clerk in the performance of her duties, especially when the instruction is legally wrong.

**Charter Section 3.7:** Detailing the duties of the city clerk, which do not include being subjected to the direction or authority of the Mayor and which further provide that the clerk “shall be responsible to the Council”.

**Charter Section 3.8(b):** Providing that the City Attorney, not the Mayor, “shall be the chief legal officer of for the City and shall have such duties as may be assigned by law and the Council.”

27. On December 5, 2002, Mayor Paul, at a meeting of the City Council, was observed mixing the contents of water bottles, and then drinking the mixture, while chairing the meeting. The bottles, which Mayor Paul had left at the dais, were collected after the meeting, and the contents smelled of alcohol. During the same meeting, Mayor Paul permitted his supporters to speak beyond the three minutes allowed by Council rule, and while objecting to pending legislation, Mayor Paul personally attacked his fellow council members and wrongfully insinuated that I had a conflict of interest, because in addition to being a council member, I served on the Great Streets Committee. Mayor Paul also used profanity again during the public meeting, saying “shit” in the course of objecting to legislation.

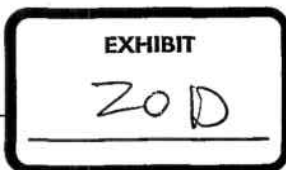
In addition to these specific charges, Mayor Paul has conducted meetings in violation of Council rules and has used the authority of his office to attack other council members, myself included, for political expediency, i.e., to foster his political agenda of electing three new council members loyal to him in April, 2013. He has insinuated that the City Planner is incompetent, and his behavior has caused the illness of the City Clerk on more than one occasion, to the point that the Clerk has excused herself from meetings and has been unable to appear for work. His illegal and improper interference in City administrative matters has caused turmoil among City staff and has required the involvement of the City Attorney to contradict the Mayor’s “legal” conclusions about the scope of his power, the Sunshine Law, and the validity of City legislation, which has resulted in the City incurring unnecessary legal expenses.

In sum, Mayor Paul has directed City employees to act without the City Manager's involvement, he has contacted a developer without holding a public meeting, he has ordered the City Clerk to perform duties that she has no obligation to do, he has attempted to remove and replace the City Attorney without the approval of the Council, and all of these actions are in violation of the City Charter. Mayor Paul has also failed to represent the City by using alcohol on city streets in violation of the City Code, by being intoxicated at public functions, and by drinking alcohol during meetings of the City Council. He has conducted council meetings in a politically-combative manner, allowing his supporters unlimited time to speak while silencing, ignoring, or personally attacking his opponents. His "leadership" has negatively affected both the morale of the Council, the City's administration, and its employees and their ability to function. He should be impeached for his noted violations of the City Charter and for his misfeasance, malfeasance, and nonfeasance.

Sincerely,

MP

[Notary Block]



Paul Martin <paul@paulmartinpc.com>

**Fwd: Mayor Paul**

Paul Martin <paul@paulmartinpc.com>  
To: Matt Pirrello <pirrello@charter.net>

Wed, Feb 20, 2013 at 7:20 AM

Slight change, see italics below.

----- Forwarded message -----

From: Paul Martin <paul@paulmartinpc.com>  
Date: Wed, Feb 20, 2013 at 7:17 AM  
Subject: Mayor Paul  
To: Matt Pirrello <pirrello@charter.net>

Matt:

At least for right now, I think the following motion will get the ball rolling in terms of Council direction to prepare the resolution.

"I move that the city attorney prepare a preliminary resolution for the removal of the mayor under Section 3.6 of the City Charter and that the City Council and staff, including the City Attorney, be authorized and directed to cooperate in the preparation of the resolution, *constraints of the Sunshine Law notwithstanding.*"

Another motion to hold a special meeting (2/27) for considering the resolution would also be appropriate.

Paul

THIS IS A CONFIDENTIAL COMMUNICATION FROM THE LAW FIRM OF:

Paul Martin, P.C.  
9322 Manchester Road  
St. Louis, Missouri 63119  
(314) 961-0097 x. 12 (Office)  
(314) 805-8800 (Direct)  
(314) 961-0667 (Fax)

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Paul Martin &lt;paul@paulmartinpc.com&gt;

EXHIBIT

ZOE

**Re: Attached**

1:48 PM

Paul Martin &lt;paul@paulmartinpc.com&gt;

Sun, Feb 10, 2013 at 6:18 PM

To: Matt Pirrello &lt;pirrello@charter.net&gt;

I'd like Dan again--this would be more his element, and I think he would do a good job. But, his association with you is probably against him. What do you think about that possibility?

I'm also thinking maybe Keith Cheung from my old firm. Very competent, lots of municipal background, good depth at the firm. But, they may not want to be associated with going after a mayor.

I have another guy who I trust to do a good job, if we can't use either of the other two. I don't want to think about him until we've eliminated the other options. I'm also open to suggestions if you have any.

On your recent text question, one of the reasons we're going to schedule a hearing is to cut down on his opportunities to bail. If he resigns, I don't know if a hearing and a judgment by the council would have any effect. I'm also not sure that it makes sense to pursue.

On Sat, Feb 9, 2013 at 2:48 PM, Matt Pirrello <pirrello@charter.net> wrote:

Who is our special prosecutor?

---

**From:** Paul Martin [mailto:paul@paulmartinpc.com]

**Sent:** Friday, February 08, 2013 5:14 PM

**To:** Matt Pirrello

**Subject:** Attached

Process:

1. KJ files complaint on Monday, 2/11, at opening of business.
2. Kate immediately delivers complaint to AP and CEC members, by e-mail (or other method noting the time of delivery), and schedules "initial" meeting of CEC for the evening of 2/18.
3. AP would have 7 days after (not business) to file answer with Kate, i.e., Monday, 2/18.
4. If AP files answer, Kate immediately forwards same to CEC members.



5. CEC holds its meeting the night of 2/18 and considers whether probable cause exists to forward complaint to the Council. "Probable cause" means a reasonable ground for believing that the charged violation is well-founded. CEC adopts its recommendation that the council consider the charged violations. (CEC could have additional meetings, but the two charges are so straightforward and easily proven, there really would be no need.) *Recommendation would include a statement that the "unbecoming conduct" charges in the complaint letter are not charter violations.*

6. On 2/19, CEC tells Kate to put the matter on the 2/20 agenda.

7. Council considers the complaint, answer, and CEC rec on 2/20 ("shall move expeditiously to judge the sufficiency of the charged violations"). Council directs that a resolution be prepared setting forth the charges and the factual specifications supporting the charges. Resolution must also set a hearing date and hire special prosecutor.

8. Also on 2/20, Council may also address the unbecoming conduct charges and ask if these can be considered. They can, through the review proceeding found in Section 3.6 of the Charter. Council should direct that a second resolution be prepared for these other matters. That resolution will identify charges and specifications, hire a special prosecutor (can be same as CEC prosecutor), suspend AP for 45 days pending resolution of the charges, and schedule a public hearing. (Note that Section 3.6 leaves it to AP to request a public hearing, but recent case law suggests that the City must hold a hearing to move on a final resolution of removal, to make absolutely sure that AP receives his constitutional due process. I'd rather be safe than sorry. If AP resigns before the public hearing, then there's no need to hold it).

9. At the 2/20 meeting, Council calls for a special meeting on 2/27 to consider the resolutions. Council passes resolutions on 2/27. Again, these must include dates for hearings.

10. Special prosecutor will investigate the all charges and will present the charges and the evidence at the hearings. Special prosecutor will need some time. CEC hearing can be scheduled earlier because of its simplicity. Sec. 3.6 hearing should be scheduled no sooner than Thursday, 3/21, but 3/27 (5th Wednesday) would probably be more reasonable. (Note, this will be very involved and costly to the city.)

11. Council holds CEC hearing and Sec. 3.6 hearing at prescribed dates and times. Both could potentially be held on the same day but must be held separately. Hearings must follow due process requirements: respondent may be represented by an attorney, introduce evidence, cross-examine witnesses, etc. After the hearing, Council adopts final resolutions of removal, which will include findings of fact, conclusions of any laws violated, and a judgment of removal.

12. AP has 30 days under the CEC process to challenge that removal motion. Per state law, he has a "reasonable time" under the Section 3.6 process to challenge that resolution.

Call if you want to discuss.

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