



Paul Martin <paul@paulmartinpc.com>

Attached

1 message

Paul Martin <paul@paulmartinpc.com>
To: jwm@eckenrode-law.com
Cc: Keith Cheung <kcheung@lawfirmemail.com>

Mon, Mar 4, 2013 at 10:16 AM

John:

Attached is a PDF of the preliminary removal resolution, a draft amended resolution (which deletes the alcohol and profanity charges and adds two charges of unlawfully recording closed session meetings), and a very rough draft of findings of fact/conclusions of law (final resolution of removal). The Charter and Code are on-line. I'll be in your office touch.

Paul

P.S. I'm also trying to attach a red-line of the amended preliminary resolution but have had some difficulty with this. For some reason—operator error I'm, sure—the red-line does not reflect that the last two charges (G.4 and G.5) are new.

THIS IS A CONFIDENTIAL COMMUNICATION FROM THE LAW FIRM OF DENNIS J. COUGHLIN, ATTORNEY AT LAW

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4 attachments

- Impeachment Resolution 2 23 REV.A.3.docx 154K
DOC022513.pdf 609K
FOF.COL.docx 129K
Impeachment Resolution.RED.doc 98K

BEFORE THE COUNCIL OF THE CITY OF ELLISVILLE, MISSOURI
IN THE MATTER OF THE REMOVAL OF MAYOR ADAM PAUL
FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT
(FINAL RESOLUTION OF REMOVAL)

; and

NOW, THEREFORE, having considered the evidence and laws pertaining to the charges alleged in the amended preliminary resolution of the removal of Mayor Adam Paul, the City Council hereby adopts this Final Resolution of Removal, as follows:

Findings of Fact.

Applicable Charter Provisions and Laws.

1. In 1993, the voters of the City of Ellisville adopted their Home Rule Charter.
2. Section 3.1 of the City Charter provides, in pertinent part:

All powers of the City shall be vested in the Council unless specifically provided otherwise in this Charter. The Council shall provide for the exercise of these powers
3. Section 3.4(c) of the City Charter Provides:

Except for the purpose of inquiry, information or investigation as established by Article III, Section 3.11 of this 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.
4. Section 3.7 of the Charter provides in pertinent part: "The "Council shall appoint [the] City Clerk" and the City Clerk "shall maintain the journal of Council proceedings [and] perform such other duties as may be required by law, by this Charter, or by the Council. The City Clerk shall be responsible to the Council."
5. Section 3.8(a) of the Ellisville Charter provides: "The Council shall appoint an officer who shall have the title of City Attorney and who shall serve at the pleasure of the Council."

6. Subsection 4.1(a) of the City Charter provides that “[t]he Mayor shall be a voting member of the Council, shall have no veto power, and shall have no additional duties other than those specified in subsection (b).” Subsection 4.1(b) provides:

Additional Duties. In addition to being a member of the Council, the Mayor shall:

- (1) Preside as Chairman of meetings of the Council;
- (2) Call special meetings of the Council as provided in Article III, Section 3.13(a), of this Charter;
- (3) Be deemed the head of City government for legal, ceremonial and military purposes, but not as chief law enforcement officer;
- (4) Execute all bills, resolutions, contracts and documents on behalf of the City except as otherwise provided by ordinance, resolution or this Charter;
- (5) Preside as Chairman of the annual Council review of the performance of the City Manager as provided in Article V, Section 5.1(b), of this Charter;
- (6) Place in nomination for consideration of the Council nominees for the positions of City Attorney, Prosecuting Attorney, Municipal Judges, City Clerk and members of all boards, commissions and committees of the City. The Council by resolution may also provide for such nominations to be made by its other members;
- (7) Have the authority, with the advice and consent of the Council, to request written reports and recommendations from the presiding officer of each board, commission and committee of the City under the jurisdiction of the Council.

7. Section 5.1 of the Charter provides that the City Council shall appoint and evaluate the City Manager. Section 5.2 provides that the Council may remove the City Manager. Section 5.4 of the Charter provides that “[t]he City Manager shall be responsible to the Council for the administration of all operations placed in [his] charge”, including the appointment, direction, supervision, and discipline of all non-appointive employees.

8. Article XII of the City Charter is entitled “Activities Prohibited”. Section 12.3(d) of the Charter provides, in pertinent part:

(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. . . .

(2) If any Council member, including the Mayor, . . . shall be approached by any person . . . concerning an application or petition that said person . . . may file with the City Council . . . , such member shall direct the person . . . to request the City Clerk schedule a public meeting as provided above.

9. Section 12.3(e) of the Charter further provides:

Any person who by himself or herself or with others willfully violates any of the provisions of Article XII, Section 12.3, of this Charter, shall be deemed guilty of a misdemeanor and shall be subject to fine, imprisonment or both as may be provided by ordinance. Any person who violates any of the aforementioned provisions shall forfeit his or her office or employment with the City.

10. Section ____ of the Revised Statutes of Missouri provides:

11. Section 125. ____ of the Ellisville City Code provides:

12. Section 125.050.D.2 of the City Code provides, in pertinent part:

Elected and appointed officials are . . . expected to maintain the same strict standards of confidentiality required of employees. Breach of the confidentiality standards established by this Chapter and required of employees in this Section may be grounds for removal from office or other sanctions as may be deemed appropriate by the body of which such official is a member or by the City Council.

Mayor Paul's Actions.

13. Adam Paul was elected to the office of Mayor of the City of Ellisville on April 3, 2012.12. He was sworn into office on April __, 2012.

14. On a date unknown, but prior to May 2, 2012, Mayor Paul disclosed a confidential legal opinion from the City Attorney concerning the legality of a citizen-initiated referendum concerning the Wal-Mart TIF approval ordinance.

15. On May 2, 2012, after a public meeting at the Ellisville Elementary Auditorium, Mayor Paul ordered Lieutenant Kelly Murray of the Ellisville Police Department to remove Ms. Katie James from the premises, without cause or excuse.

16. On May 7 contacted Sgt. Walker of the Ellisville Police Department, and on May 8 he e-mailed Chief Tom Felgate, requesting that (a) as mayor, he be issued a gun and a badge, and (b) that the City's message boards be used to advertise for a charity event to be held at a business owned by a political supporter.

17. On May 18, 2012, Mayor Paul e-mailed City Manager Bookout, without the Council's knowledge or approval, suggesting that Bookout use the city's message boards to advertise certain private events, one of which was being held at a private business owned by one of his political supporters.

18. A. At a public meeting on May 16, 2012, Mayor Paul unsuccessfully urged the City Council to expand on the relocation benefits to be made available to Clarkchester Apartment residents as a result of the Wal-Mart project.

B. On May 24, Mayor Paul e-mailed the City Manager, asking whether he could contact Jennifer Kaniecki, relocation specialist for Sansone Development Company, the Wal-Mart developer. Manager Bookout responded: "There is no reason to contact her. She will follow the Relocation laws as specified by the Missouri State Statute."

C. Mayor Paul replied that same date, acknowledging the risk of forfeiting his office because of a possible Charter violation if he contacted Kaniecki. The City Attorney was asked to respond, and he did so by e-mail, stating: "You attempted at the last council meeting to persuade the council to attempt an expansion of the [relocation] policy, and you did not receive any support for that notion. You should conduct yourself accordingly."

D. Mayor Paul nonetheless contacted Ms. Kaniecki, without Council knowledge or authorization.

19. On June 12, 2012, Mayor Paul contacted Ellisville administrative assistant Donna Bragdon and directed her to provide him with a personalized City of Ellisville letterhead, in a writable electronic format.

20. On June 13, 2012, Mayor Paul directed City Clerk Demeter to prepare an ordinance for the June 20, 2012 meeting of the City Council calling for the scheduling of recall elections for Council Members Anglin and Pieper on October 2, 2012, even though the recall petitions had not yet been circulated, the requisite recall signatures had not been obtained, nor had said signatures been certified, all of which are required by Article IX of the City Charter prior to the calling of a recall election.

21. On June 21, 2012, Mayor Paul reprimanded the City Manager for forwarding to the council a citizen e-mail expressing the sentiment that the Mayor should

stop the recall election over the Wal-Mart approval. He also ordered the City Manager to provide the Manager's personal e-mail address to him.

22. On June 13, 2012, Mayor Paul reprimanded the City Manager for asking the Council if they were available for a special meeting, wrongfully claiming that it was his exclusive prerogative under the City Charter to call for special meetings. Mayor Paul further instructed the Manager in the future to "reach out to me first regarding administrative city issues so that I, as Mayor, can issue the special meeting request" and admonished "[i]f you are unsure please ask me".

23. A. On August 10, 2012, Mayor Paul e-mailed the City Clerk that Martin's contract was about to "expire" and that he had decided not to renew the contract. He noted that he had discussed the position with "[a]t least 4 experienced municipal attorneys" who had "contacted [him] about interviewing for the role". He indicated that he wanted the Council's cooperation to replace Martin, and that if that cooperation was not forthcoming, he would call a town hall meeting on the issue, give the public "the opportunity to ask questions to 3 invited guest attorneys that I prescreened", then poll the audience and publish the results on the City's website. "If need be, I will announce the meeting details in the Trailblazer on the Mayor's Corner due on August 15th to reach the entire public (sic) audience."

B. On August 14, 2012, Mayor Paul again informed the City Clerk that his interpretation, and that of his personal attorney, of the Charter and the contract was that (a) the contract was about to expire, (b) he was the only person who could appoint the City Attorney, and (c) he would not re-nominate Martin when the contract purportedly expired.

C. At a closed session meeting of the City Council held on _____, 2012, Mayor Paul admitted being contacted by three attorneys who were interested in the position of City Attorney.

24. On August 14, 2012 Mayor Paul instructed the City Clerk to advise him as to the scope of his Charter authority to (a) appoint members to the Planning and Zoning Commission and (b) refuse to nominate the City Attorney for reappointment.

25. On August 14, and again on August 15, 2012, Mayor Paul directed the City Clerk to remove an item from the regular meeting agenda of August 15.

26. On a date unknown, but prior to October 30, 2012, Mayor Paul disclosed the contents of a closed-session personnel discussion of the City Council concerning the extension of the City Manager's severance package.

27. A. On November 9, 2012, Mayor Paul directed the City Clerk to revise the draft minutes of the November 7 meeting by adding his comments objecting to the City Manager employment contract legislation, even though the revision of meeting minutes could only be accomplished by Council motion.

B. 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 reprimanded the City Clerk for doing exactly what he had 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."

28. On November 13, 2012, Mayor Paul directed the City Clerk to post an e-mail from Council Member Pirrello on the City's website, erroneously claiming that Pirrello had violated the Sunshine Law by sending the e-mail without first posting a notice.

29. On a date unknown, but prior to December 15, 2012, Mayor Paul disclosed the contents of one or more closed-session real estate discussion of the City Council concerning the possible re-use of the Tri-Star Mercedes dealership property.

30. On February 12, 2013, Mayor Paul filed a false answer in response to a Charter violation complaint.

A. On February 11, 2013 Katie James filed a complaint against Mayor Paul pursuant to Section 12.10 of the City Charter and Chapter 145 of the City Code. James alleged that on February 6, 2013 the Mayor issued a direct order to the City's Police Chief to remove a resident from the public meeting and that such action violated Section 3.4(c) of the City Charter.

B. As permitted by Section 145.020.B of the City Code, Mayor Paul filed an answer with the City Clerk on February 12. His response stated that the resident had made "a gesture with his hands and pants pockets of what appeared to me as the shape of a firearm aimed at me" and that at the time of the incident the Mayor felt his life "potentially threatened".

C. Mayor Paul did not disclose any such concern to the police at the time of the alleged incident on February 6. He took no action at the time suggesting that he feared any kind of firearms assault. He did not ask for police protection when he exited the meeting, nor did he make, nor has he ever made, any complaint to the police department concerning the resident's actions on the night in question or at any other time.

31. On February 13, 2013, Mayor Paul disclosed the City Attorney's legal advice regarding the operations and procedure of the City's Charter Enforcement Commission.

32. Prior to the February 18, 2013 meeting of the City's Charter Enforcement Commission, Mayor Paul surreptitiously recorded telephone conversations with the Chief of Police and the City Clerk, waiting until the end of the discussion to inform them that the conversation had been recorded.

33. On February 20 and February 27, 2013, Mayor Paul recorded closed session meetings of the Ellisville City Council without the Council's knowledge or permission.

34. On multiple occasions since his election, at public meetings and at closed sessions of the City Council over which he is required by the Charter to preside, Mayor Paul has failed to enforce the Council's time limits for public comments, failed to control outbursts from the public, and has attacked and belittled City staff and his fellow Council members.

Conclusions of Law.

35. To be removed from office, Mayor Paul must be deemed to have committed misfeasance, malfeasance, or nonfeasance in the administration of his office. Misfeasance is the improper performance of some act which may lawfully be done. Malfeasance is the commission of some act wholly beyond the actor's authority. Nonfeasance is the failure to perform a required duty.

36. The Ellisville City Charter implements a professionally-managed, "weak mayor/strong council" government. All powers are vested in the City Council, unless otherwise provided by the Charter. This includes the appointment, supervision, direction, and removal of the City Manager, City Clerk, and City Attorney. The City Manager is responsible for all City employees, except for the City Clerk and the City Attorney.

37. The Charter provides that the Mayor is a voting member of the City Council but has no administrative duties other than those specifically prescribed, including presiding over meetings of the Council, being deemed the head of the municipal government for legal and ceremonial purposes, calling special meetings, and nominating appointive city officers. *Charter Art. IV.*

38. The Mayor has committed the following acts of misfeasance, malfeasance, and nonfeasance in the administration of his office:

A. The Mayor has violated Section 12.3(d)(1) of the City Charter by contacting a Sansone representative about the expansion of relocation benefits, outside of the public meeting required by that section, while the developer was seeking financing and land use approvals from the City. *Findings of Fact*, ¶¶ _____. Violation of this section requires forfeiture of office pursuant to Section 12.3(e) of the City Charter.

B. The Mayor has violated Section 12.3(d)(2) of the City Charter by discussing the replacement of the City Attorney with lawyers, outside of the public meeting required by that section, who were interested in applying for the office. *Findings*

of Fact, ¶¶ _____. Violation of this section requires forfeiture of office pursuant to Section 12.3(e) of the City Charter.

C. In contacting and discussing the expansion of the relocation benefits and the replacement of the City Attorney, the Mayor acted without the knowledge or approval of the Council, thus exceeding his own authority and usurping the Council's authority, in violation of Sections 3.1 and 4.1 of the City Charter. *Findings of Fact*, ¶¶ _____.

D. The Mayor has violated Section 125.050.D.2 of the City Code by disclosing the confidences of the City. *Findings of Fact*, ¶¶ _____. Violation of this section permits removal of the Mayor from office by the City Council.

E. The Mayor has violated Section _____ of the Revised Statutes of Missouri and Section _____ of the City Code by recording the closed sessions of the City Council. *Findings of Fact*, ¶¶ _____. Violation of this City Code section permits removal of the Mayor from office by the City Council through Section 125.050D.2 of the Code.

F. The Mayor has repeatedly exceeded his authority under the Charter by attempting to direct, manage, and supervise the City Clerk and the City Manager in the performance of their respective offices. *Findings of Fact*, ¶¶ _____.

G. The Mayor has repeatedly violated his duty to preside over the meetings of the City Council by failing to abide by Council rules in the conduct of the meetings and by failing to control public comments and outbursts. *Findings of Fact*, ¶¶ _____.

H. The Mayor has filed a false response to a Charter Enforcement Commission Complaint. *Findings of Fact*, ¶¶ _____.

Judgment.

39. It is the judgment of the Council of the City of Ellisville that Mayor Adam Paul shall forfeit, and is hereby removed from, the office of Mayor of the City of Ellisville, effective immediately, for the commission of the noted acts of misfeasance, malfeasance, and nonfeasance in the administration of his office.

40. It is also the judgment of the Council that, having knowledge of the acts of Adam Paul's misfeasance, malfeasance, and nonfeasance in the administration of his office at or shortly after their commission, does hereby concede its prejudgment of the issues presented at this hearing.

41. Having conceded such prejudgment, the Council adopts this Final Resolution of Removal under the Rule of Necessity as prescribed by *Fitzgerald v. Maryland Heights, supra*. Adam Paul may appeal this resolution as provided by Chapter 536 of the Revised statutes of Missouri.

Passed and approved this 20th day of March, 2013.

AYE NAY ABSTAIN

ANGLIN	_____
PIRRELLO	_____
REEL	_____
PIEPER	_____
MURRAY	_____
ACUP	_____

ATTEST:

CITY OF ELLISVILLE

CITY CLERK

MAYOR

SPONSORED BY COUNCIL MEMBER

RESOLUTION NO. 02-27-13-A

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INTRODUCED BY COUNCIL MEMBER

**AMENDED PRELIMINARY RESOLUTION CONCERNING THE
REMOVAL OF MAYOR ADAM PAUL**

WHEREAS, in an effort to curb past abuses of authority and City resources by the elected officials of the City of Ellisville, the voters of the City adopted in 1993 their Home Rule Charter to install a professionally-managed, "weak mayor/strong council" form of government; and

WHEREAS, the Charter accordingly: (a) vests all municipal powers with the City Council, unless otherwise provided by the Charter, (b) limits the authority of the Mayor in favor of the collective responsibility of the City Council in the exercise of those powers, (c) provides for the City Council's collective oversight and supervision of the City's appointed officers, specifically the City Manager, City Clerk, and City Attorney, and (d) prescribes the authority and responsibilities of the City Manager and City staff in administering the daily operations of the City and prohibits interference by the City Council, including the Mayor, with the City Manager's authority; and

WHEREAS, Adam Paul was elected to the office of Mayor of the City of Ellisville on April 3, 2012; and

WHEREAS, since his election, and continuing to date, Mayor Paul has committed certain acts in apparent violation of the germane provisions of the City's Charter, the City Code, and the Council's established rules and practices; and

WHEREAS, the Council of the City of Ellisville desires to consider such acts and determine, consistent with Section 3.6 of the Ellisville City Charter and the laws of the State of Missouri, whether they constitute misfeasance, malfeasance, or nonfeasance in the administration of his office and whether Mayor Paul should thereby be deemed to have forfeited his office; and

WHEREAS, the Council accordingly desires to adopt this preliminary resolution to suspend Mayor Paul from office for a period of not more than 45 days to consider and determine whether the charges noted herein merit a finding that Adam Paul shall be deemed to have forfeited the office of Mayor of the City of Ellisville; and

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WHEREAS, a copy of the proposed resolution has been made available for public inspection prior to consideration by the Council.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ELLISVILLE AS FOLLOWS:

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1. Mayor Adam Paul is hereby charged with the following acts of misfeasance, malfeasance, and nonfeasance in the administration of his office:

A. Mayor Paul has unlawfully disclosed the confidences of the City, without the knowledge or permission of the City Council, to unauthorized persons in violation of Section 125.050.D.2 of the City Code:

(1) Section 125.050.D.2 of the City Code provides:

Elected and appointed officials are also expected to maintain the same strict standards of confidentiality required of employees. Breach of the confidentiality standards established by this Chapter and required of employees in this Section may be grounds for removal from office or other sanctions as may be deemed appropriate by the body of which such official is a member or by the City Council.

(2) On a date unknown, but prior to May 2, 2012, Mayor Paul disclosed a confidential legal opinion from the City Attorney concerning the legality of a citizen-initiated referendum on the Wal-Mart TIF ordinance.

(3) On a date unknown, but prior to October 30, 2012, Mayor Paul disclosed the contents of a closed-session personnel discussion of the City Council concerning the extension of the City Manager's severance package.

(4) On a date unknown, but prior to December 15, 2012, Mayor Paul disclosed the contents of one or more closed-session real estate discussion of the City Council concerning the possible re-use of the Tri-Star Mercedes dealership property.

(5) On February 13, 2013, Mayor Paul disclosed the City Attorney's legal advice regarding the operations and procedure of the City's Charter Enforcement Commission.

As a result of his actions, the City Council is unable to have frank discussions concerning topics that are protected from public disclosure by Missouri's Sunshine Law, and the City Attorney is unable to fully advise the City Council on such matters, thus compromising the Council's abilities to be fully-informed on matters of City policy.

B. Mayor Paul has attempted to effect the replacement of the City Attorney, without the Council's knowledge or approval, and as such he has exceeded his authority under Article IV of the City Charter, has attempted to usurp the authority of the Council over the City Attorney under Section 3.8(a) of the Charter, and has violated Section 12.3(d)(2) of the Charter.

(1) Article IV of the Charter does not authorize the Mayor to remove the City Attorney from office.

(2) Section 3.8(a) of the Charter provides: "The Council shall appoint an officer who shall have the title of City Attorney and who shall serve at the pleasure of the Council."

(3) Section 12.3(d)(2) of the Charter provides, in pertinent part:

If any Council member, including the Mayor, . . . shall be approached by any person . . . concerning an application or petition that said person . . . may file with the City Council . . . , such member shall direct the person . . . to request the City Clerk schedule a public meeting as provided above.

Section 12.3(e) of the Charter further provides that “any person who violates any of the aforementioned provisions shall forfeit his or her office or employment with the City.”

(4) The Council appointed Paul Martin as City Attorney in 2004, and Martin and the City entered into a one-year, automatically renewing contract subject to termination by either party at any time.

(5) On August 10, 2012, Mayor Paul informed the City Clerk that Martin’s contract was about to “expire” and that he had decided not to renew the contract. He noted that he had discussed the position with “[a]t least 4 experienced municipal attorneys” who had “contacted [him] about interviewing for the role”. He indicated that he wanted the Council’s cooperation to replace Martin, and that if that cooperation was not forthcoming, he would call a town hall meeting on the issue, give the public “the opportunity to ask questions to 3 invited guest attorneys that I prescreened”, then poll the audience and publish the results on the City’s website. “If need be, I will announce the meeting details in the Trailblazer on the Mayor’s Corner due on August 15th to reach the entire public (sic) audience.”

(6) On August 14, 2012, Mayor Paul again informed the City Clerk that his interpretation, and that of his personal attorney, of the Charter and the contract was that (a) the contract was about to expire, (b) he was the only person who could appoint the City Attorney, and (c) he would not re-nominate Martin when the contract purportedly expired.

Mayor Paul’s attempts to remove and replace the City Attorney, which were unknown to the City Council prior to his communications with the City Clerk, and his threats to force this change on the Council through public intimidation, exceeded the scope of his authority and invaded the province of the Council with regard to the appointment and removal of the City Attorney. His willing participation in discussions with would-be city attorney applicants, discussions not known to the Council or to the public, violated Section 12.3(d)(2) of the City Charter. His actions further diverted the City Clerk’s attention away from other City business and required a legal opinion from the City Attorney, leading to additional legal bills for the City. As a result of his actions, the working relationships between the Mayor and the other members of the City Council, the City Attorney and the City Clerk have become dysfunctional.

C. Mayor Paul has attempted to circumvent the relocation policy adopted by the City Council with regard to the Wal-Mart development by contacting a representative of the developer without Council knowledge or authorization and outside of the public meeting context required by Section 12.3(d)(1) of the Charter. The Mayor accordingly exceeded his authority under Article IV of the Charter, usurped the authority of the Council under Section 3.1 of the Charter, and violated Charter Section 12.3(d)(1).

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(1) Article IV of the Charter does not authorize the Mayor to contact third-parties, without the Council's knowledge and approval, regarding the policies of the City as adopted by the City Council, or any expansion thereof.

(2) Section 3.1 of the Charter provides: "All powers of the City shall be vested in the Council unless specifically provided otherwise in this Charter. The Council shall provide for the exercise of these powers and for the performance of all duties and obligations imposed on the City by law." No ordinance of the City authorizes the Mayor to contact third-parties, without the Council's knowledge and approval, regarding the policies of the City as adopted by the City Council, or any expansion thereof.

(3) Section 12.3(d)(1) of the Charter provides, in pertinent part:

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.

Section 12.3(e) of the Charter further provides that "any person who violates any of the aforementioned provisions shall forfeit his or her office or employment with the City."

(4) At a public meeting on May 16, 2012, Mayor Paul, based on his misunderstanding of the City-approved and State-required Wal-Mart relocation policy, unsuccessfully urged the City Council to expand on the benefits to be made available to Clarkchester Apartment residents. Despite this unsuccessful effort, Mayor Paul contacted the City Manager on May 24, asking whether he could contact Jennifer Kaniecki, relocation specialist for Sansone Development Company, the Wal-Mart developer. Manager Bookout responded: "There is no reason to contact her. She will follow the Relocation laws as specified by the Missouri State Statute."

(5) Mayor Paul persisted, acknowledging the risk of forfeiting his office because of a possible Charter violation if he contacted Kaniecki. The City Attorney was asked to respond, and he did so: "You attempted at the last council meeting to persuade the council to attempt an expansion of the [relocation] policy, and you did not receive any support for that notion. You should conduct yourself accordingly."

(6) Despite knowing of the meaning and effect of Section 12.3(d)(1), and despite specific contrary advice from both the City Manager and the City Attorney regarding the relocation policy adopted by the City Council, the Mayor contacted Ms. Kaniecki, without Council knowledge or authorization and outside of the public meeting context required by Section 12.3(d)(1) of the Charter, to discuss the relocation policy in a misplaced effort to expand the scope of that policy.

As a result of his actions, Mayor Paul exceeded the scope of his authority, invaded the province of the Council over the City's policy matters and violated Section 12.3(d)(1) of the Ellisville City Charter.

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D. Mayor Paul has directed the City Clerk to perform actions contrary to law and the rules and practices of the Council, and as such he has exceeded his authority under Article IV of the City Charter and has attempted to usurp the authority of the Council by directing the activity of the City Clerk in violation of Section 3.7 of the City Charter:

(1) Article IV of the Charter does not authorize the Mayor to direct, supervise, or reprimand the City Clerk.

(2) Section 3.7 of the Charter provides in pertinent part: "The "Council shall appoint [the] City Clerk" and the City Clerk "shall maintain the journal of Council proceedings [and] perform such other duties as may be required by law, by this Charter, or by the Council. The City Clerk shall be responsible to the Council."

(3) On June 13, 2012, Mayor Paul directed City Clerk Demeter to prepare an ordinance for the June 20, 2012 meeting of the City Council calling for the scheduling of recall elections for Council Members Anglin and Pieper on October 2, 2012, even though the recall petitions had not yet been circulated, the requisite recall signatures had not been obtained, nor had said signatures been certified, all as required by Article IX of the City Charter.

(4) On August 14, 2012 Mayor Paul instructed the City Clerk to advise him as to the scope of his Charter authority to (a) appoint members to the Planning and Zoning Commission and (b) refuse to nominate the City Attorney for reappointment, thus directing the Clerk to provide legal advise exceeding the scope of her authority under the City Charter.

(5) On August 14, and again on August 15, 2012, Mayor Paul directed City Clerk to remove an item from the regular meeting agenda of August 15 based on his erroneous interpretation of Council procedure.

(6) On November 9, 2012, Mayor Paul directed the City Clerk to revise the draft minutes of the November 7 meeting by adding his comments objecting to the City Manager employment contract legislation, even though the revision of meeting minutes can only be accomplished by Council motion.

(7) 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 reprimanded the City Clerk for doing exactly what he had 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."

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(8) On November 12, 2012, Mayor Paul directed the City Clerk to post an e-mail from Council Member Pirrello on the City's website, erroneously claiming that Pirrello had violated the Sunshine Law by sending the e-mail without first posting a notice.

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As a result of the Mayor's actions, the City Clerk has been required to unnecessarily seek the advice of the City Attorney, leading to additional legal bills for the City, and the working relationship between the City Clerk and the Mayor, and the City Attorney and the Mayor, has become dysfunctional.

E. Mayor Paul has attempted to direct and supervise the City Manager and has interfered with the administration of, and has directed, employees under the City Manager's authority. The Mayor has thus exceeded his authority under Article IV of the City Charter, has usurped the authority of the Council under Article V of the Charter, and has violated Section 3.4(c) of the City Charter.

(1) Article IV of the Charter does not authorize the Mayor to direct or supervise the City Manager or to have any role in determining, assigning, or suggesting the work duties of those City employees who are subject to the City Manager's administration.

(2) Article V of the Charter provides that the City Council appoints the City Manager, establishes the duties of the City Manager, and has the authority to remove the City Manager. Section 5.4 of the Charter provides that "[t]he City Manager shall be responsible to the Council for the administration of all operations placed in [his] charge", including the appointment, direction, supervision, and discipline of all non-appointive employees.

(3) Section 3.4(c) of the City Charter Provides:

Except for the purpose of inquiry, information or investigation as established by Article III, Section 3.11 of this 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.

(4) On May 2, 2012, after a public meeting at the Ellisville Elementary Auditorium, Mayor Paul ordered Lieutenant Kelly Murray of the Ellisville Police Department to remove Ms. Katie James from the premises, without provocation, cause, or excuse.

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(5) On May 7 and May 8, 2012, Mayor Paul contacted Chief Felgate and Sgt. Walker of the Ellisville Police Department, requesting that (a) as mayor, he be issued a gun and a badge, and (b) that the City's message boards be used to advertise for a private event to be held at a business owned by a political supporter.

(6) On May 18, 2012, Mayor Paul e-mailed City Manager Bookout, without the Council's knowledge or approval, suggesting that Bookout use the city's message boards to advertise certain private events, one of which was being held at a private business owned by one of his political supporters.

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(7) On June 12, 2012, Mayor Paul contacted Ellisville administrative assistant Donna Bragdon and directed her to provide him with a personalized City of Ellisville letterhead, in a writable electronic format.

(8) On June 21, 2012, Mayor Paul reprimanded the City Manager for forwarding to the council a citizen e-mail expressing the sentiment that the Mayor should stop the recall election over the Wal-Mart approval. He also ordered the City Manager to provide the Manager's personal e-mail address to him.

(9) On June 13, 2012, Mayor Paul reprimanded City Manager for asking the Council if they were available for a special meeting, wrongfully claiming that it was his exclusive prerogative under the City Charter to call for special meetings. Mayor Paul further instructed the Manager in the future to "reach out to me first regarding administrative city issues so that I, as Mayor, can issue the special meeting request" and admonished "[i]f you are unsure please ask me".

As a result of the Mayor's actions, the City Manager has been required to seek the advice of the City Attorney, leading to additional legal bills for the City; he has had to divert his time and attention away from city business to address the Mayor's baseless concerns; and the working relationship between the City Manager and the Mayor, and the City Attorney and the Mayor, has become dysfunctional.

F. Mayor Paul has failed to competently and fairly preside over meetings of the City Council in violation of Sections 4.1(b) of the City Charter, Robert's Rules of Order, and the Council's rules.

(1) Section 4.1(b)(1) of the Charter requires that the Mayor preside as chairman of meetings of the Council.

(2) Through the enactment of Section 110.050 of the City Code, the Council has adopted Robert's Rules of Order, which requires the chair of any meeting to adhere to the body's rules and to control disruptive behavior.

(3) The Council's rules further impose time limits on public speakers and require that decorum be maintained in a meeting.

(4) Since his election, and at public meetings over which he is required by law to preside, Mayor Paul has repeatedly failed to enforce the Council's time limits for public comments and has repeatedly failed to control outbursts from the public, both during public comments and the non-public business portions of Council meetings.

Mayor Paul's actions have demonstrated a lack of respect for his office, the public, the City Council, and City staff, resulting in a complete lack of trust and confidence in, and respect for, the Mayor among Council members and City staff, to the point that the working relationships of the Mayor, Council members, and staff have become dysfunctional.

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~~(5) . During a closed session of the City Council immediately preceding the April 18, 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. .~~

~~(6) . After the April 18 meeting, Mayor Paul, without cause or provocation, verbally confronted resident Katie James, stating in a loud voice "Do not tell me how to run my f'ing meeting. This is my f'ing seat". .~~

~~(7) . On a date unknown, but at a closed meeting in the City Hall conference room during the summer of 2012, City Manager Bookout was sitting next to Mayor Paul, who was drinking something. The Manager smelled alcohol on the Mayor's breath and asked the Mayor what he was drinking. The Mayor admitted to the City Manager that he was drinking vodka. .~~

~~(8) . On July 18, 2012, during an open meeting in the City Hall conference room with representatives from Allen Roofing and West County Honda, Mayor Paul arrived and sat next to the City Manager. The Mayor had two containers, a blue energy drink and a thermos-type container with a lid. He placed the thermos-type container on the floor between his feet. He then leaned forward and used the energy drink to top off the container that was on the floor and proceeded to drink from the container. .~~

~~(9) . During a closed session immediately preceding the November 7, 2012 council meeting, Mayor Paul again used profanity ("shitty") in discussing legislation pending for that evening. .~~

~~(10) . During the public portion of the November 7 meeting, Mayor Paul criticized legislation amending the zoning code and the City Manager's employment contract, and in so doing attacked staff and council members for alleged incompetence and cronyism. .~~

~~(11) . On December 5, 2012, during a public meeting of the City Council and while he was chairing the meeting, Mayor Paul mixed and drank the contents of bottles labeled as water, at least one of which contained alcohol. .~~

~~(12) . At the same meeting, Mayor Paul personally attacked his fellow council members and again used profanity during the public meeting, saying "shit" in the course of objecting to legislation. .~~

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G. Mayor Paul has committed conduct unbecoming and demeaning to the office of Mayor of the City of Ellisville, has exceeded or abused his authority, and has violated State law and City ordinance in one or more of the following respects:

(1) After the May 2, 2012 meeting, Mayor Paul, without cause or provocation, verbally confronted resident Katie James, stating in a loud voice "Do not tell me how to run my f'ing meeting. This is my f'ing seat".

(2) On February 12, 2013 Mayor Paul filed a false answer in response to a Charter violation complaint.

(a) On February 11, 2013 Katie James filed a complaint against Mayor Paul pursuant to Section 12.10 of the City Charter and Chapter 145 of the City Code. James alleged that on February 6, 2013 the Mayor issued a direct order to the City's Police Chief to remove a resident from the public meeting and that such action violated Section 3.4(c) of the City Charter.

(b) As permitted by Section 145.020.B of the City Code, Mayor Paul filed an answer with the City Clerk on February 12. His response stated, for the first time, that the resident had made "a gesture with his hands and pants pockets of what appeared to me as the shape of a firearm aimed at me" and that at the time of the incident the Mayor felt his life "potentially threatened".

(c) The Mayor did not disclose any such concern to the police at the time of the alleged incident on February 6. He took no action at the time suggesting that he feared any kind of firearms assault. He did not ask for police protection when he exited the meeting, nor did he make, nor has he ever made, any complaint to the police department concerning the resident's actions on the night in question or at any other time. No other person on the Council dais or in the immediate proximity of the resident has verified any "gesture" or "shape" of an object suggesting that the resident was armed or was threatening the Mayor with a weapon or with any kind of physical violence.

(d) In that a Charter violation complaint had been filed and the Mayor responded as permitted by the governing city ordinance, the Mayor had a duty to be truthful in his response to the charged Charter violation. That response also included a gratuitous reference to the tragic Kirkwood shootings of 2008. The Mayor's official answer to the charged violation thus demonstrates a callous and calculated effort to fabricate an emotionally-charged excuse for the Mayor's order to remove the resident, and he was not truthful in asserting the possibility of a weapon or his fear of that possibility.

(3) In an attempt to gather "evidence" to "defend himself" at the February 18, 2013 meeting of the City's Charter Enforcement Commission, Mayor Paul surreptitiously recorded telephone conversations with the Chief of Police and the City Clerk, and in a transparent attempt at intimidation, told each of them at the end of the discussion that the conversation had been recorded.

(4) On February 20, 2013, at a closed session of the City Council, Mayor Paul removed his telephone from his pocket immediately prior to the meeting and placed it face down

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(3) On February 18, 2013 Mayor Paul permitted his attorney to continuously and repeatedly interrupt and obstruct the meeting of the Charter Enforcement Commission.

(a) The meeting of the Charter Enforcement Commission was a meeting to determine whether probable cause existed to recommend to the City Council that a hearing be held to determine Mayor Paul's right to continue to occupy the office of Mayor. It was not a "hearing" under Missouri's Administrative Procedures Act, and while Mayor had the right to attend and observe the proceedings, neither he nor his attorney had any right to speak at the meeting, to produce evidence (other than his written answer to the charges), or to make any objections to the proceedings.

(b) Only seconds after the meeting was called to order, Mayor Paul's attorney interrupted the proceedings and demanded action on her previously filed requests for a continuance and for disqualification of two of the commission members and the City Attorney. She was informed (1) that the role of the Charter Enforcement Commission was only a preliminary one—to make a recommendation on the existence of probable cause to believe that a violation occurred, (2) that her requests and complaints were a part of the public record of the meeting, and (3) that the Mayor would be afforded all due process rights, including a determination of his requests, if the matter proceeded to a hearing. She was repeatedly asked to sit down and to let the Commission conduct its business, yet at every attempt of the Commission to do so, she again interjected, repeating her earlier claims, arguing with the City Attorney, and refusing to be silent. When informed that the police would be requested to escort her from the meeting place if she did not cease her outbursts, she continued her disruptive behavior, leading to a delay of the meeting, obstruction of the process, and her ultimate removal by the Chief of Police at the direction of the City Manager.

(c) The Mayor's attorney is his agent, and the Mayor is the "principal" in the agency relationship. As such the Mayor has the responsibility and authority to control the actions of the "agent", his attorney, during a meeting of a public governmental body. [1]

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on the conference table. He started the meeting, and at this point the City Attorney quietly asked the Mayor whether he was recording the meeting. The Mayor turned to the City Attorney, smiled, and winked. On such information and belief, the Mayor recorded the Council's closed session meeting without the Council's knowledge or consent and in violation of Section 125.060.E of the City Code, which states in pertinent part:

No audio recording of any meeting, record or vote closed pursuant to the provisions of Section 610.021, RSMo., shall be allowed without permission of the public body; any person who violates this provision shall be guilty of an ordinance violation and punished by imprisonment for a period not to exceed fifteen (15) days, a fine not to exceed three hundred dollars (\$300.00) or by both such fine and imprisonment.

Section 125.050.D.2 of the City Code further provides:

Elected and appointed officials are also expected to maintain the same strict standards of confidentiality required of employees. Breach of the confidentiality standards established by this Chapter and required of employees in this Section may be grounds for removal from office or other sanctions as may be deemed appropriate by the body of which such official is a member or by the City Council.

On such information and belief, the Mayor's action also violated Section 610.020.3 of the Revised Statutes of Missouri, which states in pertinent part:

No audio recording of any meeting, record, or vote closed pursuant to the provisions of section 610.021 shall be permitted without permission of the public body; any person who violates this provision shall be guilty of a class C misdemeanor.

(5) At a closed meeting of the Council held on February 27, 2013, Mayor Paul again used his phone to record the meeting discussion, in violation of Section 125.060.E of the City Code and Section 610.020.3 of the Revised Statutes of Missouri.

Mayor Paul's actions again have demonstrated a lack of respect for his office, the public, the City Council, and City staff, resulting in a complete lack of trust and confidence in, and respect for, the Mayor among Council members and City staff, to the point that the working relationships of the Mayor, Council members, and staff have become dysfunctional.

2. Mayor Adam Paul is hereby and immediately suspended from the duty of his office for a period not to exceed 45 days, during which time the Council shall consider and determine whether Mayor Paul has forfeited his office for one or more of the noted charges.

3. Unless a different date is required by operation of Section 3.6 of the Ellisville City Charter, the Council shall hold a public hearing on March 20, 2013 at 6 p.m., at City Hall to consider the charges and determine whether Adam Paul has forfeited the office of Mayor of the City of Ellisville.

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4. Mayor Paul may be represented by counsel at the hearing and shall be entitled to present evidence and to cross-examine witnesses in his defense. The City Council shall consider the evidence presented and shall make written findings of fact and conclusions of law in its determination of the evidence presented at the hearing.

5. The City Manager is authorized and directed to enter into a letter agreement, attached as Exhibit A, with Keith Cheung and the law firm of Curtis, Heinz, Garrett and O'Keefe to serve as special counsel for the purpose of presenting the noted charges.

6. The City Manager is authorized and directed to enter into a letter agreement, attached as Exhibit B, with John Maupin and the law firm of Eckenrode and Maupin to serve as hearing officer and special counsel to the City Council with regard to these removal proceeding.

THIS RESOLUTION IS ADOPTED BY THE COUNCIL OF THE CITY OF ELLISVILLE, ST. LOUIS COUNTY, MISSOURI, ON THIS DAY OF , 2013.

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(3) On February 18, 2013 Mayor Paul permitted his attorney to continuously and repeatedly interrupt and obstruct the meeting of the Charter Enforcement Commission.

(a) The meeting of the Charter Enforcement Commission was a meeting to determine whether probable cause existed to recommend to the City Council that a hearing be held to determine Mayor Paul's right to continue to occupy the office of Mayor. It was not a "hearing" under Missouri's Administrative Procedures Act, and while Mayor had the right to attend and observe the proceedings, neither he nor his attorney had any right to speak at the meeting, to produce evidence (other than his written answer to the charges), or to make any objections to the proceedings.

(b) Only seconds after the meeting was called to order, Mayor Paul's attorney interrupted the proceedings and demanded action on her previously filed requests for a continuance and for disqualification of two of the commission members and the City Attorney. She was informed (1) that the role of the Charter Enforcement Commission was only a preliminary one—to make a recommendation on the existence of probable cause to believe that a violation occurred, (2) that her requests and complaints were a part of the public record of the meeting, and (3) that the Mayor would be afforded all due process rights, including a determination of his requests, if the matter proceeded to a hearing. She was repeatedly asked to sit down and to let the Commission conduct its business, yet at every attempt of the Commission to do so, she again interjected, repeating her earlier claims, arguing with the City Attorney, and refusing to be silent. When informed that the police would be requested to escort her from the meeting place if she did not cease her outbursts, she continued her disruptive behavior, leading to a delay of the meeting, obstruction of the process, and her ultimate removal by the Chief of Police at the direction of the City Manager.

(c) The Mayor's attorney is his agent, and the Mayor is the "principal" in the agency relationship. As such the Mayor has the responsibility and authority to control the actions of the "agent", his attorney, during a meeting of a public governmental body. The Mayor failed to do so. His attorney's unreasonable, obstructive behavior was not intended to preserve any legal defenses or positions but only to force her removal from the proceedings for the purposes of publicity and political impact. As the principal in the relationship, the Mayor is responsible for the attorney's disruptive behavior.

FEBRUARY 27, 2013

Voting Order 1 - 2 - 3 - M

6:00 P.M. CITY OF ELLISVILLE COUNCIL - Special Meeting

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Approval of Agenda
- V. Public Comments I
- VI. Legislation

A. Resolution #02-27-13

**PRELIMINARY RESOLUTION CONCERNING THE
REMOVAL OF MAYOR ADAM PAUL**

VII. Adjournment

Respectfully submitted,

Catherine Demeter

CATHERINE M. DEMETER,
City Clerk

SPONSORED BY COUNCIL MEMBER

RESOLUTION NO.

INTRODUCED BY COUNCIL MEMBER

**PRELIMINARY RESOLUTION CONCERNING THE
REMOVAL OF MAYOR ADAM PAUL**

WHEREAS, in an effort to curb past abuses of authority and City resources by the elected officials of the City of Ellisville, the voters of the City adopted in 1993 their Home Rule Charter to install a professionally-managed, "weak mayor/strong council" form of government; and

WHEREAS, the Charter accordingly: (a) vests all municipal powers with the City Council, unless otherwise provided by the Charter, (b) limits the authority of the Mayor in favor of the collective responsibility of the City Council in the exercise of those powers, (c) provides for the City Council's collective oversight and supervision of the City's appointed officers, specifically the City Manager, City Clerk, and City Attorney, and (d) prescribes the authority and responsibilities of the City Manager and City staff in administering the daily operations of the City and prohibits interference by the City Council, including the Mayor, with the City Manager's authority; and

WHEREAS, Adam Paul was elected to the office of Mayor of the City of Ellisville on April 3, 2012; and

WHEREAS, since his election, and continuing to date, Mayor Paul has committed certain acts in apparent violation of the germane provisions of the City's Charter, the City Code, and the Council's established rules and practices; and

WHEREAS, the Council of the City of Ellisville desires to consider such acts and determine, consistent with Section 3.6 of the Ellisville City Charter and the laws of the State of Missouri, whether they constitute misfeasance, malfeasance, or nonfeasance in the administration of his office and whether Mayor Paul should thereby be deemed to have forfeited his office; and

WHEREAS, the Council accordingly desires to adopt this preliminary resolution to suspend Mayor Paul from office for a period of not more than 45 days to consider and determine whether the charges noted herein merit a finding that Adam Paul shall be deemed to have forfeited the office of Mayor of the City of Ellisville; and

WHEREAS, a copy of the proposed resolution has been made available for public inspection prior to consideration by the Council.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ELLISVILLE AS FOLLOWS:

1. Mayor Adam Paul is hereby charged with the following acts of misfeasance, malfeasance, and nonfeasance in the administration of his office:

A. Mayor Paul has unlawfully disclosed the confidences of the City, without the knowledge or permission of the City Council, to unauthorized persons in violation of Section 125.050.D.2 of the City Code:

(1) Section 125.050.D.2 of the City Code provides:

Elected and appointed officials are also expected to maintain the same strict standards of confidentiality required of employees. Breach of the confidentiality standards established by this Chapter and required of employees in this Section may be grounds for removal from office or other sanctions as may be deemed appropriate by the body of which such official is a member or by the City Council.

(2) On a date unknown, but prior to May 2, 2012, Mayor Paul disclosed a confidential legal opinion from the City Attorney concerning the legality of a citizen-initiated referendum on the Wal-Mart TIF ordinance.

(3) On a date unknown, but prior to October 30, 2012, Mayor Paul disclosed the contents of a closed-session personnel discussion of the City Council concerning the extension of the City Manager's severance package.

(4) On a date unknown, but prior to December 15, 2012, Mayor Paul disclosed the contents of one or more closed-session real estate discussion of the City Council concerning the possible re-use of the Tri-Star Mercedes dealership property.

(5) On February 13, 2013, Mayor Paul disclosed the City Attorney's legal advice regarding the operations and procedure of the City's Charter Enforcement Commission.

As a result of his actions, the City Council is unable to have frank discussions concerning topics that are protected from public disclosure by Missouri's Sunshine Law, and the City Attorney is unable to fully advise the City Council on such matters, thus compromising the Council's abilities to be fully-informed on matters of City policy.

B. Mayor Paul has attempted to effect the replacement of the City Attorney, without the Council's knowledge or approval, and as such he has exceeded his authority under Article IV of the City Charter, has attempted to usurp the authority of the Council over the City Attorney under Section 3.8(a) of the Charter, and has violated Section 12.3(d)(2) of the Charter.

(1) Article IV of the Charter does not authorize the Mayor to remove the City Attorney from office.

(2) Section 3.8(a) of the Charter provides: "The Council shall appoint an officer who shall have the title of City Attorney and who shall serve at the pleasure of the Council."

(3) Section 12.3(d)(2) of the Charter provides, in pertinent part:

If any Council member, including the Mayor, . . . shall be approached by any person . . . concerning an application or petition that said person . . . may file with the City Council . . . , such member shall direct the person . . . to request the City Clerk schedule a public meeting as provided above.

Section 12.3(e) of the Charter further provides that “any person who violates any of the aforementioned provisions shall forfeit his or her office or employment with the City.”

(4) The Council appointed Paul Martin as City Attorney in 2004, and Martin and the City entered into a one-year, automatically renewing contract subject to termination by either party at any time.

(5) On August 10, 2012, Mayor Paul informed the City Clerk that Martin’s contract was about to “expire” and that he had decided not to renew the contract. He noted that he had discussed the position with “[a]t least 4 experienced municipal attorneys” who had “contacted [him] about interviewing for the role”. He indicated that he wanted the Council’s cooperation to replace Martin, and that if that cooperation was not forthcoming, he would call a town hall meeting on the issue, give the public “the opportunity to ask questions to 3 invited guest attorneys that I prescreened”, then poll the audience and publish the results on the City’s website. “If need be, I will announce the meeting details in the Trailblazer on the Mayor’s Corner due on August 15th to reach the entire public (sic) audience.”

(6) On August 14, 2012, Mayor Paul again informed the City Clerk that his interpretation, and that of his personal attorney, of the Charter and the contract was that (a) the contract was about to expire, (b) he was the only person who could appoint the City Attorney, and (c) he would not re-nominate Martin when the contract purportedly expired.

Mayor Paul’s attempts to remove and replace the City Attorney, which were unknown to the City Council prior to his communications with the City Clerk, and his threats to force this change on the Council through public intimidation, exceeded the scope of his authority and invaded the province of the Council with regard to the appointment and removal of the City Attorney. His willing participation in discussions with would-be city attorney applicants, discussions not known to the Council or to the public, violated Section 12.3(d)(2) of the City Charter. His actions further diverted the City Clerk’s attention away from other City business and required a legal opinion from the City Attorney, leading to additional legal bills for the City. As a result of his actions, the working relationships between the Mayor and the other members of the City Council, the City Attorney and the City Clerk have become dysfunctional.

C. Mayor Paul has attempted to circumvent the relocation policy adopted by the City Council with regard to the Wal-Mart development by contacting a representative of the developer without Council knowledge or authorization and outside of the public meeting context required by Section 12.3(d)(1) of the Charter. The Mayor accordingly exceeded his authority under Article IV of the Charter, usurped the authority of the Council under Section 3.1 of the Charter, and violated Charter Section 12.3(d)(1).

(1) Article IV of the Charter does not authorize the Mayor to contact third-parties, without the Council's knowledge and approval, regarding the policies of the City as adopted by the City Council, or any expansion thereof.

(2) Section 3.1 of the Charter provides: "All powers of the City shall be vested in the Council unless specifically provided otherwise in this Charter. The Council shall provide for the exercise of these powers and for the performance of all duties and obligations imposed on the City by law." No ordinance of the City authorizes the Mayor to contact third-parties, without the Council's knowledge and approval, regarding the policies of the City as adopted by the City Council, or any expansion thereof.

(3) Section 12.3(d)(1) of the Charter provides, in pertinent part:

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.

Section 12.3(e) of the Charter further provides that "any person who violates any of the aforementioned provisions shall forfeit his or her office or employment with the City."

(4) At a public meeting on May 16, 2012, Mayor Paul, based on his misunderstanding of the City-approved and State-required Wal-Mart relocation policy, unsuccessfully urged the City Council to expand on the benefits to be made available to Clarkchester Apartment residents. Despite this unsuccessful effort, Mayor Paul contacted the City Manager on May 24, asking whether he could contact Jennifer Kaniecki, relocation specialist for Sansone Development Company, the Wal-Mart developer. Manager Bookout responded: "There is no reason to contact her. She will follow the Relocation laws as specified by the Missouri State Statute."

(5) Mayor Paul persisted, acknowledging the risk of forfeiting his office because of a possible Charter violation if he contacted Kaniecki. The City Attorney was asked to respond, and he did so: "You attempted at the last council meeting to persuade the council to attempt an expansion of the [relocation] policy, and you did not receive any support for that notion. You should conduct yourself accordingly."

(6) Despite knowing of the meaning and effect of Section 12.3(d)(1), and despite specific contrary advice from both the City Manager and the City Attorney regarding the relocation policy adopted by the City Council, the Mayor contacted Ms. Kaniecki, without Council knowledge or authorization and outside of the public meeting context required by Section 12.3(d)(1) of the Charter, to discuss the relocation policy in a misplaced effort to expand the scope of that policy.

As a result of his actions, Mayor Paul exceeded the scope of his authority, invaded the province of the Council over the City's policy matters and violated Section 12.3(d)(1) of the Ellisville City Charter.

D. Mayor Paul has directed the City Clerk to perform actions contrary to law and the rules and practices of the Council, and as such he has exceeded his authority under Article IV of the City Charter and has attempted to usurp the authority of the Council by directing the activity of the City Clerk in violation of Section 3.7 of the City Charter:

(1) Article IV of the Charter does not authorize the Mayor to direct, supervise, or reprimand the City Clerk.

(2) Section 3.7 of the Charter provides in pertinent part: "The "Council shall appoint [the] City Clerk" and the City Clerk "shall maintain the journal of Council proceedings [and] perform such other duties as may be required by law, by this Charter, or by the Council. The City Clerk shall be responsible to the Council."

(3) On June 13, 2012, Mayor Paul directed City Clerk Demeter to prepare an ordinance for the June 20, 2012 meeting of the City Council calling for the scheduling of recall elections for Council Members Anglin and Pieper on October 2, 2012, even though the recall petitions had not yet been circulated, the requisite recall signatures had not been obtained, nor had said signatures been certified, all as required by Article IX of the City Charter.

(4) On August 14, 2012 Mayor Paul instructed the City Clerk to advise him as to the scope of his Charter authority to (a) appoint members to the Planning and Zoning Commission and (b) refuse to nominate the City Attorney for reappointment, thus directing the Clerk to provide legal advise exceeding the scope of her authority under the City Charter.

(5) On August 14, and again on August 15, 2012, Mayor Paul directed City Clerk to remove an item from the regular meeting agenda of August 15 based on his erroneous interpretation of Council procedure.

(6) On November 9, 2012, Mayor Paul directed the City Clerk to revise the draft minutes of the November 7 meeting by adding his comments objecting to the City Manager employment contract legislation, even though the revision of meeting minutes can only be accomplished by Council motion.

(7) 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 reprimanded the City Clerk for doing exactly what he had 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."

(8) On November 12, 2012, Mayor Paul directed the City Clerk to post an e-mail from Council Member Pirrello on the City's website, erroneously claiming that Pirrello had violated the Sunshine Law by sending the e-mail without first posting a notice.

As a result of the Mayor's actions, the City Clerk has been required to unnecessarily seek the advice of the City Attorney, leading to additional legal bills for the City, and the working relationship between the City Clerk and the Mayor, and the City Attorney and the Mayor, has become dysfunctional.

E. Mayor Paul has attempted to direct and supervise the City Manager and has interfered with the administration of, and has directed, employees under the City Manager's authority. The Mayor has thus exceeded his authority under Article IV of the City Charter, has usurped the authority of the Council under Article V of the Charter, and has violated Section 3.4(c) of the City Charter.

(1) Article IV of the Charter does not authorize the Mayor to direct or supervise the City Manager or to have any role in determining, assigning, or suggesting the work duties of those City employees who are subject to the City Manager's administration.

(2) Article V of the Charter provides that the City Council appoints the City Manager, establishes the duties of the City Manager, and has the authority to remove the City Manager. Section 5.4 of the Charter provides that "[t]he City Manager shall be responsible to the Council for the administration of all operations placed in [his] charge", including the appointment, direction, supervision, and discipline of all non-appointive employees.

(3) Section 3.4(c) of the City Charter Provides:

Except for the purpose of inquiry, information or investigation as established by Article III, Section 3.11 of this 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.

(4) On May 2, 2012, after a public meeting at the Ellisville Elementary Auditorium, Mayor Paul ordered Lieutenant Kelly Murray of the Ellisville Police Department to remove Ms. Katie James from the premises, without provocation, cause, or excuse.

(5) On May 7 and May 8, 2012, Mayor Paul contacted Chief Felgate and Sgt. Walker of the Ellisville Police Department, requesting that (a) as mayor, he be issued a gun and a badge, and (b) that the City's message boards be used to advertise for a private event to be held at a business owned by a political supporter.

(6) On May 18, 2012, Mayor Paul e-mailed City Manager Bookout, without the Council's knowledge or approval, suggesting that Bookout use the city's message boards to advertise certain private events, one of which was being held at a private business owned by one of his political supporters.

(7) On June 12, 2012, Mayor Paul contacted Ellisville administrative assistant Donna Bragdon and directed her to provide him with a personalized City of Ellisville letterhead, in a writable electronic format.

(8) On June 21, 2012, Mayor Paul reprimanded the City Manager for forwarding to the council a citizen e-mail expressing the sentiment that the Mayor should stop the recall election over the Wal-Mart approval. He also ordered the City Manager to provide the Manager's personal e-mail address to him.

(9) On June 13, 2012, Mayor Paul reprimanded City Manager for asking the Council if they were available for a special meeting, wrongfully claiming that it was his exclusive prerogative under the City Charter to call for special meetings. Mayor Paul further instructed the Manager in the future to "reach out to me first regarding administrative city issues so that I, as Mayor, can issue the special meeting request" and admonished "[i]f you are unsure please ask me".

As a result of the Mayor's actions, the City Manager has been required to seek the advice of the City Attorney, leading to additional legal bills for the City; he has had to divert his time and attention away from city business to address the Mayor's baseless concerns; and the working relationship between the City Manager and the Mayor, and the City Attorney and the Mayor, has become dysfunctional.

F. Mayor Paul has failed to competently and fairly preside over meetings of the City Council in violation of Sections 4.1(b) of the City Charter, Robert's Rules of Order, and the Council's rules.

(1) Section 4.1(b)(1) of the Charter requires that the Mayor preside as chairman of meetings of the Council.

(2) Through the enactment of Section 110.050 of the City Code, the Council has adopted Robert's Rules of Order, which requires the chair of any meeting to adhere to the body's rules and to control disruptive behavior.

(3) The Council's rules further impose time limits on public speakers and require that decorum be maintained in a meeting.

(4) Since his election, and at public meetings over which he is required by law to preside, Mayor Paul has repeatedly failed to enforce the Council's time limits for public comments and has repeatedly failed to control outbursts from the public, both during public comments and the non-public business portions of Council meetings.

(5) During a closed session of the City Council immediately preceding the May 2, 2012 meeting, Mayor Paul addressed the Council by the use of profanity, specifically accusing the Council of creating a "shit show" relative to the filing of recall petitions.

(6) After the May 2, 2012 meeting, Mayor Paul, without cause or provocation, verbally confronted resident Katie James, stating in a loud voice "Do not tell me how to run my f'ing meeting. This is my f'ing seat".

(7) On a date unknown, but at a closed meeting in the City Hall conference room during the summer of 2012, City Manager Bookout was sitting next to Mayor Paul, who was drinking something. The Manager smelled alcohol on the Mayor's breath and asked the Mayor what he was drinking. The Mayor admitted to the City Manager that he was drinking vodka.

(8) On July 18, 2012, during an open meeting in the City Hall conference room with representatives from Allen Roofing and West County Honda, Mayor Paul arrived and sat next to the City Manager. The Mayor had two containers, a blue energy drink and a thermos-type container with a lid. He placed the thermos-type container on the floor between his feet. He then leaned forward and used the energy drink to top off the container that was on the floor and proceeded to drink from the container.

(9) During a closed session immediately preceding the November 7, 2012 council meeting, Mayor Paul again used profanity ("shitty") in discussing possible legislation relative to nuisances.

(10) On December 5, 2012, during a public meeting of the City Council, Mayor Paul criticized legislation amending the zoning code and the City Manager's employment contract, and in so doing attacked staff and council members for alleged incompetence and cronyism.

(11) On December 5, 2012, while he was chairing the meeting, Mayor Paul mixed and drank the contents of bottles labeled as water, at least one of which contained alcohol.

(12) At the same meeting, Mayor Paul personally attacked his fellow council members and again used profanity during the public meeting, saying "shit" in the course of objecting to legislation.

Mayor Paul's actions have demonstrated a lack of respect for his office, the public, the City Council, and City staff, resulting in a complete lack of trust and confidence in, and respect for, the Mayor among Council members and City staff, to the point that the working relationships of the Mayor, Council members, and staff have become dysfunctional.

G. Mayor Paul has committed conduct unbecoming and demeaning to the office of Mayor of the City of Ellisville in one or more of the following respects:

(1) On February 12, 2013 Mayor Paul filed a false answer in response to a Charter violation complaint.

(a) On February 11, 2013 Katie James filed a complaint against Mayor Paul pursuant to Section 12.10 of the City Charter and Chapter 145 of the City Code. James alleged that on February 6, 2013 the Mayor issued a direct order to the City's Police Chief to

remove a resident from the public meeting and that such action violated Section 3.4(c) of the City Charter.

(b) As permitted by Section 145.020.B of the City Code, Mayor Paul filed an answer with the City Clerk on February 12. His response stated, for the first time, that the resident had made "a gesture with his hands and pants pockets of what appeared to me as the shape of a firearm aimed at me" and that at the time of the incident the Mayor felt his life "potentially threatened".

(c) The Mayor did not disclose any such concern to the police at the time of the alleged incident on February 6. He took no action at the time suggesting that he feared any kind of firearms assault. He did not ask for police protection when he exited the meeting, nor did he make, nor has he ever made, any complaint to the police department concerning the resident's actions on the night in question or at any other time. No other person on the Council dais or in the immediate proximity of the resident has verified any "gesture" or "shape" of an object suggesting that the resident was armed or was threatening the Mayor with a weapon or with any kind of physical violence.

(d) In that a Charter violation complaint had been filed and the Mayor responded as permitted by the governing city ordinance, the Mayor had a duty to be truthful in his response to the charged Charter violation. That response also included a gratuitous reference to the tragic Kirkwood shootings of 2008. The Mayor's official answer to the charged violation thus demonstrates a callous and calculated effort to fabricate an emotionally-charged excuse for the Mayor's order to remove the resident, and he was not truthful in asserting the possibility of a weapon or his fear of that possibility.

(2) In an attempt to gather "evidence" to "defend himself" at the February 18, 2013 meeting of the City's Charter Enforcement Commission, Mayor Paul surreptitiously recorded telephone conversations with the Chief of Police and the City Clerk, and in a transparent attempt at intimidation, told each of them at the end of the discussion that the conversation had been recorded.

(3) On February 18, 2013 Mayor Paul permitted his attorney to continuously and repeatedly interrupt and obstruct the meeting of the Charter Enforcement Commission.

(a) The meeting of the Charter Enforcement Commission was a meeting to determine whether probable cause existed to recommend to the City Council that a hearing be held to determine Mayor Paul's right to continue to occupy the office of Mayor. It was not a "hearing" under Missouri's Administrative Procedures Act, and while Mayor had the right to attend and observe the proceedings, neither he nor his attorney had any right to speak at the meeting, to produce evidence (other than his written answer to the charges), or to make any objections to the proceedings.

(b) Only seconds after the meeting was called to order, Mayor Paul's attorney interrupted the proceedings and demanded action on her previously filed requests for a continuance and for disqualification of two of the commission members and the City Attorney. She was informed (1) that the role of the Charter Enforcement Commission was only a

preliminary one—to make a recommendation on the existence of probable cause to believe that a violation occurred, (2) that her requests and complaints were a part of the public record of the meeting, and (3) that the Mayor would be afforded all due process rights, including a determination of his requests, if the matter proceeded to a hearing. She was repeatedly asked to sit down and to let the Commission conduct its business, yet at every attempt of the Commission to do so, she again interjected, repeating her earlier claims, arguing with the City Attorney, and refusing to be silent. When informed that the police would be requested to escort her from the meeting place if she did not cease her outbursts, she continued her disruptive behavior, leading to a delay of the meeting, obstruction of the process, and her ultimate removal by the Chief of Police at the direction of the City Manager.

(c) The Mayor's attorney is his agent, and the Mayor is the "principal" in the agency relationship. As such the Mayor has the responsibility and authority to control the actions of the "agent", his attorney, during a meeting of a public governmental body. The Mayor failed to do so. His attorney's unreasonable, obstructive behavior was not intended to preserve any legal defenses or positions but only to force her removal from the proceedings for the purposes of publicity and political impact. As the principal in the relationship, the Mayor is responsible for the attorney's disruptive behavior.

Mayor Paul's actions again have demonstrated a lack of respect for his office, the public, the City Council, and City staff, resulting in a complete lack of trust and confidence in, and respect for, the Mayor among Council members and City staff, to the point that the working relationships of the Mayor, Council members, and staff have become dysfunctional.

2. Mayor Adam Paul is hereby and immediately suspended from the duty of his office for a period not to exceed 45 days, during which time the Council shall consider and determine whether Mayor Paul has forfeited his office for one or more of the noted charges.

3. Unless a different date is required by operation of Section 3.6 of the Ellisville City Charter, the Council shall hold a public hearing on March __, 2013 at __.m., at _____ to consider the charges and determine whether Adam Paul has forfeited the office of Mayor of the City of Ellisville.

4. Mayor Paul may be represented by counsel at the hearing and shall be entitled to present evidence and to cross-examine witnesses in his defense. The City Council shall consider the evidence presented and shall make written findings of fact and conclusions of law in its determination of the evidence presented at the hearing.

5. The City Manager is authorized and directed to enter into a letter agreement, attached as Exhibit A, with Keith Cheung and the law firm of Curtis, Heinz, Garrett and O'Keefe to serve as special counsel for the purpose of presenting the noted charges.

6. The City Manager is authorized and directed to enter into a letter agreement, attached as Exhibit B, with John Maupin and the law firm of Eckenrode and Maupin to serve as hearing officer and special counsel to the City Council with regard to these removal proceedings.

**THIS RESOLUTION ADOPTED BY THE COUNCIL OF THE CITY OF
ELLISVILLE, ST. LOUIS COUNTY, MISSOURI, ON THIS ___ DAY OF _____, 2013.**

AYE NAY ABSTAIN

ANGLIN	_____
PIRRELLO	_____
REEL	_____
PIEPER	_____
MURRAY	_____
ACUP	_____
PAUL	_____

ATTEST:

CITY OF ELLISVILLE



City of Ellisville

Exhibit A

Keith K. Cheung
Curtis, Heinz, Garret & O'Keefe
130 S. Bemiston Avenue, Suite 200
Clayton, MO 63015
kcheung@lawfirmemail.com

Re. Removal of Mayor Adam Paul

Dear Mr. Cheung:

The Council of the City of Ellisville has adopted the attached preliminary resolution for the removal of Adam Paul from the office of Mayor of the City of Ellisville. This action was taken pursuant to Section 3.6 of the Ellisville City Charter, which further permits a hearing on the specified charges and the possible adoption of a final resolution of removal.

The Council desires to retain you and your firm to act as special prosecutor for the purposes of investigating, preparing, and presenting the case in favor of removal of Mr. Paul at a public hearing, date to be determined. The City will compensate you for these services at a rate of \$200 per hour, plus necessary expenses. The City will remit payment within 30 days of receipt of your detailed invoices.

If you agree to this representation, please sign and date this letter and return it to me at your earliest convenience. On receipt, I will deliver a packet of information concerning the specified charges. Of course, please call if you have any questions.

Sincerely,

Kevin Bookout
Ellisville City Manager

Keith K. Cheung
Curtis, Heinz, Garrett & O'Keefe



City of Ellisville

Exhibit B

John W. Maupin
Eckenrode and Maupin
8000 Maryland Avenue, Suite 1300
Clayton, MO 63105
jwm@eckenrode-law.com

Re. Removal of Mayor Adam Paul

Dear Mr. Maupin:

The Council of the City of Ellisville has adopted the attached preliminary resolution for the removal of Adam Paul from the office of Mayor of the City of Ellisville. This action was taken pursuant to Section 3.6 of the Ellisville City Charter, which further permits a hearing on the specified charges and the possible adoption of a final resolution of removal.

Due to the disqualification of the City Attorney, the Council desires to retain you and your firm to advise the Council and to serve as hearing officer in these proceedings. The City will compensate you for these services at a rate of \$200 per hour, plus necessary expenses. The City will remit payment within 30 days of receipt of your detailed invoices.

If you agree to this representation, please sign and date this letter and return it to me at your earliest convenience. On receipt, I will deliver a packet of information concerning the specified charges. Of course, please call if you have any questions.

Sincerely,

Kevin Bookout
Ellisville City Manager

John W. Maupin
Eckenrode and Maupin

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**AMENDED PRELIMINARY RESOLUTION CONCERNING THE
REMOVAL OF MAYOR ADAM PAUL**

WHEREAS, in an effort to curb past abuses of authority and City resources by the elected officials of the City of Ellisville, the voters of the City adopted in 1993 their Home Rule Charter to install a professionally-managed, "weak mayor/strong council" form of government; and

WHEREAS, the Charter accordingly: (a) vests all municipal powers with the City Council, unless otherwise provided by the Charter, (b) limits the authority of the Mayor in favor of the collective responsibility of the City Council in the exercise of those powers, (c) provides for the City Council's collective oversight and supervision of the City's appointed officers, specifically the City Manager, City Clerk, and City Attorney, and (d) prescribes the authority and responsibilities of the City Manager and City staff in administering the daily operations of the City and prohibits interference by the City Council, including the Mayor, with the City Manager's authority; and

WHEREAS, Adam Paul was elected to the office of Mayor of the City of Ellisville on April 3, 2012; and

WHEREAS, since his election, and continuing to date, Mayor Paul has committed certain acts in apparent violation of the germane provisions of the City's Charter, the City Code, and the Council's established rules and practices; and

WHEREAS, the Council of the City of Ellisville desires to consider such acts and determine, consistent with Section 3.6 of the Ellisville City Charter and the laws of the State of Missouri, whether they constitute misfeasance, malfeasance, or nonfeasance in the administration of his office and whether Mayor Paul should thereby be deemed to have forfeited his office; and

WHEREAS, the Council accordingly desires to adopt this preliminary resolution to suspend Mayor Paul from office for a period of not more than 45 days to consider and determine whether the charges noted herein merit a finding that Adam Paul shall be deemed to have forfeited the office of Mayor of the City of Ellisville; and

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WHEREAS, a copy of the proposed resolution has been made available for public inspection prior to consideration by the Council.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ELLISVILLE AS FOLLOWS:

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1. Mayor Adam Paul is hereby charged with the following acts of misfeasance, malfeasance, and nonfeasance in the administration of his office:

A. Mayor Paul has unlawfully disclosed the confidences of the City, without the knowledge or permission of the City Council, to unauthorized persons in violation of Section 125.050.D.2 of the City Code:

(1) Section 125.050.D.2 of the City Code provides:

Elected and appointed officials are also expected to maintain the same strict standards of confidentiality required of employees. Breach of the confidentiality standards established by this Chapter and required of employees in this Section may be grounds for removal from office or other sanctions as may be deemed appropriate by the body of which such official is a member or by the City Council.

(2) On a date unknown, but prior to May 2, 2012, Mayor Paul disclosed a confidential legal opinion from the City Attorney concerning the legality of a citizen-initiated referendum on the Wal-Mart TIF ordinance.

(3) On a date unknown, but prior to October 30, 2012, Mayor Paul disclosed the contents of a closed-session personnel discussion of the City Council concerning the extension of the City Manager's severance package.

(4) On a date unknown, but prior to December 15, 2012, Mayor Paul disclosed the contents of one or more closed-session real estate discussion of the City Council concerning the possible re-use of the Tri-Star Mercedes dealership property.

(5) On February 13, 2013, Mayor Paul disclosed the City Attorney's legal advice regarding the operations and procedure of the City's Charter Enforcement Commission.

As a result of his actions, the City Council is unable to have frank discussions concerning topics that are protected from public disclosure by Missouri's Sunshine Law, and the City Attorney is unable to fully advise the City Council on such matters, thus compromising the Council's abilities to be fully-informed on matters of City policy.

B. Mayor Paul has attempted to effect the replacement of the City Attorney, without the Council's knowledge or approval, and as such he has exceeded his authority under Article IV of the City Charter, has attempted to usurp the authority of the Council over the City Attorney under Section 3.8(a) of the Charter, and has violated Section 12.3(d)(2) of the Charter.

(1) Article IV of the Charter does not authorize the Mayor to remove the City Attorney from office.

(2) Section 3.8(a) of the Charter provides: "The Council shall appoint an officer who shall have the title of City Attorney and who shall serve at the pleasure of the Council."

(3) Section 12.3(d)(2) of the Charter provides, in pertinent part:

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If any Council member, including the Mayor, . . . shall be approached by any person . . . concerning an application or petition that said person . . . may file with the City Council . . . , such member shall direct the person . . . to request the City Clerk schedule a public meeting as provided above.

Section 12.3(e) of the Charter further provides that “any person who violates any of the aforementioned provisions shall forfeit his or her office or employment with the City.”

(4) The Council appointed Paul Martin as City Attorney in 2004, and Martin and the City entered into a one-year, automatically renewing contract subject to termination by either party at any time.

(5) On August 10, 2012, Mayor Paul informed the City Clerk that Martin’s contract was about to “expire” and that he had decided not to renew the contract. He noted that he had discussed the position with “[a]t least 4 experienced municipal attorneys” who had “contacted [him] about interviewing for the role”. He indicated that he wanted the Council’s cooperation to replace Martin, and that if that cooperation was not forthcoming, he would call a town hall meeting on the issue, give the public “the opportunity to ask questions to 3 invited guest attorneys that I prescreened”, then poll the audience and publish the results on the City’s website. “If need be, I will announce the meeting details in the Trailblazer on the Mayor’s Corner due on August 15th to reach the entire public (sic) audience.”

(6) On August 14, 2012, Mayor Paul again informed the City Clerk that his interpretation, and that of his personal attorney, of the Charter and the contract was that (a) the contract was about to expire, (b) he was the only person who could appoint the City Attorney, and (c) he would not re-nominate Martin when the contract purportedly expired.

Mayor Paul’s attempts to remove and replace the City Attorney, which were unknown to the City Council prior to his communications with the City Clerk, and his threats to force this change on the Council through public intimidation, exceeded the scope of his authority and invaded the province of the Council with regard to the appointment and removal of the City Attorney. His willing participation in discussions with would-be city attorney applicants, discussions not known to the Council or to the public, violated Section 12.3(d)(2) of the City Charter. His actions further diverted the City Clerk’s attention away from other City business and required a legal opinion from the City Attorney, leading to additional legal bills for the City. As a result of his actions, the working relationships between the Mayor and the other members of the City Council, the City Attorney and the City Clerk have become dysfunctional.

C. Mayor Paul has attempted to circumvent the relocation policy adopted by the City Council with regard to the Wal-Mart development by contacting a representative of the developer without Council knowledge or authorization and outside of the public meeting context required by Section 12.3(d)(1) of the Charter. The Mayor accordingly exceeded his authority under Article IV of the Charter, usurped the authority of the Council under Section 3.1 of the Charter, and violated Charter Section 12.3(d)(1).

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(1) Article IV of the Charter does not authorize the Mayor to contact third-parties, without the Council's knowledge and approval, regarding the policies of the City as adopted by the City Council, or any expansion thereof.

(2) Section 3.1 of the Charter provides: "All powers of the City shall be vested in the Council unless specifically provided otherwise in this Charter. The Council shall provide for the exercise of these powers and for the performance of all duties and obligations imposed on the City by law." No ordinance of the City authorizes the Mayor to contact third-parties, without the Council's knowledge and approval, regarding the policies of the City as adopted by the City Council, or any expansion thereof.

(3) Section 12.3(d)(1) of the Charter provides, in pertinent part:

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.

Section 12.3(e) of the Charter further provides that "any person who violates any of the aforementioned provisions shall forfeit his or her office or employment with the City."

(4) At a public meeting on May 16, 2012, Mayor Paul, based on his misunderstanding of the City-approved and State-required Wal-Mart relocation policy, unsuccessfully urged the City Council to expand on the benefits to be made available to Clarkchester Apartment residents. Despite this unsuccessful effort, Mayor Paul contacted the City Manager on May 24, asking whether he could contact Jennifer Kaniecki, relocation specialist for Sansone Development Company, the Wal-Mart developer. Manager Bookout responded: "There is no reason to contact her. She will follow the Relocation laws as specified by the Missouri State Statute."

(5) Mayor Paul persisted, acknowledging the risk of forfeiting his office because of a possible Charter violation if he contacted Kaniecki. The City Attorney was asked to respond, and he did so: "You attempted at the last council meeting to persuade the council to attempt an expansion of the [relocation] policy, and you did not receive any support for that notion. You should conduct yourself accordingly."

(6) Despite knowing of the meaning and effect of Section 12.3(d)(1), and despite specific contrary advice from both the City Manager and the City Attorney regarding the relocation policy adopted by the City Council, the Mayor contacted Ms. Kaniecki, without Council knowledge or authorization and outside of the public meeting context required by Section 12.3(d)(1) of the Charter, to discuss the relocation policy in a misplaced effort to expand the scope of that policy.

As a result of his actions, Mayor Paul exceeded the scope of his authority, invaded the province of the Council over the City's policy matters and violated Section 12.3(d)(1) of the Ellisville City Charter.

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D. Mayor Paul has directed the City Clerk to perform actions contrary to law and the rules and practices of the Council, and as such he has exceeded his authority under Article IV of the City Charter and has attempted to usurp the authority of the Council by directing the activity of the City Clerk in violation of Section 3.7 of the City Charter:

(1) Article IV of the Charter does not authorize the Mayor to direct, supervise, or reprimand the City Clerk.

(2) Section 3.7 of the Charter provides in pertinent part: "The "Council shall appoint [the] City Clerk" and the City Clerk "shall maintain the journal of Council proceedings [and] perform such other duties as may be required by law, by this Charter, or by the Council. The City Clerk shall be responsible to the Council."

(3) On June 13, 2012, Mayor Paul directed City Clerk Demeter to prepare an ordinance for the June 20, 2012 meeting of the City Council calling for the scheduling of recall elections for Council Members Anglin and Pieper on October 2, 2012, even though the recall petitions had not yet been circulated, the requisite recall signatures had not been obtained, nor had said signatures been certified, all as required by Article IX of the City Charter.

(4) On August 14, 2012 Mayor Paul instructed the City Clerk to advise him as to the scope of his Charter authority to (a) appoint members to the Planning and Zoning Commission and (b) refuse to nominate the City Attorney for reappointment, thus directing the Clerk to provide legal advise exceeding the scope of her authority under the City Charter.

(5) On August 14, and again on August 15, 2012, Mayor Paul directed City Clerk to remove an item from the regular meeting agenda of August 15 based on his erroneous interpretation of Council procedure.

(6) On November 9, 2012, Mayor Paul directed the City Clerk to revise the draft minutes of the November 7 meeting by adding his comments objecting to the City Manager employment contract legislation, even though the revision of meeting minutes can only be accomplished by Council motion.

(7) 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 reprimanded the City Clerk for doing exactly what he had 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."

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(8) On November 12, 2012, Mayor Paul directed the City Clerk to post an e-mail from Council Member Pirrello on the City's website, erroneously claiming that Pirrello had violated the Sunshine Law by sending the e-mail without first posting a notice.

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As a result of the Mayor's actions, the City Clerk has been required to unnecessarily seek the advice of the City Attorney, leading to additional legal bills for the City, and the working relationship between the City Clerk and the Mayor, and the City Attorney and the Mayor, has become dysfunctional.

E. Mayor Paul has attempted to direct and supervise the City Manager and has interfered with the administration of, and has directed, employees under the City Manager's authority. The Mayor has thus exceeded his authority under Article IV of the City Charter, has usurped the authority of the Council under Article V of the Charter, and has violated Section 3.4(c) of the City Charter.

(1) Article IV of the Charter does not authorize the Mayor to direct or supervise the City Manager or to have any role in determining, assigning, or suggesting the work duties of those City employees who are subject to the City Manager's administration.

(2) Article V of the Charter provides that the City Council appoints the City Manager, establishes the duties of the City Manager, and has the authority to remove the City Manager. Section 5.4 of the Charter provides that "[t]he City Manager shall be responsible to the Council for the administration of all operations placed in [his] charge", including the appointment, direction, supervision, and discipline of all non-appointive employees.

(3) Section 3.4(c) of the City Charter Provides:

Except for the purpose of inquiry, information or investigation as established by Article III, Section 3.11 of this 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.

(4) On May 2, 2012, after a public meeting at the Ellisville Elementary Auditorium, Mayor Paul ordered Lieutenant Kelly Murray of the Ellisville Police Department to remove Ms. Katie James from the premises, without provocation, cause, or excuse.

Paul Martin 3/4/13 10:10 AM
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(5) On May 7 and May 8, 2012, Mayor Paul contacted Chief Felgate and Sgt. Walker of the Ellisville Police Department, requesting that (a) as mayor, he be issued a gun and a badge, and (b) that the City's message boards be used to advertise for a private event to be held at a business owned by a political supporter.

(6) On May 18, 2012, Mayor Paul e-mailed City Manager Bookout, without the Council's knowledge or approval, suggesting that Bookout use the city's message boards to advertise certain private events, one of which was being held at a private business owned by one of his political supporters.

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(7) On June 12, 2012, Mayor Paul contacted Ellisville administrative assistant Donna Bragdon and directed her to provide him with a personalized City of Ellisville letterhead, in a writable electronic format.

(8) On June 21, 2012, Mayor Paul reprimanded the City Manager for forwarding to the council a citizen e-mail expressing the sentiment that the Mayor should stop the recall election over the Wal-Mart approval. He also ordered the City Manager to provide the Manager's personal e-mail address to him.

(9) On June 13, 2012, Mayor Paul reprimanded City Manager for asking the Council if they were available for a special meeting, wrongfully claiming that it was his exclusive prerogative under the City Charter to call for special meetings. Mayor Paul further instructed the Manager in the future to "reach out to me first regarding administrative city issues so that I, as Mayor, can issue the special meeting request" and admonished "[i]f you are unsure please ask me".

As a result of the Mayor's actions, the City Manager has been required to seek the advice of the City Attorney, leading to additional legal bills for the City; he has had to divert his time and attention away from city business to address the Mayor's baseless concerns; and the working relationship between the City Manager and the Mayor, and the City Attorney and the Mayor, has become dysfunctional.

F. Mayor Paul has failed to competently and fairly preside over meetings of the City Council in violation of Sections 4.1(b) of the City Charter, Robert's Rules of Order, and the Council's rules.

(1) Section 4.1(b)(1) of the Charter requires that the Mayor preside as chairman of meetings of the Council.

(2) Through the enactment of Section 110.050 of the City Code, the Council has adopted Robert's Rules of Order, which requires the chair of any meeting to adhere to the body's rules and to control disruptive behavior.

(3) The Council's rules further impose time limits on public speakers and require that decorum be maintained in a meeting.

(4) Since his election, and at public meetings over which he is required by law to preside, Mayor Paul has repeatedly failed to enforce the Council's time limits for public comments and has repeatedly failed to control outbursts from the public, both during public comments and the non-public business portions of Council meetings.

Mayor Paul's actions have demonstrated a lack of respect for his office, the public, the City Council, and City staff, resulting in a complete lack of trust and confidence in, and respect for, the Mayor among Council members and City staff, to the point that the working relationships of the Mayor, Council members, and staff have become dysfunctional.

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Deleted: (5) During a closed session of the City Council immediately preceding the April 18, 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.

(6) After the April 18 meeting, Mayor Paul, without cause or provocation, verbally confronted resident Katie James, stating in a loud voice "Do not tell me how to run my f'ing meeting. This is my f'ing seat".

(7) On a date unknown, but at a closed meeting in the City Hall conference room during the summer of 2012, City Manager Bookout was sitting next to Mayor Paul, who was drinking something. The Manager smelled alcohol on the Mayor's breath and asked the Mayor what he was drinking. The Mayor admitted to the City Manager that he was drinking vodka.

(8) On July 18, 2012, during an open meeting in the City Hall conference room with representatives from Allen Roofing and West County Honda, Mayor Paul arrived and sat next to the City Manager. The Mayor had two containers, a blue energy drink and a thermos-type container with a lid. He placed the thermos-type container on the floor between his feet. He then leaned forward and used the energy drink to top off the container that was on the floor and proceeded to drink from the container.

(9) During a closed session immediately preceding the November 7, 2012 council meeting, Mayor Paul again used profanity ("shitty") in discussing legislation pending for that evening.

(10) During the public portion of the November 7 meeting, Mayor Paul criticized legislation amending the zoning code and the City Manager's employment contract, and in so doing attacked staff and council members for alleged incompetence and cronyism.

(11) On December 5, 2012, during a public meeting of the City Council and while he was chairing the meeting, Mayor Paul mixed and drank the contents of bottles labeled as water, at least one of which contained alcohol.

(12) At the same meeting, Mayor Paul personally attacked his fellow council members and again used profanity during the public meeting, saying "shit" in the course of objecting to legislation.

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G. Mayor Paul has committed conduct unbecoming and demeaning to the office of Mayor of the City of Ellisville, has exceeded or abused his authority, and has violated State law and City ordinance in one or more of the following respects:

(1) After the May 2, 2012 meeting, Mayor Paul, without cause or provocation, verbally confronted resident Katie James, stating in a loud voice "Do not tell me how to run my firing meeting. This is my firing seat".

(2) On February 12, 2013 Mayor Paul filed a false answer in response to a Charter violation complaint.

(a) On February 11, 2013 Katie James filed a complaint against Mayor Paul pursuant to Section 12.10 of the City Charter and Chapter 145 of the City Code. James alleged that on February 6, 2013 the Mayor issued a direct order to the City's Police Chief to remove a resident from the public meeting and that such action violated Section 3.4(c) of the City Charter.

(b) As permitted by Section 145.020.B of the City Code, Mayor Paul filed an answer with the City Clerk on February 12. His response stated, for the first time, that the resident had made "a gesture with his hands and pants pockets of what appeared to me as the shape of a firearm aimed at me" and that at the time of the incident the Mayor felt his life "potentially threatened".

(c) The Mayor did not disclose any such concern to the police at the time of the alleged incident on February 6. He took no action at the time suggesting that he feared any kind of firearms assault. He did not ask for police protection when he exited the meeting, nor did he make, nor has he ever made, any complaint to the police department concerning the resident's actions on the night in question or at any other time. No other person on the Council dais or in the immediate proximity of the resident has verified any "gesture" or "shape" of an object suggesting that the resident was armed or was threatening the Mayor with a weapon or with any kind of physical violence.

(d) In that a Charter violation complaint had been filed and the Mayor responded as permitted by the governing city ordinance, the Mayor had a duty to be truthful in his response to the charged Charter violation. That response also included a gratuitous reference to the tragic Kirkwood shootings of 2008. The Mayor's official answer to the charged violation thus demonstrates a callous and calculated effort to fabricate an emotionally-charged excuse for the Mayor's order to remove the resident, and he was not truthful in asserting the possibility of a weapon or his fear of that possibility.

(3) In an attempt to gather "evidence" to "defend himself" at the February 18, 2013 meeting of the City's Charter Enforcement Commission, Mayor Paul surreptitiously recorded telephone conversations with the Chief of Police and the City Clerk, and in a transparent attempt at intimidation, told each of them at the end of the discussion that the conversation had been recorded.

(4) On February 20, 2013, at a closed session of the City Council, Mayor Paul removed his telephone from his pocket immediately prior to the meeting and placed it face down

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(3) On February 18, 2013 Mayor Paul permitted his attorney to continuously and repeatedly interrupt and obstruct the meeting of the Charter Enforcement Commission.

(a) The meeting of the Charter Enforcement Commission was a meeting to determine whether probable cause existed to recommend to the City Council that a hearing be held to determine Mayor Paul's right to continue to occupy the office of Mayor. It was not a "hearing" under Missouri's Administrative Procedures Act, and while Mayor had the right to attend and observe the proceedings, neither he nor his attorney had any right to speak at the meeting, to produce evidence (other than his written answer to the charges), or to make any objections to the proceedings.

(b) Only seconds after the meeting was called to order, Mayor Paul's attorney interrupted the proceedings and demanded action on her previously filed requests for a continuance and for disqualification of two of the commission members and the City Attorney. She was informed (1) that the role of the Charter Enforcement Commission was only a preliminary one—to make a recommendation on the existence of probable cause to believe that a violation occurred, (2) that her requests and complaints were a part of the public record of the meeting, and (3) that the Mayor would be afforded all due process rights, including a determination of his requests, if the matter proceeded to a hearing. She was repeatedly asked to sit down and to let the Commission conduct its business, yet at every attempt of the Commission to do so, she again interjected, repeating her earlier claims, arguing with the City Attorney, and refusing to be silent. When informed that the police would be requested to escort her from the meeting place if she did not cease her outbursts, she continued her disruptive behavior, leading to a delay of the meeting, obstruction of the process, and her ultimate removal by the Chief of Police at the direction of the City Manager.

(c) The Mayor's attorney is his agent, and the Mayor is the "principal" in the agency relationship. As such the Mayor has the responsibility and authority to control the actions of the "agent", his attorney, during a meeting of a public governmental body. [1]

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on the conference table. He started the meeting, and at this point the City Attorney quietly asked the Mayor whether he was recording the meeting. The Mayor turned to the City Attorney, smiled, and winked. On such information and belief, the Mayor recorded the Council's closed session meeting without the Council's knowledge or consent and in violation of Section 125.060.E of the City Code, which states in pertinent part:

No audio recording of any meeting, record or vote closed pursuant to the provisions of Section 610.021, RSMo., shall be allowed without permission of the public body; any person who violates this provision shall be guilty of an ordinance violation and punished by imprisonment for a period not to exceed fifteen (15) days, a fine not to exceed three hundred dollars (\$300.00) or by both such fine and imprisonment.

Section 125.050.D.2 of the City Code further provides:

Elected and appointed officials are also expected to maintain the same strict standards of confidentiality required of employees. Breach of the confidentiality standards established by this Chapter and required of employees in this Section may be grounds for removal from office or other sanctions as may be deemed appropriate by the body of which such official is a member or by the City Council.

On such information and belief, the Mayor's action also violated Section 610.020.3 of the Revised Statutes of Missouri, which states in pertinent part:

No audio recording of any meeting, record, or vote closed pursuant to the provisions of section 610.021 shall be permitted without permission of the public body; any person who violates this provision shall be guilty of a class C misdemeanor.

(5) At a closed meeting of the Council held on February 27, 2013, Mayor Paul again used his phone to record the meeting discussion, in violation of Section 125.060.E of the City Code and Section 610.020.3 of the Revised Statutes of Missouri.

Mayor Paul's actions again have demonstrated a lack of respect for his office, the public, the City Council, and City staff, resulting in a complete lack of trust and confidence in, and respect for, the Mayor among Council members and City staff, to the point that the working relationships of the Mayor, Council members, and staff have become dysfunctional.

2. Mayor Adam Paul is hereby and immediately suspended from the duty of his office for a period not to exceed 45 days, during which time the Council shall consider and determine whether Mayor Paul has forfeited his office for one or more of the noted charges.

3. Unless a different date is required by operation of Section 3.6 of the Ellisville City Charter, the Council shall hold a public hearing on March 20, 2013 at 6 p.m., at City Hall to consider the charges and determine whether Adam Paul has forfeited the office of Mayor of the City of Ellisville.

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4. Mayor Paul may be represented by counsel at the hearing and shall be entitled to present evidence and to cross-examine witnesses in his defense. The City Council shall consider the evidence presented and shall make written findings of fact and conclusions of law in its determination of the evidence presented at the hearing.

5. The City Manager is authorized and directed to enter into a letter agreement, attached as Exhibit A, with Keith Cheung and the law firm of Curtis, Heinz, Garrett and O'Keefe to serve as special counsel for the purpose of presenting the noted charges.

6. The City Manager is authorized and directed to enter into a letter agreement, attached as Exhibit B, with John Maupin and the law firm of Eckenrode and Maupin to serve as hearing officer and special counsel to the City Council with regard to these removal proceeding.

THIS RESOLUTION IS ADOPTED BY THE COUNCIL OF THE CITY OF ELLISVILLE, ST. LOUIS COUNTY, MISSOURI, ON THIS DAY OF 2013.

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PIRRELLO _____
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(3) On February 18, 2013 Mayor Paul permitted his attorney to continuously and repeatedly interrupt and obstruct the meeting of the Charter Enforcement Commission.

(a) The meeting of the Charter Enforcement Commission was a meeting to determine whether probable cause existed to recommend to the City Council that a hearing be held to determine Mayor Paul's right to continue to occupy the office of Mayor. It was not a "hearing" under Missouri's Administrative Procedures Act, and while Mayor had the right to attend and observe the proceedings, neither he nor his attorney had any right to speak at the meeting, to produce evidence (other than his written answer to the charges), or to make any objections to the proceedings.

(b) Only seconds after the meeting was called to order, Mayor Paul's attorney interrupted the proceedings and demanded action on her previously filed requests for a continuance and for disqualification of two of the commission members and the City Attorney. She was informed (1) that the role of the Charter Enforcement Commission was only a preliminary one—to make a recommendation on the existence of probable cause to believe that a violation occurred, (2) that her requests and complaints were a part of the public record of the meeting, and (3) that the Mayor would be afforded all due process rights, including a determination of his requests, if the matter proceeded to a hearing. She was repeatedly asked to sit down and to let the Commission conduct its business, yet at every attempt of the Commission to do so, she again interjected, repeating her earlier claims, arguing with the City Attorney, and refusing to be silent. When informed that the police would be requested to escort her from the meeting place if she did not cease her outbursts, she continued her disruptive behavior, leading to a delay of the meeting, obstruction of the process, and her ultimate removal by the Chief of Police at the direction of the City Manager.

(c) The Mayor's attorney is his agent, and the Mayor is the "principal" in the agency relationship. As such the Mayor has the responsibility and authority to control the actions of the "agent", his attorney, during a meeting of a public governmental body. The Mayor failed to do so. His attorney's unreasonable, obstructive behavior was not intended to preserve any legal defenses or positions but only to force her removal from the proceedings for the purposes of publicity and political impact. As the principal in the relationship, the Mayor is responsible for the attorney's disruptive behavior.