



**CITY OF WALLED LAKE  
SPECIAL COUNCIL MEETING  
(ELECTRONIC MEETING PLATFORM)  
THURSDAY, DECEMBER 10, 2020  
7:30 P.M.**

The Meeting was called to order at 7:30 p.m. by Mayor Ackley.

**ROLL CALL** Mayor Ackley, Mayor Pro Tem Ambrose, Council Member Loch, Council Member Lublin, Council Member Owsinek, Council Member Woods

There being a quorum present, the meeting was declared in session.

**REQUESTS FOR AGENDA CHANGES** None

**CITY MANAGER REPORT**

**1. Award Presentations:**

**Government Finance Officers Association Distinguished Budget Presentation Award presented to the City of Walled Lake**

City Manager Whitt said the city was awarded the Government Finance Officer Association Distinguished Budget of the Year Award. Manager Whitt said Finance Director Barlass worked steadfast on the application and receipt of award. Manager Whitt congratulated Finance Director Barlass and stated she did an outstanding job.

City Manager Whitt explained the City's Employee of the Year is awarded at this time each year. Manager Whitt explained that due to her outstanding performance Finance Director Sandra Barlass has been designated as Employee of the Year. City Manager Whitt asked the community and City Council to acknowledge Finance Director Sandra Barlass' good work.

**CM 12-1-20 MOTION TO ACKNOWLEDGE SANDRA BARLASS AS THE CITY OF WALLED LAKE 2020 DEPARTMENT HEAD OF THE YEAR**

Motion by Lublin, seconded by Woods: UNANIMOUSLY CARRIED: To acknowledge Sandra Barlass as the City of Walled Lake 2020 Department Head of the Year.

Roll Call Vote

Ayes (5) Lublin, Owsinek, Woods, Ambrose, Ackley  
Nays (0)  
Absent (1) Loch  
Abstain (0)

Council Member Owsinek said Finance Director Barlass has done her job well and he hopes she enjoys her new adventure.

*\*Council Member Loch joined meeting 7:45 p.m.*

**2. Receive and File Resignation of Department Heads**

City Manager Whitt explained Ms. Barlass is leaving the city to provide services within another community.

**CM 12-2-20 MOTION TO RECEIVE AND FILE RESIGNATION OF SANDRA BARLASS, FINANCE DIRECTOR**

Motion by Owsinek, seconded by Lublin, UNANIMOUSLY CARRIED: To receive and file the resignation of Sandra Barlass, Finance Director.

Roll Call Vote

Ayes (6) Loch, Lublin, Owsinek, Woods, Ambrose, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

City Manager Whitt explained now that there is a vacancy in the Finance Director position, he would like approval of Chelsea Pesta as Finance Director. Manager Whitt explained if Ms. Pesta accepts and council approves, she will be resigning as City Treasurer.

**3. Fill Vacancies on City Council, Boards and Commissions and Staff**

**CM 12-3-20 MOTION TO APPROVE RESOLUTION 2020-37 A RESOLUTION TO APPOINT CHELSEA PESTA TO THE OFFICE OF FINANCE AND BUDGET; PROVIDING FOR THE EXERCISE OF POWERS OF THE CITY FINANCE DIRECTOR**

Motion by Loch, seconded by Owsinek, UNANIMOUSLY CARRIED: To approve resolution 2020-37 a resolution to appoint Chelsea Pesta to the Office of Finance and Budget; providing for the exercise of powers and authorities of the City Finance Director.

Roll Call Vote

Ayes (6) Lublin, Owsinek, Woods, Ambrose, Loch, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

**CM 12-4-20 MOTION TO RECEIVE AND FILE RESIGNATION OF CHELSEA PESTA, CITY TREASURER**

Motion by Owsinek, seconded by Lublin, UNANIMOUSLY CARRIED: To receive and file the resignation of Chelsea Pesta, City Treasurer.

Roll Call Vote

Ayes (6) Owsinek, Woods, Ambrose, Loch, Lublin, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

**CM 12-5-20 MOTION TO APPROVE RESOLUTION 2020-38 TO A RESOLUTION TO APPOINT L. DENNIS WHITT TO THE OFFICE OF CITY TREASURER; PROVIDING FOR THE EXERCISE OF POWERS AND AUTHORITIES OF THE CITY TREASURER**

Motion by Lublin, seconded by Owsinek, UNANIMOUSLY CARRIED: To approve resolution 2020-38 a resolution to appoint L. Dennis Whitt to the Office of City Treasurer; providing for the exercise of powers and authorities of the City Treasurer.

Roll Call Vote

Ayes (6) Woods, Ambrose, Loch, Lublin, Owsinek, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

City Manager Whitt opined there are several vacancies on the city's boards and commissions and recommended Mayor and Council review. City Manager Whitt

recommended the Mayor and Council also fill the vacancy on city council as soon as possible, according to city Charter there is a time limit of 60 days to do so. City Manager Whitt explained if no appointment is made by city council there will have to be a special election.

**4. Discussion on scheduling a Performance Evaluation of City Manager pursuant to the Employment Agreement**

City Manager Whitt explained it is time for his annual review per his agreement and asked council to consider scheduling his performance evaluation.

Mayor Ackley said if council agrees, she requested council make a motion this evening on the City Manager's performance. Mayor Ackley opined that the City Manager has performed very satisfactorily in his role.

**CM 12-6-20 MOTION THAT THE CITY COUNCIL UNANIMOUSLY FINDS THAT THE CITY MANAGER'S PERFORMANCE FOR THE YEAR 2020 HAS BEEN SASTISFACTORY**

Motion by Lublin, seconded by Ambrose: UNANIMOUSLY CARRIED: To motion that the City Council unanimously agree with providing a satisfactory performance evaluation for City Manager Whitt.

City Manager Whitt explained he will not be part of the closed session for this meeting and will be stepping out of the meeting for this portion.

**CITY ATTORNEY REPORT**

City Attorney explained he wanted to take this opportunity to comment on some significant legal issues arising as a result of the vote on the initiatory ballot proposal to amend section 4.7 of the City Charter that purports to effectuate a voter removal of the current City Manager who, by charter, is an appointive official appointed by Council and not an elective official who is elected and removed from office by the voters at the polls. Pursuant to the charter amendment procedures under state statute, the initiatory charter amendment proposal was reviewed and acted upon by both the state Attorney General and Governor for purposes of determining compliance with applicable state law requirements. Pursuant to their statutory authority, both the state Attorney General and Governor found the proposed charter amendment did not comply with applicable state law requirements and therefore disapproved the initiatory proposal to amend section 4.7 of the City Charter.

City Attorney Vanerian said because this amendment was proposed by way of an initiatory petition and citizens have the right to present proposed charter amendments to the voters for their consideration by way of an initiatory petition, under state law, government officials, including the Attorney General and Governor, cannot veto this

right by preventing an initiatory proposal from appearing on the ballot. This explains why the initiatory proposal to amend section 4.7 of the City Charter appeared on the November 2020 ballot even though both the state Attorney General and Governor found the proposed amendment defective under state law. However, once an initiatory charter amendment is approved by the voters, the validity of the charter amendment under state law is evaluated under the same legal standards as any other local law regardless of how that local law originated or was adopted. In other words, for purposes of evaluating the validity of a local law under state law, it makes no difference if the local was adopted by way of the initiatory, rather than the more typical legislative process. Therefore, under well settled Michigan law, voter approval of an initiatory charter amendment does not somehow waive or abrogate defects and deficiencies arising under state law.

City Attorney Vanerian explained it is important for people to understand why both the Attorney General and Governor found this charter amendment defective under state law. In the state of Michigan, there are 3 basic forms of local government: Townships, Villages and Cities. The City of Walled Lake is a Home Rule City organized and existing under a state law known as the Home Rule City Act. Under the Home Rule City Act, an existing city charter can be changed by only one of two legally distinct procedural mechanism; those being either a charter amendment or a charter revision. If a change to an existing charter provision represents a fundamental change in how the existing City government operates, it must be accomplished by way of a charter revision rather than an amendment. Under Michigan law, a proposed charter amendment approved by the voters is invalid under the Home Rule City Act if the change is fundamental in nature and therefore requires approval through the charter revision process rather than the charter amendment process.

City Attorney Vanerian further explained both the Attorney General and Governor found the proposed charter amendment represented a fundamental change in how the City's existing City government operates. Under the City's historic Council-Manager form of representative government, only the seven members of council are elective officials subject to appointment and removal at the polls by a vote of the City's residents. Historically, City Council, in its representative capacity, appoints and removes appointive officials such as the City Manager who historically serve at the sole discretion and pleasure of City Council per City Charter. As determined by the Attorney General and Governor, subjecting sitting appointive officials such as the City Manager to direct voter removal through the adoption of entirely new charter-imposed prohibitions that prohibit sitting appointive officials from continued service in their respective appointive office represents a fundamental change to the City's historic Council-Manager form of representative government where appointive officials have always served at the sole discretion and pleasure of council and have never before been subject to any form of direct voter removal. Accordingly, both the state Attorney General and Governor made their statutorily authorized determinations that the Home Rule City Act therefore requires adoption of the proposed change under the charter revision provisions of the Home Rule City Act rather than the chosen amendment provisions. Again, under Michigan law, a proposed charter amendment approved by the voters is invalid under the Home Rule City

Act if the change is fundamental in nature and therefore required approval through the charter revision process rather than the charter amendment process. *City of Midland v Arbury*, 38 Mich App 771 (1972).

City Attorney Vanerian said the Attorney General's well supported March 18, 2020 written legal determination cites many prior instances in other Home Rule Cities where initiatory charter amendment proposals have attempted to impose direct voter decision making over who serves, or is prohibited from serving, in an appointive office. As recognized by the Attorney General, initiatory proposals seeking to subject sitting appointive city officials to direct voter removal under the guise of creative charter "amendments" (e.g. recall, term limits, abolishment of office, etc.) have been consistently found invalid under the HRCA due to these fundamental changes requiring adoption under the charter "revision" rather than the "amendment" procedures of the HRCA. Attorney Vanerian said his independent legal research reveals no legal authorities that would call into question the Attorney General's statutorily authorized determination that the changes proposed by way of the November 2020 proposal to amend section 4.7 of the City Charter were fundamental in nature and therefore require adoption under the charter revision rather than the amendment provisions of the Home Rule City Act. He stated neither himself as city Attorney nor this Council has the independent legal authority to overrule a statutorily authorized determination by the state Attorney General and/or Governor on an issue of state law.

City Attorney Vanerian said under the Home Rule City Act, both a charter revision and a charter amendment can be initiated by way of an initiatory petition. As determined by the Attorney General and Governor, the sponsor of this initiatory petition improperly sought to pursue this fundamental change to the City's Charter by way of an amendment rather than the required revision procedures. Had the sponsor properly pursued this fundamental change as a revision rather than as a legally defective amendment, as determined by the Attorney General and Governor, there would be no apparent legal defect under state law. Moreover, had this change to the City's Charter been accomplished by way of a properly adopted revision rather than this legally defective amendment, the resulting contractual liability exposure under the termination provisions of the current City Manager's employment contract, which exceeds three quarters of a million dollars, could have been avoided entirely. Unfortunately, as determined by the state Attorney General and Governor, the sponsors of this petition failed to pursue this fundamental change to the City's Charter in a legally permissible manner thereby creating significant legal doubt as to the validity of this amendment under state law and further exposing the City to substantial contractual liability claims under the current city Manager's employment contract that exceeds three quarters of a million dollars.

City Attorney Vanerian said lastly, assuming for the sake of argument that this charter amendment was somehow properly adopted as an amendment rather than as a revision, the absence of any legal authority that would support that assumption notwithstanding, state statute provides that an initiatory charter amendment that contemplates the expenditure of unbudgeted funds does not become effective until the following fiscal year

which means this charter amendment would not become legally effective until July 1, 2021 given the substantial unbudgeted financial exposure under the current City Manager's employment contract directly resulting from this charter amendment.

- 1. Closed Session request to discuss Confidential Attorney Client Communications regarding future litigation strategy pursuant to Section 8 (e) of the Open Meetings Act**

**CM 12-7-20 TO APPROVE REQUEST TO ENTER INTO CLOSED SESSION TO DISCUSS CONFIDENTIAL ATTORNEY CLIENT COMMUNICATIONS REGARDING FUTURE LITIGATION STRATEGY PURSUANT TO SECTION 8(E) OF THE OPEN MEETINGS ACT (OMA)**

Motion by Ambrose, seconded by Loch, UNANIMOUSLY CARRIED: To approve to enter closed session to discuss confidential attorney client communications regarding future litigation strategy pursuant to Section 8 (e) of the Open Meetings Act (OMA)

Roll Call Vote

Ayes (6) Loch, Lublin, Owsinek, Woods, Ambrose, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

#### **NEW BUSINESS**

- 1. Proposed Resolution 2020-39 Establishing Procedures to Allow Electronic Meetings Public Act 228 of 2020 Pursuant to the Open Meetings Act**

**CM 12-8-20 TO APPROVE RESOLUTION 2020-39 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WALLED LAKE ESTABLISHING PROCEDURES TO ALLOW ELECTRONIC MEETINGS OF ALL CITY OF WALLED LAKE PUBLIC BODIES AND/OR THE ATTENDANCE AT MEETINGS BY MEMBERS OF THE PUBLIC BODIES**

Motion by Lublin, seconded by Loch, UNANIMOUSLY CARRIED: To approve resolution 2020-39 a resolution of the City Council of the City of Walled Lake to allow electronic meetings of all City of Walled Lake public bodies and/or the attendance at meetings by members of the public bodies.

Roll Call Vote

Ayes (6) Loch, Lublin, Owsinek, Woods, Ambrose, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

**2. Proposed Resolution 2020-40 Schedule of Regular Meetings for 2021  
Calendar Year**

**CM 12-9-20 TO APPROVE RESOLUTION 2020-40 A RESOLUTION  
ESTABLISHING THE TIME, PLACE AND THE 2021  
SCHEDULE OF REGULAR MEETINGS FOR THE CITY  
OF WALLED LAKE PURSUANT TO CITY CHARTER;  
PROVIDING FOR PUBLICATION**

Motion by Ambrose, seconded by Owsinek, UNANIMOUSLY CARRIED: To approve resolution 2020-40 a resolution establishing the time, place and the 2021 Schedule of Regular Meetings for the City of Walled Lake pursuant to City Charter; providing for publication.

Roll Call Vote

Ayes (6) Lublin, Owsinek, Woods, Ambrose, Loch, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

**3. Proposed Resolution 2020-41 Approving the Interlocal Agreement for  
Transportation Services with the Western Oakland Transportation  
Authority (WOTA)**

**CM 12-10-20 MOTION TO APPROVE RESOLUTION 2020-41  
A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE AN INTERLOCAL AGREEMENT WITH  
THE WESTERN OAKLAND TRANSPORTATION  
AUTHORITY (WOTA) TO ASSIST IN COORDINATION  
AND THE OPERATION OF THE RESIDENTIAL  
TRANSPORTATION PARTNERSHIP PROGRAM WITH  
HIGHLAND TOWNSHIP**

Motion by Owsinek, seconded by Woods, UNANIMOUSLY CARRIED: To approve resolution 2020-41 a resolution authorizing the City Manager to execute an interlocal agreement with the Western Oakland Transportation Authority



(WOTA) to assist in coordination and the operation of the residential transportation partnership program with Highland Township.

Roll Call Vote

Ayes (6) Owsinek, Woods, Ambrose, Loch, Lublin, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

**4. Proposed Resolution 2020-42 providing acknowledgment of the Walled Lake Civic Fund as a recognized organization operating in the City of Walled Lake**

**CM 12-11-20 TO APPROVE RESOLUTION 2020-42 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WALLED LAKE PROVING ACKNOWLEDGEMENT OF THE WALLED LAKE CIVIC FUND AS A RECOGNIZED ORGANIZATION OPERATING IN THE CITY**

Motion by Loch, seconded by Woods, UNANIMOUSLY CARRIED: To approve resolution 2020-42 a resolution of the City Council of the City of Walled Lake providing acknowledgment of the Walled Lake Civic Fund as a recognized organization operating in the City.

Roll Call Vote

Ayes (6) Woods, Ambrose, Loch, Lublin, Owsinek, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

**COUNCIL COMMENTS**

Council Member Owsinek said he hopes everyone had a wonderful Thanksgiving. Member Owsinek said he hopes the local small businesses weather this next round of shutdowns and they need our support.

Council Member Lublin said he also hopes everyone supports the local businesses during these times.

Council Member Woods said he too also echoes the support for the small businesses. Member Woods said Mrs. Barlass did a great job and he appreciates her work and wishes her well. He wished everyone a happy 2021.

Council Member Loch said she also would like to thank Mrs. Barlass for her hard work and wishes her well in the future.

Mayor Pro Tem Ambrose said congratulations to Mrs. Barlass and good luck. He wished everyone a safe holiday season.

## **MAYOR'S REPORT**

Mayor Ackley wished everyone a happy and safe holiday. Mayor Ackley acknowledged the lights all around the public safety campus they look beautiful. Mayor Ackley explained Council Member Woods had posted the city's local restaurant phone numbers in an easily accessible list on his Facebook page as a quick access point to help the local businesses. Mayor Ackley said she has spoken with Oakland County and there is some grant funding that will be coming for the restaurants.

### **1. City Charter, Section 4.5(g) Duties of Mayor to nominate qualified person to the Council and various Boards and Commissions**

Mayor Ackley said she has spoken with the applicants; they are all very qualified. Mayor Ackley said she is nominating Mindy Fernandes, she is a 20-year citizen of Walled Lake, works as a legislative aid in Lansing and currently serves on the DDA board. Mayor Ackley explained upon Ms. Fernandes acceptance of nomination and appointment she would have to step down from the DDA.

**CM 12-12-20 TO APPROVE RESOLUTION 2020-43 A RESOLUTION ACCEPTING THE MAYOR'S NOMINATION TO FILL A VACANCY IN THE OFFICE OF CITY COUNCILPERSON PURSUANT TO THE REQUIREMENTS OF THE CITY CHARTER; MAKING AN APPOINTMENT TO THE OFFICE OF CITY COUNCILPERSON**

Motion by Owsinek, seconded by Loch, UNANIMOUSLY CARRIED: To approve resolution 2020-43 a resolution accepting the Mayor's nomination to fill a vacancy in the Office of City Councilperson pursuant to the requirements of the City Charter; making an appointment to the Office of City Councilperson.

## **Roll Call Vote**

Ayes (6)      Ambrose, Loch, Lublin, Owsinek, Woods, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

## AUDIENCE PARTICIPATION

Neal Wolfson, Winwood – said congratulations to Mrs. Barlass as Department Head of the Year and wished her well in new role within her new community. Mr. Wolfson also provided congratulations to new council member Mrs. Mindy Fernandes. Mr. Wolfson wished everyone a happy holiday.

Giovanni Johnson – said he is a member of the Parks and Recreation Commission; he explained the commission did try its best to push through during the COVID-19 pandemic. Mr. Johnson said congratulations to the outgoing staff and the new role for Mrs. Fernandes as a city council member. He wished everyone a happy holiday.

Mindy Fernandes, 45400 W. Pontiac Trail – said she is excited to help the city in moving forward and accomplish even greater things into the future. Mrs. Fernandes said she appreciated the time and questions of the interview by Mayor Ackley in this process for council appointment to fill an unexpired term due to vacancy and the prudent inquiries she made.

Council entered closed session 8:45p.m.

Council arose from closed session 9:29 p.m.

Council reconvened meeting 9:31 p.m.

**CM 12-13-20 MOTION TO AUTHORIZE THE CITY ATTORNEY TO  
TAKE REASONABLE AND APPROPRIATE LEGAL  
ACTIONS TO ADDRESS AND RESOLVE ANY LEGAL  
ISSUES ARISING FROM THE NOVEMBER 2020  
CHARTER AMENDMENT BALLOT RESULT**

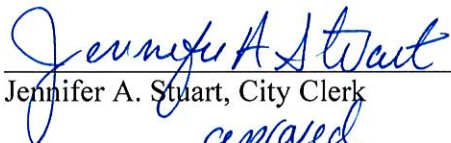
Motion by Lublin, seconded by Loch: UNANIMOUSLY CARRIED: To authorize the City Attorney to take reasonable and appropriate legal actions to address and resolve and legal issues arising from the November 2020 Charter amendment ballot result.

### Roll Call Vote

Ayes (6) Loch, Lublin, Owsinek, Woods, Ambrose, Ackley  
Nays (0)  
Absent (0)  
Abstain (0)

**ADJOURNMENT**

Meeting adjourned at 9:35p.m.

  
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Jennifer A. Stuart, City Clerk  
*approved*  
*1-19-21*

  
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Linda S. Ackley, Mayor