

IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO
CIVIL DIVISION

CITY OF NELSONVILLE
et al.,
Plaintiffs and Counterclaim Defendants

Case Number 25CI0136

Judge Patrick Lang

Jury Demand Endorsed Hereon

v.

GREGORY SMITH
Defendant and Counterclaim Plaintiff
et al.

**DEFENDANT’S ANSWER, DEFENSES, AND COUNTERCLAIMS
TO PLAINTIFFS’ COMPLAINT**

ANSWER AND FIRST DEFENSE

For his First Defense, Defendant responds to answer the numbered Paragraphs of Plaintiff’s Complaint in matching numbered paragraphs as follows in the numbered paragraphs below: Plaintiff’s unnumbered paragraphs that contain headers and identify legal actions and/or conclusions for which no response is required are identified and/or are otherwise denied to the extent these paragraphs can be construed to assert material facts in support of Plaintiffs in this case in this case. The words “Plaintiff” or “Plaintiffs” may be used interchangeably throughout this document and mean any party named as a Plaintiff in the Complaint.

1. Defendant denies paragraph 1 to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case, denies that Nelsonville has been left with no other choice than to seek judicial relief, denies that he has perpetrated or continues to perpetrate fraud against Nelsonville or anyone and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff’s Paragraph 1.

2. Defendant admits the allegations of Plaintiff's Paragraph 2.
3. Defendant admits "Those litigations relating to Mr. Smith's former position resulted in the parties entering into a full and complete settlement agreement." Defendant admits "A copy of the Settlement Agreement is incorporated herein by reference for all purposes and in its entirety as Exhibit 1. The Settlement Agreement expressly provided Mr. Smith would release his claims against the City." Defendant denies "The Settlement Agreement became effective when Nelsonville City Council voted (on or about January 22, 2024) to authorize the Settlement Agreement and to make payments to Mr. Smith pursuant to the Settlement Agreement." Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 3.
4. Defendant denies all the allegations of Plaintiff's Paragraph 4.
5. Defendant denies the allegations of Plaintiff's Paragraph 5 to the extent that Defendant has no knowledge of what the Plaintiff assumed about Mr. Smith "at the time". Defendant otherwise denies any knowledge of any facts alleged in Paragraph 5 as such allegation may be interpreted to allege wrongdoing of the Defendant and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 5.
6. Paragraph 6 contains legal conclusions to which no response is required. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 6. Further answering, Defendant denies engaging in any fraud or fraudulent intent.
7. Paragraph 7 contains legal conclusions to which no response is required. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert

material facts in support of Plaintiffs in this case and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 7. Further answering, Defendant denies engaging in any fraud or fraudulent intent.

8. Paragraph 8 contains legal conclusions to which no response is required. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 8. Plaintiff further answers he has abided by all contractual obligations under the Settlement Agreement.
9. Paragraph 9 contains legal conclusions to which no response is required. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 9.
10. Paragraph 10 contains legal conclusions to which no response is required. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 10. Further answering, Defendant denies engaging in any fraud or fraudulent intent.
11. Paragraph 11 contains legal conclusions to which no response is required. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 11.

12. Paragraph 12 contains legal conclusions to which no response is required. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 12.
13. Defendant denies the allegation in Paragraph 13 that this Court has jurisdiction to determine enumerated rights of the parties as defined pursuant to Exhibit 1, the Settlement Agreement on the basis there is no jurisdiction by a lack of standing of the Plaintiffs as a proper party. Defendant admits the allegation in Paragraph 13 that Exhibit 1, the Settlement Agreement, is attached to Plaintiff's complaint. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 13.
14. Defendant admits the allegation in Paragraph 14.
15. Defendant admits the allegation in Paragraph 15.
16. Defendant admits the allegation in Paragraph 16.
17. Defendant admits the allegation in Paragraph 17 that he is a natural person. Defendant admits the allegation in Paragraph 17 that he resides in Nelsonville and that he has made prior public representations he resides in Nelsonville. Defendant denies Nelsonville has a good faith basis to doubt the veracity of those prior public representations and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 17.
18. Defendant denies any knowledge of any John Does #1-25 who are persons and/or businesses whose names and addresses could not be discovered and who could not be

sufficiently described on the basis that Defendant denies any conspiratorial conduct associated with the arrest of April 14, 2025. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 18.

19. To the extent this paragraph 19 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference to all of his previous responses to all prior enumerated allegations of the Plaintiff in the corresponding numerical averment.

A. A Brief History of Time: Mr. Smith's Lawsuits Relating to A Council Seat

Plaintiff's statement is a conclusory statement requiring no responsive pleading. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

20. In ¶20 Plaintiff's first sentence is an opinion and states no law or fact requiring a responsive pleading. To the extent the sentence describes Defendant's relationship with Nelsonville as "convulsive", Defendant denies the allegation. Defendant admits he has held various appointed and elected positions in city government. And that most recently he was a member of Nelsonville City Council, prior to his resignation. Defendants admits he resigned as council president on or about January 22, 2024. Defendant denies that he resigned his position as a member of counsel on or about February 12, 2025 and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 20.

21. Defendant admits the allegation in Paragraph 21.

22. Defendant admits the allegation in Paragraph 22.

23. Defendant answers Paragraph 23. The Settlement Agreement speaks for itself. Defendant further answers he entered into the Settlement Agreement in good faith. Defendant further

answers the Settlement Agreement speaks for itself as to any liability of Nelsonville. Defendant has insufficient information as to the motives of Nelsonville to admit or deny Nelsonville's good faith or desire to end litigation and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 20.

24. Defendant admits the allegations in Paragraph 24 to the extent they are consistent with the Settlement Agreement. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 24.
25. Defendant admits the allegations in Paragraph 25 to the extent they are consistent with the Settlement Agreement. Defendant admits payments under Sections 1(a) and 1(b) of this Agreement were specifically made in consideration of his promises made to resign from City Council and not seek re-election pursuant to Section 4 of this Agreement. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 25.
26. Defendant answers Paragraph 26 and admits Paragraph 3 of the Settlement Agreement is reproduced verbatim in Paragraph 26 of the Plaintiff's Complaint and speaks for itself. Defendant further answers that he denies seeking any back pay. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 26.
27. Defendant has insufficient information as to the motives of Nelsonville to admit or deny Nelsonville would have agreed or not agreed to the Settlement Agreement as a whole based on Paragraph 3 of the Settlement Agreement, there being other provisions conditioning its acceptance by the parties and thus denies the averment.
28. Defendant admits the allegation in Paragraph 28.

29. Defendant admits the allegations in Paragraph 29 that Nelsonville delivered settlement payments to Defendant in reliance upon the Defendant having signed the Settlement Agreement for his promises made to resign from City Council and not seek re-election pursuant to Section 4 of this Agreement. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 29.
30. Plaintiff's Paragraph 30 contains conclusory opinions to which no responsive pleading is necessary. However, Defendant further answers he denies any intention of not abiding by his contractual obligations including contractual obligations set forth in Paragraph 3 of the Settlement Agreement. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 30.
31. Paragraph 31 contains legal and factual conclusions to which no response is required. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 3. Defendant further denies any intent at any time to not abide by the signed Settlement Agreement. Defendant further denies any fraudulent intent of inducing Nelsonville into paying him (or for his benefit) the settlement payments.

B. City Council's January 22, 2025 Council Meeting and Executive Session

- Plaintiff's statement is a conclusory statement requiring no responsive pleading. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case. Defendant denies participating in a January 22, 2025 Council Meeting and Executive Session.
32. Defendant admits the allegation in Paragraph 32.

33. Defendant admits the Settlement Agreement was approved by City Council on December 11, 2023. Defendant denies the Settlement Agreement became effective on January 22, 2024. Defendant admits that the approval of City Council made the Settlement Agreement effective as last signed by all parties December 14, 2023 by the Nelsonville City Manager.
34. Defendant denies the allegation in Paragraph 32 that on January 22, 2025, City Council held a regular Council meeting. Defendant admits that on January 22, 2024, City Council held a regular Council meeting over which he presided until replaced by Rita Nguyen.
35. Defendant admits that on January 22, 2024, City Council held a regular Council meeting and voted to go into executive session to “Consider a proposal that [The City’s] attorneys for Gary Hunter lawsuit made and wants [City Council] to consider”. Defendant has insufficient information of the letter to Nelsonville to admit or deny the proposal had been submitted via letter to the City for City Council’s consideration. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff’s Paragraph 35.
36. Defendant admits the allegation in Paragraph 36.
37. Defendant admits the allegation in Paragraph 37.
38. Defendant partially admits and partially denies the allegations in Paragraph 38. Defendant admits making the statements in quotation marks but denies knowledge of making a specific statement using the words “this would not pose a problem”.
39. Defendant admits the allegation in Paragraph 39.
40. Defendant admits to the allegation of Paragraph 40 that in the executive session there was a discussion of Gary Hunter’s settlement proposal which was approved by all Council Members, including Defendant, in open session after the close of the executive session.

Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 40.

41. Defendant denies that City Council proceeded to consider the Settlement Agreement with Mr. Smith. Defendant admits that the City Manager told others present in the session everything was done, all signatures are in place, everything has been withdrawn against the city, the documents already in place and "we have to comply". Defendant admits he told the session he needed to clarify that the appropriation for the settlement the City Manager said "everything was done" was his so that he could abstain from voting as he had agreed to in December with Nelsonville legal counsel. Defendant admits he told the session attendees he was not going to talk about it and abstain from any vote regarding his Settlement Agreement. Defendant admits no attorney was present at the executive session meeting of January 22, 2024. Defendant further answers and denies any unlawful or unethical deliberate and calculated move regarding the Settlement Agreement. Defendant denies any influence over the new Council President. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 41.
42. Defendant denies the allegations in sentence 1 of Paragraph 42. Defendant denies the allegations in sentence 2 of Paragraph 42. Defendant denies he was ever asked to leave the executive session. Defendant denies he was ever asked to leave the executive session repeatedly. Defendant denies he refused to leave on the basis that he was never asked to leave. Defendant denies making any statement as reported by Plaintiff to be "he couldn't and wouldn't leave unless someone else pushed his wheelchair out of the conference room." Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 42.

43. Defendant denies City Council considered the settlement agreement. Defendant admits he remained in the conference room for the entire executive session. Defendant denies there was any discussion of his Settlement Agreement. Defendant is without sufficient information to admit or deny what the public knew on January 22, 2024. Defendant denies any conduct in executive session intended to deprive the public of any knowledge of his settlement or otherwise act in a manner inconsistent with his duties as an elected official.
44. Defendant admits the allegations of paragraph 44.
45. Defendant admits the allegations of paragraph 45.
46. Defendant admits that after he had left the Council meeting room assisted by another person pushing his wheelchair, Council then voted on a motion to permit the Auditor to issue the checks in the amounts that had settled the lawsuit in December 2023. The motion did not identify the settlement amount. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 46.
47. Defendant admits the allegations of paragraph 47.
48. Plaintiff's allegation in Paragraph 48 are a statement of legal conclusions requiring no response. However, further answering, Defendant denies that being in an executive session without participating in any substance, approval, or influence of his already signed and effective Settlement Agreement violates any law, ethical standard or duty his office and denies that the entirety of his conduct constitutes any fraudulent intent.
49. Defendant admits in part the allegations of paragraph 49. Defendant admits he resigned his seat on City Council per the Settlement Agreement and thereafter was paid a Settlement by Nelsonville. Defendant is without sufficient knowledge to admit or deny the City did so only in reliance on Defendant's representations and promises in the Settlement Agreement

and thus denies the same. Defendant denies any fraudulent conduct related to the Settlement Agreement.

50. Defendant denies the allegations of paragraph 50 that he bragged regarding Nelsonville's relationship to his pickup truck. Defendant is without sufficient knowledge to admit or deny what Plaintiff may have presumed as to how Defendant used his settlement proceeds and thus denies the same. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 50.
51. Defendant denies the allegations of paragraph 51. Further answering, Defendant is without sufficient knowledge to admit or deny what was known to the City at the time of the signing of the Settlement Agreement and what the City now knows.

C. Mr. Smith's Continued Fraudulent Purpose

Plaintiff's statement is a conclusory statement requiring no responsive pleading. Defendant denies any fraudulent conduct related to the Settlement Agreement. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

52. Defendant denies any fraudulent purpose or conduct related to the Settlement Agreement at anytime.
53. Defendant admits to sending Exhibit 2 to the City Auditor. Defendant admits Exhibit 2 speaks for itself. Defendant denies asking for back pay. Defendant denies Exhibit 2 violates the Settlement Agreement.
54. Defendant admits Exhibit 2 uses the words "Please do a correction". Defendant denies this was a demand or claim. Defendant further denies that the request for a correction was for

back pay. Defendant states that Paragraph 3 of the Settlement Agreement speaks for itself and denies it expressly bars the request contained in Exhibit 2.

55. Defendant admits Exhibit 1 speaks for itself. Defendant denies there was any demand or claim for back pay or that Exhibit 1 contains a waiver for pay the Defendant earned for the time served on Council. Defendant is without sufficient knowledge to admit or deny the reasons the City agreed to make settlement payment to Defendant.
56. Defendant admits Exhibit 3 is addressed to Defendant's Counsel who represented Defendant at the time the Settlement Agreement was signed. Defendant admits Exhibit 3 speaks for itself.
57. Defendant admits Exhibit 3 speaks for itself and contains the language quoted in Paragraph 57. Defendant denies a claim for back pay, denies any claim to Plaintiff that was facially, frivolous, baseless, and/or contrary to binding law.
58. Defendant admits at the time Exhibit 3 was sent to Defendant the Counsel who represented Defendant in the Settlement Agreement did not represent the Defendant in his request for a correction by email on April 9, 2025 or subsequent interactions with the City regarding the request. Defendant admits he has since retained the same Counsel, signing below to represent him in this instant action.
59. Defendant admits the allegations in Paragraph 59.
60. Defendant denies the allegations contained in sentence one of Paragraph 60. Defendant is without sufficient knowledge to admit or deny what Nelsonville understood the email of April 11, 2025 to be and denies that the email was a threat to defraud anyone. Defendant denies that the April 11, 2025 email is contrary to the Settlement Agreement.

61. Defendant denies any false assertions in the April 11, 2025 email or any fraudulent purpose or intent and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 61.
62. Defendant admits an email dated April 16, 2025 from the Acting City Manager is contained in Plaintiff's Exhibit 4 and speaks for itself and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 62.
63. Defendant denies the allegations of sentence one of Paragraph 63 with the exception that Defendant responded to the Acting City Manager by email. Defendant denies the allegations of sentence three of Paragraph 63 pretending any position or conduct. Further answering the Defendant admits Exhibit 4 speaks for itself. Defendant denies authoring any email of April 6, 2025.
64. Defendant denies the allegations in Paragraph 64 and denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 64.
65. Defendant admits the allegation in Paragraph 65 that he sent a letter to City identified as Exhibit 5. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 65.
66. Defendant denies the allegation in Paragraph 66.

D. The Conspiracy to Disrupt A City Council Meeting

Plaintiff's statement is a conclusory statement requiring no responsive pleading. Defendant denies any conspiracy conduct related to the City Council meeting of April 14, 2025. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

67. Defendant denies the allegations in Paragraph 67.

68. Defendant denies the allegations in Paragraph 68.
69. Defendant admits the allegations in Paragraph 69.
70. Defendant is without sufficient knowledge to admit or deny the allegations of Paragraph 70 which fails to identify the city officer or whether the term refers to a law enforcement officer or any other officer of the City and thus denies the same. Defendant further answers he denies acting in an unlawful conspiracy related to the City Council meeting of April 14, 2025.
71. Defendant is without sufficient knowledge to admit or deny the allegations of Paragraph 71. Defendant further answers he denies acting in an unlawful conspiracy related to the City Council meeting of April 14, 2025.
72. Defendant denies the allegation in sentence one of Paragraph 72. Defendant denies any knowledge of any John or Jane Does #1-25 on the basis that Defendant denies any conspiratorial conduct associated with the arrest of April 14, 2025. Defendant expressly denies any allegations of Paragraph 72 not expressly admitted.
73. Defendant denies the allegations in Paragraph 73.
74. Defendant denies making the statements attributed to him in sentence one of Paragraph 74. Defendant admits making statements on public media informing Nelsonville citizens that the water and sewer fund contains records of payment of litigation fees for legal services and settlements of lawsuits. Defendant denies that making such truthful statements is evidence of any misconduct or fraud. Defendant further denies any allegation made in paragraph 74 not expressly admitted.
75. Defendant denies the allegations in Paragraph 75.
76. Defendant denies the allegations in Paragraph 76.

77. Plaintiff's allegations in Paragraph 77 contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.
78. Defendant denies he has made a frivolous or baseless demand to the City and denies that Nelsonville had no other choice but to bring this action. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.
79. Plaintiff's allegations in Paragraph 79 contain statements that require no responsive pleading by the Defendant. Defendant denies any attempt to defraud the good people of Nelsonville or anyone else. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

CLAMS FOR RELIEF

First Cause — Fraud

- Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.
80. To the extent this paragraph 80 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference of all of his previous responses to all prior enumerated allegations.
81. Defendant admits the allegation in Paragraph 81.
82. Defendant admits the allegation in Paragraph 82.

83. Defendant is without sufficient knowledge to admit or deny Nelsonville's reason for entering into the Settlement Agreement however Defendant admits in the Settlement Agreement Nelsonville agreed to pay \$137,500.00 to or for the benefit of the Defendant.
84. Defendant is without sufficient knowledge to admit or deny Nelsonville's reason for making a payment to the Defendant.
85. Defendant denies the allegations in Paragraph 85.
86. Defendant denies the allegations in Paragraph 86.
87. Defendant denies the allegations in Paragraph 87. Further answering, Defendant denies Plaintiff was damaged in any manner.
88. Defendant denies the allegations in Paragraph 88. Further answering, Defendant denies any act of fraud and denies Plaintiff was and/or continues to be damaged in any manner.
89. Defendant denies the allegations in Paragraph 89. Further answering, Defendant denies any act of fraud and denies Plaintiff was damaged in any manner.
90. Defendant denies the allegations in Paragraph 90.
91. In Paragraph 90 Defendant denies any act of fraud or continuing fraud and denies anyone was damaged in any manner.
92. Plaintiff's allegations in Paragraph 92 contain statements that require no responsive pleading by the Defendant. Further answering, Defendant denies any act of fraud.

Second Cause — Fraudulent Inducement

Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

93. To the extent this paragraph 93 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference of all of his previous responses to all prior enumerated allegations.
94. Defendant denies the allegations in Paragraph 94.
95. Defendant denies the allegations in Paragraph 95. Further answering Defendant denies any fraudulent inducement of anyone to sign the Settlement Agreement. Defendant is without knowledge to affirm or deny what Nelsonville and its agents would have done regarding the settlement payments made to the Defendant
96. Defendant denies the allegations in Paragraph 96.
97. Defendant denies the allegations in Paragraph 97.
98. Defendant denies the allegations in Paragraph 98. Further answering Defendant denies any fraudulent conduct against the people of Nelsonville.
99. Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant denies any fraudulent conduct.

Third Cause — Constructive Fraud

- Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.
100. To the extent this paragraph 100 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference of all of his previous responses to all prior enumerated allegations.
101. Defendant admits the allegation in Paragraph 101.

102. Defendant admits that he has a duty not to perpetrate fraud. Defendant admits that he had a duty to act lawfully as a Council Member. Defendant denies all other allegations of Paragraph 102 to the contrary. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 102.
103. Defendant admits the allegations in Paragraph 103. Further answering, Defendant denies he violated any duty owed to Nelsonville as a Council Member.
104. Defendant denies the allegations in Paragraph 104.
105. Defendant denies the allegations in Paragraph 105. Further answering, Defendant is without sufficient knowledge to admit or deny Nelsonville's reason for entering into the Settlement Agreement. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 105.
106. Defendant admits the allegation in Paragraph 106 that he is no longer on City Council. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 106.
107. Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Further answering, Defendant denies any fraudulent conduct or breach of duty as a Council Member.

Fourth Cause — Breach of Contract

Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

108. To the extent this paragraph 108 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference of all of his previous responses to all prior enumerated allegations.
109. Defendant admits the allegation in Paragraph 109.
110. Defendant admits the allegation in Paragraph 110. Further answering, Defendant states he has performed all conditions precedent and subsequent of Exhibit 1, the contract. Further answering, Defendant is without sufficient knowledge to admit or deny Nelsonville's allegation regarding the current state of discharge or waiver by Nelsonville.
111. Defendant denies the allegations in Paragraph 111.
112. Defendant admits to Paragraph 112 he would forever waive any claim or demand for any back pay or benefits for his service on City Council.
113. Defendant denies the allegations in Paragraph 113.
114. Defendant denies the allegations in Paragraph 114 that Nelsonville has performed all of its contractual obligations by solely tendering the payments to or on behalf of the Defendant. Defendant denies Nelsonville has acted in good faith. Defendant is without sufficient knowledge to admit or deny Nelsonville's allegation it stands ready to perform any of its remaining and/or ongoing contractual obligations.
115. For Paragraph 115, Defendant answers he is without sufficient knowledge to admit or deny Nelsonville's allegation it has substantially performed what is required of it under the Settlement Agreement.
116. For Paragraph 116 Defendant admits he has an obligation to perform all of the conditions of the Settlement Agreement. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 106.

117. Defendant answers he is without sufficient knowledge to admit Nelsonville's allegation and therefore denies for lack of understanding the meaning of Paragraph 117.
118. Defendant denies the allegations in Paragraph 118.
119. Defendant denies the allegations in Paragraph 119.
120. Defendant denies the allegations in Paragraph 120.
121. Defendant denies the allegations in Paragraph 121. Further answering, Defendant denies Plaintiff has a lawful interest in bringing this action.
122. Defendant denies the allegations in Paragraph 122. Further answering, Defendant denies acting in bad faith.
123. Plaintiff's allegations in Paragraph 123 contain statements that require no responsive pleading by the Defendant. Further answering, Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 123.
124. Defendant denies the allegations in Paragraph 124. Further answering, Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 124.

Fifth Cause — Specific Performance

Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

125. To the extent this paragraph 125 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference of all of his previous responses to all prior enumerated allegations.
126. Defendant admits the allegation in Paragraph 126.

127. Defendant admits to Paragraph 127 he would waive any claim or demand for any back pay or benefits for his service on City Council. Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 127.
128. Defendant denies the allegations in Paragraph 128.
129. Defendant denies the allegations in Paragraph 129 that Nelsonville has performed all of its contractual obligations by solely tendering the payments to or on behalf of the Defendant. Defendant denies Nelsonville has acted in good faith. Defendant is without sufficient knowledge to admit or deny Nelsonville's allegation it stands ready to perform any of its remaining and/or ongoing contractual obligations.
130. For Paragraph 130, Defendant answers he is without sufficient knowledge to admit or deny Nelsonville's allegation it has substantially performed what is required of it under the Settlement Agreement.
131. Defendant denies the allegations in Paragraph 131.
132. Plaintiff's allegations in Paragraph 132 contain statements that require no responsive pleading by the Defendant. Further answering, Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 123.
133. Defendant denies the allegations in Paragraph 133.

Sixth Cause — Restitution

Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

134. To the extent this paragraph 134 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference of all of his previous responses to all prior enumerated allegations.
135. Defendant denies the allegations in Paragraph 135
136. For Paragraph 136, Defendant answers he is without sufficient knowledge to admit or deny Nelsonville's allegation it has substantially performed what is required of it under the Settlement Agreement.
137. Defendant denies the allegations in Paragraph 137.
138. Defendant denies the allegations in Paragraph 138.
139. Defendant denies the allegations in Paragraph 139.
140. Plaintiff's allegations in Paragraph 140 contain statements that require no responsive pleading by the Defendant. Further answering, Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 140.
141. Defendant denies the allegations in Paragraph 141.

Seventh Cause — Anticipatory Breach of Contract

Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

142. To the extent this paragraph 142 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference of all of his previous responses to all prior enumerated allegations.
143. Defendant denies the allegations of anticipatory breach in Paragraph 143.
144. Defendant admits the allegation in Paragraph 144.

145. Defendant denies the allegations in Paragraph 145.
146. Defendant denies the allegations in Paragraph 146.
147. Defendant denies the allegations in Paragraph 147.
148. Defendant denies the allegations in Paragraph 148.
149. For Paragraph 149, Defendant answers he is without sufficient knowledge to admit or deny Nelsonville's allegation it has substantially performed what is required of it under the Settlement Agreement.
150. For Paragraph 150 Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Further answering, Defendant denies all other allegations and averment of facts not expressly admitted to as alleged in Plaintiff's Paragraph 150.
151. Defendant denies the allegations in Paragraph 151.

Eighth Cause — Civil Conspiracy

- Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.
152. To the extent this paragraph 152 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference of all of his previous responses to all prior enumerated allegations.
153. Defendant denies the allegations in Paragraph 153.
154. Defendant denies the allegations in Paragraph 154.
155. Defendant denies the allegations in Paragraph 155.
156. Defendant denies the allegations in Paragraph 156.
157. Defendant denies the allegations in Paragraph 157.

- 158. Defendant denies the allegations in Paragraph 158.
- 159. Defendant denies the allegations in Paragraph 159.

Ninth Cause — Declaratory Judgment

Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

- 160. To the extent this paragraph 160 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference of all of his previous responses to all prior enumerated allegations.
- 161. Defendant denies the allegations in Paragraph 161.
- 162. Defendant denies the allegations in Paragraph 162.
- 163. Defendant denies the allegations in Paragraph 163.
- 164. Defendant denies the allegations in Paragraph 164.
- 165. Defendant denies the allegations in Paragraph 165.

Tenth Cause — Injunctive Relief

Plaintiff's allegations contain statements that require no responsive pleading by the Defendant. Defendant otherwise denies all allegations to the extent this Paragraph can be construed to assert material facts in support of Plaintiffs in this case.

- 166. To the extent this paragraph 166 seeks to incorporate Plaintiff's previously enumerated allegations, Defendant denies by incorporation by reference of all of his previous responses to all prior enumerated allegations.
- 167. Defendant denies the allegations in Paragraph 167.
- 168. Defendant denies the allegations in Paragraph 168.

169. Defendant denies the allegations in Paragraph 169.
170. Defendant denies the allegations in Paragraph 170.
171. Defendant denies the allegations in Paragraph 171.
172. Defendant admits the Plaintiff has the right to seek injunctive by properly pleading under the Ohio Rules of Civil Procedure.
173. Defendant expressly reserves the right to supplement this Answer and defenses raised herein as discovery proceeds.

SECOND DEFENSE

174. Defendants deny all allegations contained in the Plaintiffs' Complaint that are not expressly admitted in this Answer.

THIRD DEFENSE

175. **Affirmative Defense** – Plaintiffs have failed to mitigate their damages.

FOURTH DEFENSE

176. **Affirmative Defense** – Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

FIFTH DEFENSE

177. **Affirmative Defense** – Plaintiffs' Complaint fails to join necessary and indispensable parties.

SIXTH DEFENSE

178. **Affirmative Defense** – Plaintiffs' Complaint is premature.

SEVENTH DEFENSE

179. **Affirmative Defense** – Plaintiffs' Complaint fails to properly plead Civil Conspiracy.

EIGHTH DEFENSE

180. **Affirmative Defense** – Unclean Hands: Plaintiffs are not entitled to obtain an equitable

remedy because the Plaintiffs acted unethically or in bad faith with respect to the subject of the Complaint.

NINTH DEFENSE

181. **Affirmative Defense** – At all times, Defendant acted reasonably, in good faith, and in accordance with law and/or in the exercise of his statutory duties and responsibilities.

TENTH DEFENSE

182. **Affirmative Defense** – Plaintiffs suffered no injuries or damages by the conduct of the Defendant.

ELEVENTH DEFENSE

183. **Affirmative Defense** – Plaintiffs’ claims, in whole or in part, are not ripe for adjudication.

TWELFTH DEFENSE

184. **Affirmative Defense** – Plaintiffs’ claims are precluded by operation of law by lack of jurisdiction and standing. Plaintiffs’ authority to prosecute this action is in violation of the City Charter §4.09 which requires an ordinance or resolution to prosecute a civil complaint. “The action of Council shall be by ordinance or resolution. On all matters of a general or permanent nature, or granting a franchise, or levying a tax, or appropriating money, or contracting indebtedness, or issuing bonds or notes, or for the purchase, lease or transfer of property, action shall betaken formally, by ordinance, in the manner hereinafter provided. Action on all other matters of a temporary or informal nature may be taken by resolution.” The authorization to have Mr. Robe take legal action against the Defendant was by Motion “[T]o take legal action against Mr. Greg Smith ... [unless] he withdraws his baseless and frivolous claims against the city...” [<https://www.youtube.com/watch?v=S-b-RU1DJ4Y> 2:20:40-2:21:22]. Because none of the Plaintiffs, nor their Counsel, have been approved by either Ordinance or Resolution to prosecute an action against the Defendant, they have no standing as a proper party or party representative to seek remedy for Nelsonville from this Court. Notwithstanding the lack of

standing, the Resolution did not authorize any other legal action beyond the conduct of Mr. Smith writing the email for a “correction” that the City perceived as a frivolous and baseless demand. No legal action for civil conspiracy was approved for any legal action.

THIRTEENTH DEFENSE

185. **Affirmative Defense** – Plaintiff’s claims for breach of contract preclude a tort claim for fraud based upon the same actions.

FOURTEENTH DEFENSE

186. **Affirmative Defense** – Plaintiffs’ claims for injunctive relief are moot because there has been no breach or anticipatory breach by Defendant.

FIFTEENTH DEFENSE

187. **Affirmative Defense** – Any declaratory judgment by the Court must declare there has been no breach by Defendant because Exhibit 1 Settlement Agreement Paragraph 3 does not apply to any pay earned for the service of the Plaintiff earned after December 14, 2023 and before February 13, 2024.

SIXTEENTH DEFENSE

188. **Affirmative Defense** – Plaintiffs’ Counsel has perpetrated Fraud upon the Court by knowingly representing falsehoods as true facts to the Court, such representations being essential to the decision of the Court in rendering justice.

SEVENTEENTH DEFENSE

189. **Affirmative Defense** – Should Plaintiffs prevail on any cause of action alleging a breach of the Settlement Agreement, the Settlement Agreement Paragraph 13 prohibits the Plaintiffs from any recovery.

EIGHTEENTH DEFENSE

190. **Affirmative Defense** – The Covenant Not to Sue, ¶ 7 of Exhibit 1, enumerated the entire

set of terms and conditions for which Defendant Smith agreed to take no action against the City or Releasees. Defendant Smith's Exhibit 2 email states no action or threat of action "to file any other" action enumerated in ¶ 7 of Exhibit 1 Settlement Agreement. Plaintiffs' Fourth Cause — Breach of Contract avers no breach of ¶ 7 of Exhibit 1. Defendant did not breach ¶ 7 of Exhibit. Further, Defendant Smith sought no right to collect compensation pursuant to ¶ 3 of Exhibit 1 that existed on and before the date of December 14, 2023, the effective date of Exhibit 1 as last signed by the City Manager. ¶ 3 of Exhibit 1 contains no waiver of any future claims after the date of the Settlement Agreement.

NINETEENTH DEFENSE

191. **Affirmative Defense** – Factual Impossibility of Fraud. In ¶ 96 Plaintiff's aver Defendant Smith "made false and fraudulent representations, with knowledge of their falsity, to materially induce Nelsonville and its agents into making the settlement payments for Mr. Smith's benefit." In their Complaint Defendants aver no other fact of fraudulent conduct by the Defendant prior to December 14, 2023. As of December 14, 2023 no fact existed to suggest, indicate or prove the future occurrence of a failure of the City to pay Defendant compensation for December 2023 or any future date for which Defendant served as a Council member. The conduct upon which the Plaintiffs allege the Defendant to have formed an intent to commit a fraudulent demand for compensation had yet to come into existence at the time of the final signing of the Settlement Agreement on December 14, 2023. Formation of fraudulent intent to claim any backpay, frontpay or wage based on yet unknown and unpredictable events was therefore a factual impossibility and could not form the basis of any fraudulent intent.

PRAYER FOR RELIEF

Defendant answers that because Defendant has committed no actionable wrong regarding

the allegations and averments of the Plaintiff in this Complaint and the Complaint is improvidently before this Court, Defendant denies Plaintiff is entitled to relief as prayed for in (a) - (h).

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed with prejudice at Plaintiff's costs, and that the Court award Defendant reasonable attorney's fees, costs and such other relief to which he is entitled.

**COUNTERCLAIMS OF DEFENDANT AGAINST PLAINTIFFS AND ADDITIONAL
COUNTERCLAIM DEFENDANTS
WITH JURY DEMAND**

VENUE, JURISDICTION AND PARTIES

1. This Athens County Court of Common Pleas has jurisdiction pursuant to the subject matter of Counterclaims of the Defendant.
2. The Athens County Court of Common Pleas has personal jurisdiction over any and all of the parties to this action pursuant to the subject matter of Counterclaims of the Defendant.
3. Venue is proper and Athens County because the events and actions of all Counterclaim Defendants giving rise to Defendant's Counterclaim causes of action occurred in Athens County, Ohio.
4. Plaintiff/Counterclaim Defendant Nelsonville is a Municipal Corporation organized under the laws of the State of Ohio and its own City Charter and is an entity subject to suit and Counter suit under Ohio law and 42 U.S.C. §1983.
5. Plaintiff/Counterclaim Defendant Taylor Sappington is an official of the City of Nelsonville and has represented himself as a party Plaintiff against the Defendant in all causes of action herein and is thus subject to Counterclaim for those claims subject to his official and individual

liability. Plaintiff/Counterclaim Defendant Taylor Sappington is subject to suit and Counter suit under Ohio law and 42 U.S.C. §1983.

6. Plaintiff/Counterclaim Defendant Devon Tolliver is an official of the City of Nelsonville. Devon Tolliver is the Police Chief and Acting City Manager of the City of Nelsonville at all times averred herein and is a person subject to suit and Counter suit under Ohio law and 42 U.S.C. §1983. At all times relevant herein Devon Tolliver acted under color of law.
7. Counterclaim Defendants City Officer and City John Does are persons subject to suit and Counterclaim suit under Ohio and Federal law.
8. Counterclaim Defendant Jonathan Robe is the City Attorney for the City of Nelsonville and is a person subject to suit and Counterclaim suit under Ohio law and 42 U.S.C. §1983. At all times relevant herein Mr. Robe acted under color of law.
9. Counterclaim Defendants Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick, Gregg Clement and Opha Lawson are City Council Members, subject to suit and Counterclaim suit under Ohio law and 42 U.S.C. §1983 and at all times relevant herein acted under color of law.

DEFENDANT/COUNTERCLAIM PLAINTIFF'S FACTS

10. Defendant/Counterclaim Plaintiff, (hereinafter Mr. Smith or Smith) is a resident of Nelsonville, Ohio and was an elected City Council Member for the City of Nelsonville serving during December 2023 through February 12, 2024.
11. Mr. Smith was to be compensated \$1,200.00 per year as a City Council Member and an additional \$1,200.00 per year as City Council President pursuant to the Nelsonville City Charter §4.15. [Defendant/Counterclaim Plaintiff Exhibit A City Charter]. The Nelsonville City Charter creates a contractual obligation on the part on Nelsonville to compensate their

Council Members. The practice and custom of the City was to pay Council Members Compensation monthly after completion of each month of service.

12. Plaintiff/Counterclaim Defendant Nelsonville failed to pay Mr. Smith compensation as a Council Member for service for December 2023, January 2024 and until February 12, 2024. Plaintiff/Counterclaim Defendant Nelsonville failed to pay Mr. Smith compensation as the President Council for service for December 2023 up until January 22, 2024.
13. Mr. Smith's Settlement Agreement Exhibit 1, at Paragraph 3, does not waive payment for services rendered as a Council Member or Council President for the times averred in ¶11.
14. Settlement Agreement Exhibit 1, at Paragraph 3 waives "back pay" and "front pay" and "wages" subject to other conditions in the Settlement Agreement. As of December 14, 2023, the date the Settlement Agreement became effective with the signature of the City Manager, Mr. Smith had no perfected claim for back pay for December because compensation for December had not yet accrued. Mr. Smith did not waive a claim he did not have by signing the Settlement Agreement.
15. Mr. Smith was entitled to be compensated for his entire service as an elected Council Member. His term did not expire until December 2025. Exhibit 1, at Paragraph 3 waives front pay. That is pay for the remainder of his service after his resignation on February 12, 2024.
16. Mr. Smith and the Plaintiff/Counterclaim Defendant Nelsonville signed Settlement Agreement Exhibit 1 which became effective December 14, 2023 upon signature of the City Manager Tom Cangemi for the City and Releasees.
17. Settlement Agreement Exhibit 1, at Paragraph 3 recites:
 3. Entire Amount of Monetary Consideration: Smith agrees that this Agreement sets forth the entire amount of monetary consideration and benefits to which he is entitled related to the Complaints, and that he will not seek any further

compensation or benefits of any kind or nature from the City or Releasees, including, but not limited to wages, benefits, back pay, front pay, damages (whether compensatory, punitive or otherwise), legal fees, expenses and court costs, in connection with any matter.

18. “Frontpay” (aka “front pay”) has been defined and to be calculated by the Supreme Court of Ohio as “lost future wages, (which) may be awarded as compensation between the date of discharge and reemployment in a position of equal or similar status.” *Worrell v. Multipress, Inc.* 45 Ohio St. 3d 241, 242 (1989). Further, “Front pay is “the monetary equivalent to reinstatement, to be given in situations where reinstatement is impracticable or impossible.” *Kramer v. Logan Cty. School Dist. No. R-1* (C.A.8, 1998), 157 F.3d 620, 626” *Jordan v. Ohio Civ. Rights Comm’n*, 173 Ohio App. 3d 87, 98 (12th Dist. 2006). “Frontpay” as defined is not applicable to the ordinary compensation of Mr. Smith in his service to Council in December 2023 though his service until February 12, 2024.
19. Mr. Smith was never discharged nor reinstated. Mr. Smith voluntarily resigned February 12, 2024. Frontpay would only apply to a claim for any compensation after his cessation of employment whether by discharge or resignation. Mr. Smith reasonably understood what was waived, under the definition of Front pay by the Ohio Supreme, consisted of compensation that would have been paid to him but for his resignation until the end of his elected term if for any reason he was reinstated or able to lawfully rescind his resignation.
20. “Backpay” is to make a wrongfully terminated employee whole and to place that employee in the position the employee would have been in absent a violation of the employment contract. *Jordan v. Ohio Civ. Rights Comm’n*, 173 Ohio App. 3d 87, 97 (12th Dist. 2006). Mr. Smith was never terminated. As of December 8, 2023, when Mr. Smith signed the Settlement Agreement, he was still a Council Member and its President. As of December 14, 2023, when Tom

Cangemi signed the Settlement Agreement, Mr. Smith was still a Council Member and its President. As of December 14, 2023, when Mr. Cangemi signed the Settlement Agreement Mr. Smith had not yet accrued any claim for backpay for the month of December because 1) he had not been terminated and; 2) If there was any such December backpay claim it was not yet a ripe or a perfected claim for December 2023 service as of December 14, 2023; 3) Plaintiffs' Counsel wrote a letter to Defendant's Counsel on April 10, 2025¹ [Complaint Exhibit 3 unmarked]. The letter recited in part on page 2 explains the true reason Nelsonville had not paid Mr. Smith was because of not filling out the correct form notwithstanding the duty to pay City Council members per the City Charter even in the absence of any form:

“The City Auditor’s office’s practice is to process Council pay for a particular Member only after the Member has completed and submitted the payroll forms to the City Auditor’s office for processing. Mr. Smith never complied with the City Auditor’s request and never completed the payroll forms. *Accordingly, due to Mr. Smith’s failure to complete the payroll forms, the City Auditor was unable to process any Council pay for Mr. Smith for the period of December 2023 through February 2024.* [emphasis added not in the original] Thus, Mr. Smith has waived any claim to any Council pay for that period, is estopped from now making any such claim, and is otherwise barred from now making such a claim.”

“Backpay” as defined is not applicable to the ordinary compensation of Mr. Smith in his service to Council in December 2023 though his service until February 12, 2024.

21. In the three pages of Exhibit 3 the Settlement Agreement is not mentioned nor is any part of the Settlement Agreement’s Paragraph 3 mentioned.

¹ At that time Defendant’s Counsel was not representing the Defendant with the Plaintiffs in this matter regarding a request for a correction. See also Plaintiffs’ Complaint ¶ 58.

22. Plaintiffs' page 2 recitation of Exhibit 3 *supra* is an admission that the reason Mr. Smith was not paid was for the sole reason of the alleged failure to complete payroll forms.
23. Mr. Smith's Exhibit A, City Charter at §4.15, contains no restriction on payment of compensation dependent on a completed payroll for Smith. There is no requirement under Nelsonville City ordinances, Ohio or Federal law, that prohibits the Plaintiffs' from paying Mr. Smith for services rendered as a City Council member without completing a payroll form. Mr. Smith completed all conditions precedent and subsequent to be paid compensation for his services. Exhibit A City Charter at §4.15 constitutes a written contract between the Plaintiff/Counterclaim Defendant City and the Defendant/Counterclaim Plaintiff Smith for their respective obligations for Smith's service as a Council Member and Council President.
24. Mr. Smith further informed Plaintiff/Counterclaim Defendant Sappington "I did return the pay documents to the City of Nelsonville." [Exhibit 4 Email April 11, 2025 11:20 AM] and "If you are unable to locate the pay documents that I returned you may email me whatever you need me to sign." Plaintiff/Counterclaim Defendants thereafter have never provided Mr. Smith with the pay documents they allege are necessary to pay his compensation.
25. Plaintiff/Counterclaim Defendants' Nelsonville, Jonathan Robe and Taylor Sappington's conduct in denying Mr. Smith his earned compensation as a Council Member and bringing this action is in retaliation for Mr. Smith having participated in the citizens' initiative process to submit Issue #23 to abolish the City Charter to the City electors in November 2024 and opposing City Council's Issue #4 submission to the electors to repeal Issue #23 in the May 2025 primary as well as speaking out publicly in print and broadcast media in favor of Issue #23 opposing Issue #4 and being critical of City Council and the City Attorney regarding the attempts to repeal Issue #23 by Issue #4. The right to speak on matters of public and political

importance is not only a well-established right but it is well established that “a public official’s retaliation against an individual exercising his or her First Amendment rights is a violation of § 1983.” *Barrett v. Harrington*, 130 F.3d 246, 264 (6th Cir. 1997).

26. Mr. Smith’s conduct in having participated in the citizens’ initiative process to submit Issue #23 to abolish the City Charter to the City electors in November 2024 and opposing City Council’s Issue #4 submission to the electors to repeal Issue #23 in the May 2025 primary, as well as speaking out publicly in print and broadcast media in favor of Issue #23 and opposing Issue #4 and being critical of City Attorney Jonathan Robe, is constitutionally protected activity under the First Amendment to the Constitution of the United States.
27. The denial of paying Mr. Smith his earned compensation as a Council Member; the filing of this lawsuit naming Mr. Smith and 25 John and Jane Does as criminal conspirators seeking \$137,500.00 plus fees in damages; sending a prolific three page letter threatening legal action for a request for a corrective action by Mr. Smith; are adverse actions that would deter a person of ordinary firmness from pursuing their First Amendment rights.
28. These adverse actions were taken as a direct result of Defendant engaging in First Amendment protected activity.
29. Paragraphs 70 through 73 of the Plaintiffs’ complaint alleges “A city officer discovered the incident resulting in the arrest and charges had been premeditated and staged by several individuals, not just the individual arrested at the April 14 council meeting.”... “[T]hose individuals conspired together with the individual arrested.”... “The purpose of the conspiracy was to unlawfully disrupt the April 14 regular Council meeting”... “On information and belief, Mr. Smith was one of the conspirators.” Upon information and belief the City Officer was informed by other persons (aka City John Does), herein named Counterclaim Defendants who

communicated this to the City Officer who in turn communicated false information to Plaintiffs about the Defendant. The City Officer and/or any other persons (aka City John Does) are unidentified but are capable of being identified, if they exist, by discovery in the instant case. The false communication that Mr. Smith was a conspirator was made intentionally or with such reckless disregard for the truth that malicious intent may be inferred. Upon information and belief the City Officer and/or other City John Does made false communications of the Mr. Smith's conduct, among themselves and to others, as being conspiratorial to commit a criminal act and was a statement of an indictable offense involving moral turpitude. The communication by the City Officer and/or other City John Does caused Mr. Smith to suffer injury and was defamatory per se.

**FIRST CAUSE OF ACTION — BREACH OF CONTRACT BY CITY OF
NELSONVILLE AND TAYLOR SAPPINGTON**

30. Defendant/Counterclaim Plaintiff Smith, hereinafter Smith, recites Paragraph's 1-29 of COUNTERCLAIMS OF DEFENDANT AGAINST PLAINTIFFS AND ADDITIONAL COUNTERCLAIM DEFENDANTS as if fully rewritten herein.
31. Exhibit A, §4.15 of the Nelsonville City Charter, is a contract between the Plaintiff/Counterclaim Defendant City and Smith.
32. Plaintiff/Counterclaim Defendant Sappington is bound by the terms of Exhibit A which creates a contractual obligation and official duty for him as the City Auditor to pay just debts of the City of Nelsonville.
33. By the terms of §4.15 of the City Charter Plaintiff/Counterclaim Defendant City was to compensate Mr. Smith \$100.00 per month for his service as a Council Member and \$100.00 per month in return for his service as Council President.

34. Plaintiff/Counterclaim Defendant Sappington had an independent duty as City Auditor, an officer of the Plaintiff/Counterclaim Defendant City, to pay debts justly incurred by the City. Mr. Sappington failed to pay compensation to Mr. Smith as mandated and contractually mandated by §4.15 of the Nelsonville City Charter. Mr. Sappington has breached his duty as the City Auditor and his contractual obligation to compensate Mr. Smith, being contractually bound by §4.15 of the Nelsonville City Charter, to compensate Mr. Smith for his services on City Council.
35. Mr. Smith served as a Council Member in the months of December 2023, January, 2024 and February, 2024 fulfilling all conditions precedent and subsequent to be compensated. Plaintiff/Counterclaim Defendants failed to compensate Mr. Smith for his service as Council Member.
36. Mr. Smith served as Council President in the months of December, 2023 and January, 2024 fulfilling all conditions precedent and subsequent to be compensated as Council President. Plaintiffs/Counterclaim Defendants failed to compensate Mr. Smith for his service as Council President.
37. By failing to compensate Mr. Smith, Plaintiffs/Counterclaim Defendants City of Nelsonville and Sappington have breached their contractual obligations to Mr. Smith by the terms of §4.15 of the Nelsonville City Charter to compensate Mr. Smith for his services on City Council.
38. As a result of the City's breach, City has breached its contractual obligations to Mr. Smith and damaged Mr. Smith in the amount of five hundred dollars (\$500.00). As a result of the Mr. Sappington's breach, Mr. Sappington has breached his contractual obligations to Mr. Smith and damaged Mr. Smith in the amount of five hundred dollars (\$500.00).

39. Mr. Smith states a cause of action for breach of contract jointly and severally against Plaintiffs/Counterclaim Defendants City of Nelsonville and Taylor Sappington.

SECOND CAUSE OF ACTION — DECLARATORY JUDGMENT AGAINST CITY OF NELSONVILLE

40. Defendant/Counterclaim Plaintiff Smith, hereinafter Smith, recites Paragraph's 1-39 of COUNTERCLAIMS OF DEFENDANT AGAINST PLAINTIFFS AND ADDITIONAL COUNTERCLAIM DEFENDANTS as if fully rewritten herein.

41. In addition to the jurisdictional authority of the Court recited in these Counterclaims, this Court has specific jurisdiction under R.C. § 2721.03.

42. Exhibit 1 to the Plaintiffs' Complaint² is a contract between the Smith and the Plaintiff/Counterclaim Defendant City of Nelsonville.

43. Exhibit 1 at item 3 is fully recited :

3. Entire Amount of Monetary Consideration: Smith agrees that this Agreement sets forth the entire amount of monetary consideration and benefits to which he is entitled related to the Complaints, and that he will not seek any further compensation or benefits of any kind or nature from the City or Releasees, including, but not limited to wages, benefits, back pay, front pay, damages (whether compensatory, punitive or otherwise), legal fees, expenses and court costs, in connection with any matter.

44. "Frontpay" and "Backpay" as recited in Exhibit 1 at item 3 are not applicable to the ordinary compensation of Mr. Smith in his service to Council in December 2023 through his service until February 12, 2024.

² All numbered exhibits are Plaintiffs' Complaint exhibits, all lettered exhibits are Defendants' Counterclaim exhibits.

45. Mr. Smith's ordinary compensation is not waived by Exhibit 1 at item 3 waiver of "back pay, front pay".

46. On April 10, 2025, more than 16 months after Mr. Smith signed the Settlement Agreement, two days after Mr. Smith asked Mr. Sappington to "Please do a correction" after stating "While doing my taxes I discovered that I was not paid for the time I was council president from December 2023 thru February 2024." [Exhibit 2 p.4 email of April 9, 2025 1:52:40 PM], Plaintiff/Counterclaim Defendants' Counsel sent Mr. Smith Exhibit 3 [letter of April 10, 2025] to instant Counsel for Mr. Smith. Instant Counsel had not represented to Plaintiffs' counsel he was representing Mr. Smith in the matter. Mr. Smith confirmed he was representing himself the very same day after instant Counsel forwarded the letter to Mr. Smith [Exhibit 4 p.3 email of April 11, 2025 Smith to Sappington].

47. On April 10, 2025 in Exhibit 3 on p. 2 Plaintiff/Counterclaim Defendants' Counsel recited:

"The City Auditor's office's practice is to process Council pay for a particular Member only after the Member has completed and submitted the payroll forms to the City Auditor's office for processing. Mr. Smith never complied with the City Auditor's request and never completed the payroll forms. *Accordingly, due to Mr. Smith's failure to complete the payroll forms, the City Auditor was unable to process any Council pay for Mr. Smith for the period of December 2023 through February 2024.* [emphasis added not in the original] Thus, Mr. Smith has waived any claim to any Council pay for that period, is estopped from now making any such claim, and is otherwise barred from now making such a claim."

48. The entire letter of April 10, 2025 is devoid of any reference to the Settlement Agreement or any other Federal, State of Ohio or local law to support any lawful reason to deny Mr. Smith his compensation for service on Council. Plaintiff/Counterclaim Defendants Counsel's admonition, without any supporting statutory, codified or case law legal authority, was that he

reserved the right to supplement “both public and private law” to Mr. Smith’s articulated request for a “correction” and that it was “contrary to binding law” [Exhibit 3 on p. 2 & 3].

49. Mr. Robe’s written response of April 10, 2025 that “[D]ue to Mr. Smith’s failure to complete the payroll forms, the City Auditor was unable to process any Council pay for Mr. Smith for the period of December 2023 through February 2024.” combined with the total absence of citing the Settlement Agreement or any of its sections, is a clear admission that the Plaintiffs’ allegation of a breach of the Settlement Agreement at Item 3 did not occur because of a request for a “correction”. The sole reason contained in the letter was an alleged (and pretextual retaliatory explanation) of a failure by Mr. Smith to fill out forms.
50. Mr. Smith is entitled to a declaration, order and judgment declaring the validity of Paragraph 3 of the Settlement Agreement determining that front pay, back pay and wages as may be applicable to Mr. Smith in the Settlement Agreement are not applicable to create an unlawful circumstance when Mr. Smith requested a correction of his Council Member compensation.
51. Mr. Smith is entitled to a declaration, order and judgment declaring the validity of Paragraph 3 of the Settlement Agreement determining that asking for a correction under the circumstances requested in Exhibit 2 p.4 email of April 9, 2025 1:52:40 PM is not a breach of contract.
52. Mr. Smith is entitled to a declaration, order and judgment declaring the validity of Paragraph 3 of the Settlement Agreement determining that compensating Smith for his Council services for the contiguous months of December, January and February of 2023 to 2024 is lawful and is not prohibited by the Settlement Agreement.
53. Mr. Smith is entitled to a declaration, order and judgment declaring the validity of Paragraph 3 of the Settlement Agreement determining that Mr. Smith is entitled to damages, reasonable attorneys' fees, expenses, and costs (including discovery costs) incurred in pursuing the same

to be determined at a separate damages hearing or upon submission of an evidentiary damages brief.

**THIRD CAUSE OF ACTION — DEFAMATION AGAINST COUNTERCLAIM
DEFENDANT CITY OFFICER AND CITY JOHN DOES**

54. Defendant/Counterclaim Plaintiff Smith, hereinafter Smith, recites Paragraph's 1-53 of COUNTERCLAIMS OF DEFENDANT AGAINST PLAINTIFFS AND ADDITIONAL COUNTERCLAIM DEFENDANTS as if fully rewritten herein.

55. Upon information and belief, the Counterclaim Defendant City Officer, hereinafter City Officer, is an employee and/or an official of the City of Nelsonville and subject to jurisdiction of this Court. Upon information and belief the City Officer was informed by other persons (aka City John Does) who communicated false information to the City Officer who in turn communicated the false information to Plaintiffs about Mr. Smith that Mr. Smith was an unlawful criminal conspirator.

56. Upon information and belief, Counterclaim Defendants City John Does are individuals, who are unidentified but capable of identification in discovery, who knowingly communicated false information with reckless disregard as to its truth or falsity to the City Officer who in turn knowingly communicated the false information intentionally or with such reckless disregard as to its truth or falsity as to infer its falsity to Counterclaim Defendants Robe, Sappington and Tolliver that Mr. Smith was an unlawful criminal conspirator.

57. Information communicated to the Counterclaim Defendant City Officer by Counterclaim Defendants City John Does are words that import a charge of an indictable offense involving moral turpitude.

58. As a result Mr. Smith has suffered damages.

59. Mr. Smith states a cause of action of defamation per se against Counterclaim Defendant City Officer and Counterclaim Defendants City John Does.

**FOURTH CAUSE OF ACTION
VIOLATION OF FIRST AMENDMENT, FIRST AMENDMENT RETALIATION
AS APPLIED TO THE STATES UNDER THE FOURTEENTH AMENDMENT
AGAINST COUNTERCLAIM DEFENDANTS THROUGH 42 U.S.C. § 1983:
1) DEVON TOLLIVER IN HIS INDIVIDUAL CAPACITY AND OFFICIAL CAPACITY
AS CHIEF OF POLICE AND ACTING CITY MANAGER;
2) TAYLOR SAPPINGTON IN HIS INDIVIDUAL CAPACITY AND OFFICIAL
CAPACITY AS CITY AUDITOR AND; 3) JONATHAN ROBE IN HIS INDIVIDUAL
CAPACITY AND OFFICIAL CAPACITY AS CITY ATTORNEY**

60. Defendant/Counterclaim Plaintiff Smith, hereinafter Smith, recites Paragraph's 1-59 of COUNTERCLAIMS OF DEFENDANT AGAINST PLAINTIFFS AND ADDITIONAL COUNTERCLAIM DEFENDANTS as if fully rewritten herein.

61. This Court has jurisdiction over the Plaintiff, Defendant, Counterclaim Plaintiff and Counterclaim Defendants pursuant to 42 U.S.C. § 1983.

62. Counterclaim Defendant Devon Tolliver, hereinafter Mr. Tolliver, is the Chief of Police and Acting City Manager of Nelsonville and is subject to the jurisdiction of this Court. At all times herein Mr. Tolliver acted under color of law both in his official as Acting City Manager and Chief of Police of the City of Nelsonville and in his individual capacity.

63. Mr. Tolliver, as Acting City Manager, is the policy maker and decision maker as to the determination of enforcement of the of the City of Nelsonville policies.

64. Plaintiff/Counterclaim Defendant Taylor Sappington, hereinafter Mr. Sappington, is a Plaintiff in this original action. At all times herein Mr. Sappington acted under color of law both in his official capacity as Auditor of the City of Nelsonville and in his individual capacity.

65. Counterclaim Defendant Jonathan Robe, hereinafter Mr. Robe is the City Attorney for the City of Nelsonville and is subject to the jurisdiction of this Court. At all times herein Mr. Robe

acted under color of law both in his official capacity as City Attorney of the City of Nelsonville and in his individual capacity. Mr. Robe in his official and individual capacity advised City Council that the conduct of Mr. Smith regarding asking for a correction to his compensation his Settlement Agreement was unlawful. Mr. Robe's statement to City Council was false and made with the purpose to convince Council to vote to approve legal action against Mr. Smith by Mr. Robe. Mr. Robe made his statements to Council in retaliation for Mr. Smith's protected speech, advocating for the rejection of Issue # 4, retaining Issue #23, and being critical of the City Attorney for opposing the will of the people's vote to pass Issue #23, in violation of Mr. Smith's First Amendment rights.

66. At all material times, Counterclaim Plaintiff Mr. Smith was engaged in constitutionally protected activity, exercising his well-established First Amendment rights to advocate publicly in printed and broadcast media for matters of great public concern such as Issue #23 and Issue #4; matters of political speech of great public concern; legal process to select a form of government for the City of Nelsonville and criticized the City Attorney, Mr. Robe, and City Council for their efforts to repeal Issue #23 as adopted by 70% of the voters in the November 2024 general election. Mr. Smith has engaged in discussions regarding the change to Nelsonville's process to change its form of government giving interviews with reporters for print media on many occasions. See 1) "Nelsonville residents go to court to get an initiative on the ballot to change the city's government" ATHENS, Ohio (WOUB) <https://woub.org/2024/09/24/nelsonville-city-council-votes-initiative-november-ballot/> ; 2) "An initiative to remake Nelsonville's city government appears less likely to make the fall ballot" ATHENS, Ohio (WOUB/Report for America) <https://woub.org/2024/08/01/> ; 3) "The Athens County Board of Elections votes to put an initiative on the ballot that would

change Nelsonville's government" ATHENS, Ohio (WOUB) <https://woub.org/2024/09/26/> ; and 4) Nelsonville voters overwhelmingly said they want a new government. What happens next is less clear" ATHENS, Ohio (WOUB) <https://woub.org/2024/12/05/> , and also given other interviews for public broadcast.

67. The initiation of retaliatory conduct against Mr. Smith began in early May of 2024 when Mr. Smith, along with four other persons, began an initiative process in accord with the Nelsonville City Charter to submit language to the Athens County Board of Elections to place on the ballot language to abolish the Nelsonville City Charter. Part of the process was to contact registered voters, explain the abolishment language for the ballot and obtain the registered voter's signature on the initiative petition. Such activity and conduct by Mr. Smith is political speech protected by the First Amendment.
68. In the initiative process it was required of City Council to have legislation to send the initiative petition to the Athens County Board of Elections to be put on the ballot for the general election. On July 8, 2024, at a Council meeting, City Council refused to pass the required legislation. Mr. Robe opined at the meeting that the initiative process relying on Article 10 of the City Charter did not pertain to an initiative that abolished the City Charter, opposed any enabling legislation and has maintained an opposition to the abolishment, passed by the voters in November 2024, as continuing to the present.
69. As a result of the City Council refusing to pass the required legislation to put the initiative language on the ballot, Mr. Smith and Vicki Lynn McDonald petitioned for a writ of mandamus in this Court in case number 24CI0180.
70. After the filing for a writ of mandamus, during the litigation and continuing to the present, Mr. Smith called a local radio station call in program named "Viewpoint", on AM radio station 770

WAIS on many occasions to express his views and to criticize City Council and Mr. Robe for their opposition to the expressed wishes of Nelsonville citizens to have an election to abolish the City Charter. Counterclaim Defendant Robe advised this Court, in his now voluntarily dismissed case 25CI0045 filed 3/24/25, that there “are audio recordings of a local radio show on which Relator frequently appears for comment.” [Motion p.16]. Such activity and conduct by Mr. Smith is political speech constitutionally protected by the First Amendment.

71. The mandamus action was subject to significant litigation in this Court and in the Fourth District Court of Appeals in case numbers 24CA0017, 24CA0022, 24CA0028 and 24CA0029. The ultimate conclusion of the Court of Appeals on October 21, 2024 in 24CA0028 and 24CA0029 p.22 was that the trial court properly issued a writ of mandamus compelling the appellants City and Council to enact an ordinance submitting the initiative to abolish the Nelsonville City Charter on the ballot for the November 5, 2024 election, Mr. Smith and Ms. McDonald having prevailed on appellate arguments regarding the language of Issue #23.
72. After the election when Issue #23 passed, Mr. Robe proposed an ad hoc committee to transition from a City Charter Government to a statutory government. As evidence of the animus of Mr. Robe and the ad hoc committee, Mr. Smith applied for and was rejected for a seat on the committee despite have 20 plus years of prolific experience and training as a City Council member. There have been committee meetings the Thursdays before the regular Council meeting beginning in April 2025. The ad hoc committee was, and is, a sham regarding the transition. Mr. Robe made statements opposing the transition and was an integral part of the Council Amendment Initiative drafted by Counterclaim Defendant Devon Tolliver with guidance from Mr. Robe and City Council, to repeal Issue #23’s abolishment of the Charter and replace it with a City Charter Amendment as was presented to the Athens County Board

of Elections. This Initiative was balloted as Issue #4. This ballot initiative to amend the City Charter was unconstitutional as proposed to the Athens County Board of Elections. Mr. Robe was so incensed at Mr. Smith's First Amendment speech activity that he developed the unconstitutional Issue #4 through and with his proxy Devon Tolliver. [See *Hittle v. Muskingum County Bd. of Elections* 1979 Ohio App. LEXIS 10706 at 3. The initiative petitions proposing an election to "repeal the abolition" of a City Charter and also an Ordinance which called for the election on the issue are in fatal conflict with Article XVIII, Sections 7 and 8 of the Ohio Constitution. "There can be no pathway of return to charter government except through compliance with the express special constitutional provisions of Article XVIII, Section 8 dealing therewith." *Id.* p.6]

73. Mr. Smith initially brought an action in mandamus against the City and Athens County Board of Elections to attempt to halt the Issue #4 balloting process on February 7, 2025 in this Court in case # 25CI0045 after Mr. Robe personally delivered the Initiative language of Issue #4 to the Athens County Board of Elections. Mr. Smith voluntarily dismissed his petition without prejudice on February 13, 2025. After the dismissal Mr. Smith continued to provide public statements to the press in the form of statements made on radio as well as published interviews provided to the Athens Messenger and Athens Independent newspapers. The substance of these statements and interviews was that Mr. Robe and Nelsonville City Council were providing incorrect information regarding the effects of Issue #23 and Issue #4. Mr. Smith was highly critical of both Mr. Robe and City Council's efforts to pass Issue #4 to repeal Issue #23, which was passed by a 70% majority of voters. Such speech, activity and conduct by Mr. Smith is political speech and made on matters of great public importance protected by the First Amendment.

74. As a result Mr. Smith has suffered damages in the form of attorney's fees, costs, embarrassment, humiliation, and emotional distress as a result of the conduct of Devon Tolliver, Taylor Sappington and Jonathan Robe in their individual and official capacities.

75. Mr. Smith states a cause of action of First Amendment retaliation against Devon Tolliver, Taylor Sappington and Jonathan Robe.

FOURTH CAUSE OF ACTION: ROBE'S FIRST AMENDMENT RETALIATION #1, 42 U.S.C. § 1983

76. Mr. Smith incorporates all previous Counterclaim allegations Paragraphs 1-75.

77. Mr. Robe made the statement "Relator has also made clear, publicly, he intends to sue the City over the upcoming May primary/special election if the results of the constitutional charter amendment ballot measure don't go the way he wants it to." Mr. Robe's conclusory and misleading statement was based on his citing to the quote of entirely different language in Mr. Smith's WOUB interview of February 13, 2025 "The lawsuit filed last week against Nelsonville City Council has been withdrawn as the plaintiff pursues a different legal strategy," [NELSONVILLE RESPONDENTS' MOTION FOR SANCTIONS Case 25CI0045 p.8]. Mr. Smith's statement to WOUB by Mr. Smith is political speech protected by the First Amendment. Mr. Robe's statement was motivated by, and in retaliation for, Mr. Smith expressing his constitutionally protected speech on political matters and matters of great public interest and voicing opposition to the attempts of Mr. Robe and the City Council to repeal Issue #23 and to unlawfully adopt Issue #4. Additionally, Mr. Robe's specific recitation in his R.C. §2323.51 motion that "[H]e [Smith] intends to sue the City over the upcoming May primary/special election if the results of the constitutional charter amendment ballot measure don't go the way he wants it to" demonstrates that Mr. Robe would continue to seek legal

action as a prophylactic mechanism to protect against Mr. Smith's criticism of Mr. Robe and Issue #4 based on Mr. Robe's interpretation of Mr. Smith's intent to file a lawsuit was based on constitutional issues and matters of public concern. Mr. Smith's alleged statement he intended to file a lawsuit is protected pursuant to *Jackson v. City of Columbus* 194 F.3d 737, 756-757 (6th Cir 1999 abrogated on other grounds by *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002)). Mr. Robe's conduct, acting under color of law, was retaliatory. No reasonable person would have believed otherwise, given the state of the law and Defendant Robe's motivations. Such a statement by Robe would have a chilling effect on anyone who may have wanted to challenge the legality of the matters associated with the submission of Issue #4 to the electors, including Mr. Smith. As a result Mr. Smith has suffered damages in the form of embarrassment, humiliation, and emotional distress. Mr. Robe is liable via 42 U.S.C. § 1983 for First and Fourteenth Amendment violations.

78. As a result Mr. Smith has suffered damages in the form of attorney's fees, costs, embarrassment, humiliation, and emotional distress as a result of the conduct of Jonathan Robe in his individual and official capacities.

79. Mr. Smith states a cause of action of First Amendment retaliation against Jonathan Robe.

FOURTH CAUSE OF ACTION: ROBE'S FIRST AMENDMENT RETALIATION #2, 42 U.S.C. § 1983

80. Mr. Smith incorporates all previous Counterclaim allegations Paragraphs 1-79.

81. On April 9, 2025, approximately a month before Issue #4 was to appear on the May Primary election ballot, Mr. Smith sent Mr. Sappington an email [Exhibit 3 email of April 9, 2025 1:52:40 PM] which recited in full "While doing my taxes I discovered that I was not paid for the time I was council president from December 2023 thru February 2024[.] ¶ Please do a

correction[.] ¶ Greg Smith 740 591 7124”. The very next day Mr. Robe sent the three page letter of April 10, 2025 [Exhibit 3 pp.1-3] to Instant Counsel because Mr. Smith had copied Instant Counsel on the April 9 email. [See footnote 1- At that time Defendant’s Counsel was not representing the Defendant]. The three page prolifically accusatory letter recites the words “frivolous” 9 times and “baseless” 8 times. The letter recites Mr. Robe’s sole legal retort to the April 9 email as “there’s no basis in law or fact for Mr. Smith’s demand. In fact, his demand is facially frivolous, baseless, and contrary to binding law.” Despite the letter being sent to Mr. Smith’s presumptive Counsel (the same Counsel in the Settlement Agreement) the mention of the existence of a Settlement Agreement [Exhibit 1] signed nearly 16 months earlier is completely and conspicuously absent. The letter does however recite “Mr. Smith never complied with the City Auditor’s request and never completed the payroll forms. *Accordingly, due to Mr. Smith’s failure to complete the payroll forms, the City Auditor was unable to process any Council pay for Mr. Smith for the period of December 2023 through February 2024* [emphasis added not in the original]. Thus, Mr. Smith has waived any claim to any Council pay for that period” [Exhibit 1]. The entire letter of April 10, 2025 is devoid of any reference to the Settlement Agreement or any other Federal, State of Ohio or local law to support any lawful reason to deny Mr. Smith his compensation for service on Council. This letter is also pretext for retaliation against Mr. Smith alleging the breach of contract when the stated reason by Mr. Robe, as Counsel for the City, is that a failure of Mr. Smith to fill out pay forms was the reason Mr. Smith was not paid. Not paying Mr. Smith what he is due from service as a Council member and then suing Mr. Smith for the alleged breach of contract and other fabricated causes of action is retaliation for Mr. Smith having engaged in constitutionally protected activity expressed his position on political matters and matters of great public interest

with the purpose to chill and deter Mr. Smith from public comment and providing the public with accurate information regarding Issues #23 and #4 a month before the Primary election. Mr. Robe participated in the First Amendment retaliation by threatening Mr. Smith by falsely telling Mr. Smith that asking for a pay correction was a frivolous and baseless action that had no support at law. Mr. Robe's action in sending the letter of April 10, 2025 was motivated by, and in retaliation for, Mr. Smith expressing his constitutionally protected speech on political matters and matters of great public interest and voicing opposition to the attempts of Mr. Robe and the City Council to repeal Issue #23 and to unlawfully adopt Issue #4. Mr. Robe's adverse actions violated Mr. Smith's clearly established First and Fourteenth Amendment rights in light of clearly established law, including the Supreme Court's recognition that the threat of legal action or prosecution is a prior restraint on speech. *ACLU v. City of Pittsburgh*, 586 F. Supp. 417, 423 (W.D. Pa. 1984). Mr. Robe's conduct, acting under color of law, was retaliatory and designed to deter Mr. Smith's clearly established First Amendment rights in light of clearly established law but also to deter, to an impermissible degree, Mr. Smith's advocacy to others to exercise their rights to vote and inform others of what Mr. Smith was publicly saying. No reasonable person would have believed otherwise, given the state of the law and Mr. Robe's motivations.

82. As a result Mr. Smith has suffered damages in the form of attorney's fees, costs, embarrassment, humiliation, and emotional distress. Mr. Robe is liable via 42 U.S.C. § 1983 for First and Fourteenth Amendment violations.

83. Mr. Smith has suffered damages as a result of the conduct of Jonathan Robe in his individual and official capacities.

84. Mr. Smith states a cause of action of First Amendment retaliation against Jonathan Robe.

FOURTH CAUSE OF ACTION: ROBE'S FIRST AMENDMENT RETALIATION #3, 42 U.S.C. § 1983

85. Mr. Smith incorporates all previous Counterclaim allegations Paragraphs 1-84.

86. Exhibit 1 also contains Mr. Robe's statement "Unless and until Mr. Smith expressly withdraws his frivolous and baseless demand, I cannot be assured he won't initiate frivolous and baseless litigation against the City or its officers. Accordingly, I will be instructing the City's officers, staff, and employees not to communicate with Mr. Smith on this matter." Mr. Smith has a legal right to make lawful requests of the City of Nelsonville related to his Settlement Agreement or any other matter to which the City may be a party to affect his rights as a citizen. Mr. Robe participated in the First Amendment retaliation by acting under the color of law of his office to adversely interfere with Mr. Smith's right to communicate and speak to Nelsonville officials and to resolve contractual matters created by the City Charter with the City because Mr. Smith spoke upon political matters and of great public concern opposing and criticizing Mr. Robe's attempts to revoke the passage of Issue #23. Mr. Robe's action in sending the letter of April 10, 2025 instructing the City's officers, staff, and employees not to communicate with Mr. Smith on this matter was an adverse and punitive action motivated by, and in retaliation for, Mr. Smith expressing his constitutionally protected speech on political matters and matters of great public interest and voicing opposition to the attempts of Mr. Robe and the City Council to repeal Issue #23 and to unlawfully adopt Issue #4. No reasonable person would have believed otherwise, given the state of the law and Mr. Robe's motivations.

87. As a result Mr. Smith suffered damages in the form of attorney's fees, costs, embarrassment, humiliation, and emotional distress. Mr. Robe is liable via 42 U.S.C. § 1983 for First and Fourteenth Amendment violations. As a result Mr. Smith has suffered damages in the form of

attorney's fees, costs, embarrassment, humiliation, and emotional distress. Mr. Robe is liable via 42 U.S.C. § 1983 for First and Fourteenth Amendment violations.

88. Mr. Smith has suffered damages as a result of the conduct of Jonathan Robe in his individual and official capacities.

89. Mr. Smith states a cause of action of First Amendment retaliation against Jonathan Robe.

FOURTH CAUSE OF ACTION: SAPPINGTON'S FIRST AMENDMENT RETALIATION #1, 42 U.S.C. § 1983

90. Mr. Smith incorporates all previous Counterclaim allegations Paragraphs 1-89.

91. On April 11, 2025 Mr. Smith emailed Mr. Sappington regarding Mr. Robe's letter which Mr. Smith had received as forwarded by Instant Counsel. The email [Exhibit 4 email April 11, 2025 11:20 AM] recited in part that Mr. Smith had returned the pay form documents but if Mr. Sappington had not received them "you may email me whatever you need me to sign."

92. On April 15, 2025 Mr. Sappington replied to Mr. Smith by email [Exhibit 4 email April 15, 2025 12:24 PM]. The email recited in part "...[O]ur process was followed according to local, state and federal guidelines." Mr. Sappington provided no further explanation by text or information of any to local, state and federal guidelines that were allegedly followed to refuse to pay Mr. Smith. Mr. Sappington further replied "I have been informed that it would be unlawful to follow through with your demands in this email. Please read Mr. Robe's letter discussion of the deadlines and facts." Plaintiff/Counterclaim Defendant Sappington had an independent duty as Auditor, an officer of the Plaintiff/Counterclaim Defendant City, to pay debts justly incurred by the City. Mr. Sappington failed to pay compensation to Mr. Smith as mandated by §4.15 of the Nelsonville City Charter. Further, Mr. Sappington's statement adopts the retaliatory conduct of Mr. Robe and facts Mr. Robe related which included the

contravening explanation that reason Mr. Smith was not compensated was “[D]ue to Mr. Smith’s failure to complete the payroll forms, the City Auditor was unable to process any Council pay for Mr. Smith for the period of December 2023 through February 2024.” Mr. Sappington’s statement and denial of compensation to Mr. Smith was motivated by, and in retaliation for, Mr. Smith expressing his constitutionally protected speech on political matters and matters of great public interest and voicing opposition to the attempts of Mr. Robe and the City Council to repeal Issue #23 and to unlawfully adopt Issue #4. No reasonable person would have believed otherwise, given the state of the law and Mr. Sappington’s motivations in adopting Mr. Robe’s specious explanation that Mr. Sappington refused payment for lack of properly executed forms. As a result Mr. Smith suffered damages in the form of attorney’s fees, costs, embarrassment, humiliation, and emotional distress. Mr. Sappington is liable via 42 U.S.C. § 1983 for First and Fourteenth Amendment violations.

93. As a result Mr. Smith suffered damages in the form of attorney’s fees, costs, embarrassment, humiliation, and emotional distress. As a result Mr. Smith has suffered damages in the form of attorney’s fees, costs, embarrassment, humiliation, and emotional distress. Mr. Sappington is liable via 42 U.S.C. § 1983 for First and Fourteenth Amendment violations.

94. Mr. Smith has suffered damages as a result of the conduct of Taylor Sappington in his individual and official capacities.

95. Mr. Smith states a cause of action of First Amendment retaliation against Taylor Sappington.

FOURTH CAUSE OF ACTION: TOLLIVER’S FIRST AMENDMENT RETALIATION #1, 42 U.S.C. § 1983

96. Mr. Smith incorporates all previous Counterclaim allegations Paragraphs 1-95.

97. The next day on April 16, 2025 at 3:18 PM, Mr. Tolliver, acting in a *sua sponte* manner and in a concerted manner with previous communications of Robe and Sappington, emailed Mr. Smith referencing Mr. Sappington's statement characterizing it as telling Mr. Smith it was unlawful to pay him. Mr. Tolliver repeated the same mantra of calling Mr. Smith's correction request unlawful for the Auditor to pay, referring to the requested correction email as a "demand", presenting the email to Mr. Smith as "this is your final warning" and further advising Mr. Smith the City Council had already authorized Mr. Robe to take legal action if he did not "Withdraw your frivolous and baseless demand by April 17th, 2025" [Exhibit 4 p.2]. Mr. Tolliver was acting under color of law representing both the Office of the Chief of Police and the City of Nelsonville and signed the email as "Chief Devon Tolliver (Acting City Manager)" [Exhibit 4 p.2]. Mr. Tolliver engaged in First Amendment retaliation adopting Mr. Robe's characterization of Mr. Smith's correction request as "frivolous and baseless" because Mr. Smith was advocating on matters of great public concern, Issue #23 and Issue #4. Upon information and belief Issue #4 language was authored by Mr. Tolliver with assistance and/or approval from Mr. Robe as submitted to the Athens County Board of Elections for placement on the May 2025 primary ballot. Mr. Smith was critical of the language of Issue #4 and publicly expressed the opinion that the voters of Nelsonville voted to abolish the City Charter and did not want the Issue #4 Charter Amendment. Mr. Tolliver's email was designed to chill and distract Mr. Smith from further First Amendment protected speech in advocacy opposing Issue #4. Mr. Tolliver, in his capacity as Chief of Police, could bring criminal charges against Mr. Smith and at no time prior to the filing of the instant complaint against Mr. Smith was Mr. Smith informed if the alleged illegality about his request for a correction of his compensation was criminally or civilly unlawful. Mr. Smith was further chilled and concerned that any of his

advocacy regarding favoring Issue #23, opposing Issue #4 and/or being critical of Mr. Robe and Mr. Tolliver's Charter amendment language may provoke retaliatory law enforcement action against him. Mr. Tolliver's statement and denial of compensation to Mr. Smith and threats of legal action against Mr. Smith was motivated by, and in retaliation for, Mr. Smith expressing his constitutionally protected speech on political matters and matters of great public interest and voicing opposition to the attempts of Mr. Robe and the City Council to repeal Issue #23 and to unlawfully adopt Issue #4 which was authored by Mr. Tolliver. Mr. Tolliver acted under color of law to threaten and retaliate against Mr. Smith as both the Chief of Police and Acting City Manager. No reasonable person would have believed otherwise, given the state of the law and Mr. Tolliver's motivations.

98. As a result Mr. Smith suffered damages in the form of attorney's fees, costs, embarrassment, humiliation, and emotional distress. As a result Mr. Smith has suffered damages in the form of attorney's fees, costs, embarrassment, humiliation, and emotional distress. Mr. Tolliver is liable via 42 U.S.C. § 1983 for First and Fourteenth Amendment violations.

99. Mr. Smith has suffered damages as a result of the conduct of Devon Tolliver in his individual and official capacities.

100. Mr. Smith states a cause of action of First Amendment retaliation against Devon Tolliver.

FOURTH CAUSE OF ACTION: ROBE'S FIRST AMENDMENT RETALIATION #4, SAPPINGTON'S FIRST AMENDMENT RETALIATION #2; TOLLIVER'S FIRST AMENDMENT RETALIATION #2, 42 U.S.C. § 1983

101. Mr. Smith incorporates all previous Counterclaim allegations Paragraphs 1-100.

102. A little over 6 hours later on April 16, 2025 at 9:49:38 PM, Mr. Smith sent an email to Mr. Tolliver as "Chief Devon Tolliver". [Exhibit 4 p.1 email April 16, 2025 9:49:38 PM] This email was forwarded by Chief Devon Tolliver to Mr. Robe and Mr. Sappington [Exhibit 4 p.1

email April 17, 2025 6:52:27 AM]. The April 16, 2025 email contained no request or “demand” for any compensation. The gravamen of the letter sets the scenario for the escalation of First Amendment retaliation conduct by Mr. Robe, Mr. Sappington and Mr. Tolliver. Mr. Smith asked:

“If you, the Auditor, or any other official wants to make an assertion of law to suggest a pay correction is illegal, then I request again you provide me with that law so I can evaluate it. I would never want anyone to violate the law. If you, the City Attorney or the Auditor know of such a law, please provide it. I cannot evaluate or get legal counsel on assertions without the actual law.”

And

“I am not of the opinion that asking public officials to give explanations of their public actions and to provide legal authority is either frivolous or baseless. I have no control over you, the Council, or the City Attorney’s actions. I find your warning inappropriate, unwarranted and your continued withholding of any supporting law, fact or other authority you may have to be deliberate to keep me uninformed and to merely serve as an excuse to expensively litigate rather than frugally negotiate.”

Despite the clear and unequivocal request for Mr. Robe, Mr. Sappington and Mr. Tolliver to provide Mr. Smith with any “law to suggest a pay correction is illegal” and the most logical of reasons for the request “I cannot evaluate or get legal counsel on assertions without the actual law.” there was no response to Mr. Smith except silence until May 6, 2025 when Mr. Robe, as City Counsel, and Mr. Sappington as Plaintiff, filed the instant action at 10:36 AM on the morning of the election [25CI0136 Docket at 10:36 AM] and was published on social media the same day during the hours the election poles were open. Only with the filing of this action did the Mr. Robe finally present his theory of illegality. The alleged illegality of the payment, never disclosed to Mr. Smith prior to the lawsuit, was inarguably known prior to the complaint by Counterclaim Defendants Robe, Sappington and Tolliver, as based on **A Brief History of Time: Mr. Smith’s Lawsuits Relating to A Council Seat**, Complaint ¶¶ 26-27, 29-30; C.

Mr. Smith's Continued Fraudulent Purpose, Complaint ¶¶ 53-54 and the **Fourth Cause of Action — Breach of Contract** violation of Settlement Agreement Exhibit 1 ¶¶ 108-124.

103. The purpose of Mr. Robe, Mr. Sappington and Mr. Tolliver was to engage in a series of threats and coercion to unlawfully interfere in the constitutionally protected First Amendment activity of Mr. Smith advocating against the repeal of Issue #23, against the passage of Issue #4 and informing the electors of Nelsonville of facts and law supporting his statements to the broadcast and publishing media.
104. Counterclaim Defendants Robe, Sappington and Tolliver's adverse actions under the circumstance in threatening Mr. Smith with litigation and deliberately concealing the authority for their alleged claim of any payment to Mr. Smith being unlawful injured Mr. Smith by restraining, preventing, and impairing his right to public speech and advocacy in a way likely to chill a person of ordinary firmness from propounding further lawful speech.
105. Counterclaim Defendants were motivated to take these adverse actions in whole and/or in large part because of Mr. Smith's constitutionally protected speech expressing his constitutionally protected speech on political matters and matters of great public interest and voicing opposition to the attempts of Mr. Robe and the City Council to repeal Issue #23 and to unlawfully adopt Issue #4. No reasonable person would have believed otherwise, given the state of the law and Counterclaim Defendants Robe, Sappington and Tolliver's motivations.
106. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.
107. As a direct and proximate result of Counterclaim Defendants Robe, Sappington and Tolliver's unlawful retaliatory activity acting under color of law, Mr. Smith has suffered, and continues to suffer, damages in the form of attorney's fees, costs, embarrassment, humiliation,

and emotional distress for which Counterclaim Defendants Robe, Sappington and Tolliver are liable via 42 U.S.C. § 1983 for First and Fourteenth Amendment violations.

108. Mr. Smith has suffered damages as a result of the conduct of Robe, Sappington and Tolliver in their individual and official capacities.

109. Mr. Smith states a cause of action of First Amendment retaliation against Jonathan Robe, Taylor Sappington and Tolliver Devon Tolliver.

**FIFTH CAUSE OF ACTION
VIOLATION OF FIRST AMENDMENT, FIRST AMENDMENT RETALIATION
AS APPLIED TO THE STATES UNDER THE FOURTEENTH AMENDMENT
AGAINST COUNTERCLAIM DEFENDANTS THROUGH 42 U.S.C. § 1983:
1) NIC JOSEPH SAUL IN HER INDIVIDUAL CAPACITY AND OFFICIAL CAPACITY AS
A NELSONVILLE COUNCIL MEMBER AND; 2) CAMERON PECK IN HIS INDIVIDUAL
CAPACITY AND OFFICIAL CAPACITY AS A NELSONVILLE COUNCIL MEMBER
AND;
3) CORY TAYLOR IN HIS INDIVIDUAL CAPACITY AND OFFICIAL CAPACITY AS A
NELSONVILLE COUNCIL MEMBER AND; 4) NANCY SONICK IN HER INDIVIDUAL
CAPACITY AND OFFICIAL CAPACITY AS A NELSONVILLE COUNCIL MEMBER
AND; 5) GREGG CLEMENT IN HIS INDIVIDUAL CAPACITY AND OFFICIAL
CAPACITY AS A NELSONVILLE COUNCIL MEMBER AND; 6) OPHA LAWSON IN HIS
INDIVIDUAL CAPACITY AND OFFICIAL CAPACITY AS A NELSONVILLE COUNCIL
MEMBER**

110. Mr. Smith incorporates all previous Counterclaim allegations Paragraphs 1-109.

111. At the Nelsonville City Council Meeting, Mon, 4/14/2025 Recording at <https://www.youtube.com/watch?v=S-b-RU1DJ4Y> at [2:20:42-2:21:21] A motion was introduced and affirmed by yes vote by Council Members Nic Joseph Saul, Cameron Peck, Gregg Clement, Cory Taylor, Nancy Sonick, and Opha Lawson.

112. Counterclaim Defendants Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick, Gregg Clement, and Opha Lawson are all Council Members of the Nelsonville City Council. Each individual acted in their respective official capacities and individual capacity under color of law to unlawfully affirm by yes vote a motion to authorize legal action against Mr. Greg Smith.

113. The motion was based on a previously written email request by Mr. Smith stating in its entirety “While doing my taxes I discovered that I was not paid for the time I was council president from December 2023 thru February 2024. Please do a correction” [Exhibit 2 p.4 email of April 9, 2025 1:52:40 PM]. The motion characterized Mr. Smith’s request as “frivolous and baseless claims against the city ” and the “legal action” to be carried out “by the deadline given by the City Attorney” [YouTube Record 4/14/25 2:20:55-2:21:01].
114. The instant action was filed as a result of this motion passed by Counterclaim Defendants Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick, Gregg Clement, and Opha Lawson. The motion as passed by Counterclaim Defendants Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick, Gregg Clement, and Opha Lawson in their official and individual capacities is the policy of the Defendant City of Nelsonville regarding the legal action against Mr. Smith. The instant action is a sham and pretext for retaliation against Mr. Smith as retaliation for Mr. Smith opposing the ad hoc committee’s and opposing Council members’ unlawful unconstitutional attempts to reinstate the charter form of government³. Mr. Smith opposed Council providing the public what he believed to be incomplete and misleading information about Issue #23. Mr. Smith expressed his constitutionally protected speech on political matters and matters of great public interest and voicing opposition to the attempts of Mr. Robe and the City Council to invalidate Issue #23 by the actions of the ad hoc committee. The Counterclaim Defendants Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick,

³ [See *Hittle v. Muskingum County Bd. of Elections* 1979 Ohio App. LEXIS 10706 at 3.] The initiative petitions proposing an election to "repeal the abolition" of a City Charter and also an Ordinance which called for the election on the issue are in fatal conflict with Article XVIII, Sections 7 and 8 of the Ohio Constitution. *Supra*.

Gregg Clement, and Opha Lawson retaliated against Mr. Smith for having originally participated in bringing the initiative language of Issue #23 to the Nelsonville public to be placed on the general election ballot; speaking in favor of Issue #23 and once passed, opposing Issue #4 in its attempt to unconstitutionally repeal Issue #23; and providing information in public media that explained the efficacy of Issue #23 in returning to a statutory form of government.

115. Counterclaim Defendants Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick, Gregg Clement, and Opha Lawson's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

116. As a direct and proximate result of Counterclaim Defendants Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick, Gregg Clement, and Opha Lawson's unlawful retaliatory activity, Mr. Smith has suffered, and continues to suffer, damages in the form of attorney's fees, costs, embarrassment, humiliation, and emotional distress for which the Counterclaim Defendants are liable. No reasonable person would have believed otherwise, given the state of the law and Defendants' motivations. Counterclaim Defendants Counterclaim Defendants Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick, Gregg Clement, and Opha Lawson are liable via 42 U.S.C. § 1983 for First and Fourteenth Amendment violations.

117. Mr. Smith states a cause of action of First Amendment retaliation against Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick, Gregg Clement, and Opha Lawson.

PRAYER FOR RELIEF

For the foregoing reasons, Mr. Smith respectfully requests that the Court:

1. Enter judgment in Mr. Smith's favor against all Counterclaim Defendants on all claims for relief and award in excess of \$25,000.00 as punitive damages where applicable, in excess of \$25,000.00 as compensatory damages where applicable, and other monetary sanctions, attorney's fees and costs;
2. Declare that Counterclaim Defendants Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick, Gregg Clement, Opha Lawson, Jonathan Robe, Taylor Sappington and Devon Tolliver's acts and conduct as alleged herein constitute violations of the United States Constitution of the First and Fourteenth Amendments and First Amendment Retaliation, as well as violations of 42 U.S.C. § 1983 and enter an award of judgment as to each for punitive damages individually and exemplary damages individually in the amount of the amount of \$137,500.00, compensatory damages in the amount of \$137,500.00, costs and attorney's fees as applicable to each count for each of the Counterclaim Defendants Nic Joseph Saul, Cameron Peck, Cory Taylor, Nancy Sonick, Gregg Clement, Opha Lawson, Jonathan Robe, Taylor Sappington and Devon Tolliver for their intentional, malicious, and egregious acts and callous and reckless disregard and violation of Mr. Smith's constitutional rights;
3. Declare that Counterclaim Defendants are liable for damages on all claims for relief as to each count applicable to them individually and officially;
4. Enter a declaratory judgment and order and declaring the validity of Paragraph 3 of the Settlement Agreement determining that front pay, back pay and wages as may be applicable to Mr. Smith in the Settlement Agreement are not applicable to create an unlawful circumstance for Mr. Smith requesting a correction of his Council Member compensation;

5. Enter a declaratory judgment and order declaring the validity of Paragraph 3 of the Settlement Agreement determining that asking for a correction under the circumstances requested in Exhibit 2 p.4 email of April 9, 2025 1:52:40 PM is not a breach of contract.
6. Enter a judgment for defamation per se against Defendant City Officer and Counterclaim Defendants City John Does, as they may be identified, for punitive and compensatory damages including but not limited to damages for pain and suffering, mental anguish, emotional distress, humiliation, embarrassment, and inconvenience by an award of punitive and exemplary damages in the amount of \$137,500.00, compensatory damages in the amount of \$137,500.00 that Mr. Smith has suffered and is reasonably certain to suffer, and an amount for costs, expenses and attorney's fees upon submission of an evidentiary damages brief;
7. Award punitive and exemplary damages in the amount of \$137,500.00, compensatory damages in the amount of \$137,500.00, costs and attorney's fees as applicable to each count under 42 U.S.C. § 1983 against the individual Counterclaim Defendants Robe, Sappington and Tolliver for their intentional, malicious, and egregious acts and callous and reckless disregard of Mr. Smith's constitutional rights;
8. Award all other relief in law or equity, including injunctive relief, to which Mr. Smith is entitled and that the Court deems equitable, just, or proper.

Respectfully submitted,

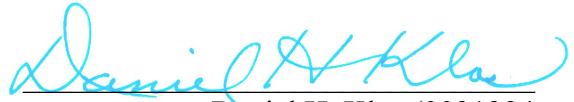


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Attorney for Defendant, Counterclaim Plaintiff Greg Smith

Mr. Smith demands a Jury Trial on all matters triable to a jury on his counterclaims.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The Defendant-Counterclaim Plaintiff, Mr. Greg Smith hereby certifies that a copy of the above was delivered by electronic mail to the parties and representatives of Record of record by delivery to their Counsel as named below this 18th day of July, 2025 by electronic mail pursuant to Civ. R. 5(B)(2)(f) and the Court's electronic filing system.

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Nelsonville City Charter

NELSONVILLE CITY CHARTER

PREAMBLE

ARTICLE I - Name, Succession and Boundaries

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PREAMBLE

We, the people of the City of Nelsonville, Ohio, in order to obtain and secure the benefits of home rule powers under the Constitution of the State of Ohio, do hereby adopt this Charter for the government of the City of Nelsonville.

Through this Charter with divine guidance we express our beliefs and convey our trusts, so that its concepts shall long endure without regard to age, race, color, sex, marital status, handicap, religion, ancestry, or national origin.

ARTICLE I - NAME, SUCCESSION AND BOUNDARIES

§1.01. Name, succession and boundaries

The City shall be known as the "City of Nelsonville", shall continue under this Charter to be a body politic and corporate, and as such shall have perpetual succession. The City shall have the same boundaries existing at the time of adoption of this Charter, with the power and authority to change its boundaries and annex territory thereto in the manner authorized by the laws of the State of Ohio.

ARTICLE II - FORM OF GOVERNMENT

§2.01. Form of government.

The government provided by this Charter shall be known as the Council-Manager form.

ARTICLE III - POWERS

§3.01. Powers.

§3.02. Construction

§3.03. Intergovernmental relations.

§3.01. Powers.

The City shall have all powers to which a city is entitled under the Constitution and laws of the State of Ohio, either expressly or by implication, as fully and completely though specifically enumerated in this Charter. The

enumeration of specific powers in this Charter or the reference in this Charter to specific powers granted by the Constitution or laws of the State of Ohio shall not be construed to be exclusive, and the City may determine to exercise any power in the manner provided under this Charter or in the manner provided under the Constitution or laws of the State of Ohio. Unless otherwise specified by ordinance or resolution, powers shall be exercised in the manner provided under this Charter. It is the intention of the people by the adoption of this Charter that a substantial compliance with the Charter's provisions shall be sufficient to sustain any action taken under this Charter.

§3.02. Construction.

The powers of the City under this Charter shall be construed liberally in favor of the City. As applied in this Charter, unless the context otherwise requires, the singular includes the plural; the plural includes the singular; words of one gender include the other gender; and words in the present tense include the future tense.

§3.03. Intergovernmental relations.

The City may exercise any of its functions, and participate in the financing thereof, including the incurrence of debt, jointly or in cooperation, by contract or otherwise, with one or more political subdivisions, or civil divisions thereof, or the United States or any agency thereof.

ARTICLE IV - THE COUNCIL

§4.01. Number, selection and term.

§4.02. Qualifications.

§4.03. Vacancies.

§4.04. Quorum.

§4.05. Meetings.

§4.06. Clerk of Council.

§4.07. Special meetings.

§4.08. Powers of Council.

§4.09. Forms of action by Council.

§4.10. Enactment of ordinances.

§4.11. Effective date.

§4.12. Publication of ordinances.

§4.13. Initiative and referendum.

§4.14. Adoption of standard codes by reference.

§4.15. Council compensation.

§4.01. Number, selection and term.

The legislative powers of the City except as are reserved to the people by this Charter (Initiative and Referendum), and by the Constitution of the State of Ohio, shall be vested in a Council, which shall consist of seven (7) members elected at large by a non-partisan ballot. All such members must be and must remain residents of the City. The term of office of members of Council shall be for four (4) years beginning the first Monday of December next following their election and they shall hold office until their successors

are elected and qualified. To effect election by staggered terms of its members, the four (4) members who receive the highest number of votes shall be elected for four (4) years, and the three (3) members receiving the next highest votes shall be elected for two (2) years. At succeeding elections all members shall be elected for four (4) year terms of office.

§4.02. Qualifications.

Any qualified elector who has been continuously a resident and a qualified elector of the City of one (1) year next prior to their election, and who is not the occupant of an incompatible office, shall be eligible to serve as a member of City Council. Each member of Council shall continue to be a resident and qualified elector of the City throughout his term of office, failing which Council shall remove him from office.

§4.03. Vacancies.

Vacancies in Council shall be filled by appointment of a qualified person. The appointment shall be made by a majority vote of Council and shall continue until the next election is held at which time a successor shall be elected to fill the unexpired term. In the event Council fails to fill the vacancy within thirty (30) days the President of Council shall make the appointment within fifteen (15) days of Council's failure to do so.

§4.04. Quorum.

Four (4) members of Council shall constitute a quorum to transact business, but a lesser number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by Council rules and regulations duly adopted.

§4.05. Meetings.

The Council shall meet at such times and places as may be prescribed by its ordinances, resolutions, rules or by motion. Regular meetings shall be held at least twice in each calendar month, except that during the months of July and August the Council may dispense with one of its regular meetings. The Council shall determine its own rules and order of business and shall keep a journal of its proceedings. Council may appoint, from its own body, such officers or employees deemed necessary for efficient operation of Council. Except for such closed executive sessions as may be permitted by Ohio law, all meetings of Council and its committees shall be open to the public. Any person shall have access to the public records of the City as permitted by Ohio law.

§4.06. Clerk of Council.

Council shall appoint, by majority vote, a person to serve as Clerk of Council. The Clerk shall serve at the pleasure of Council and may be removed by a majority vote of Council. The Clerk of Council may not hold other office or position of employment in the City. The Clerk of Council shall keep an accurate and complete journal of the proceedings of Council and perform such other duties as this Charter or Council may require. Council shall set a reasonable salary for

the position of Clerk of Council, before any such appointment is made.

§4.07. Special meetings.

The President of Council or any three (3) members thereof may call special meetings of Council upon written notice served personally upon each member, or left at their usual place of residence twenty-four (24) hours previous to the time fixed for such meeting. Any request for a special meeting and the notice calling same shall the subject(s) to be considered, and such meeting shall be limited to a consideration of such subject(s).

§4.08. Powers of Council.

All legislative power of the City shall be vested in the Council except as otherwise provided by this Charter and The Constitution of the State of Ohio therefore. Council shall have authority to:

- (1) Adopt ordinances and resolutions on any subject within the scope of its powers and provide penalties for the violation thereof;
- (2) Establish the internal organization, staffing and compensation of the departments, boards and commissions created by this Charter;
- (3) Set up such additional departments, boards, or commissions as it may deem necessary and determine their powers and duties;
- (4) Adopt and modify the master plan and official map of the City;
- (5) Have the power to adopt and provide for the enforcement of zoning classifications, districts, uses and regulations by ordinance as authorized under the provisions of the Ohio law;
- (6) Adopt a subdivision platting ordinance and approve subdivision plats which conform thereto.
- (7) Enact a comprehensive building code;
- (8) Adopt an annual appropriation ordinance based upon the annual budget;
- (9) Appoint and remove, and establish compensation for, the office of Mayor and Vice-Mayor. The Mayor and Vice-Mayor will be elected biennially from among the seven Council members. The Mayor shall act as President of Council and preside over Council, but will have no veto powers. The Mayor will act as a ceremonial figure for various civic functions where the City should be represented. The Mayor shall preside over Mayor's Court and supervise the bailiff of that Court. The Vice-Mayor shall perform the duties of the Mayor when the Mayor is absent;
- (10) Appoint and remove, and establish compensation for, the position of City Manager, and appoint an acting Manager when necessary;
- (11) Confirm and remove, and establish compensation for, the position of City Attorney;
- (12) Inquire into the conduct of any City officer or employee in the performance of their functions;
- (13) Make investigations of any office, department or agency of the City;

(14) Employ a public accountant to make an audit of the financial affairs of the City whenever such audit is deemed necessary or required by law;

(15) Provide for the employment of engineering and other professional services on a consulting basis when deemed necessary; and

(16) Issue subpoenas for witnesses and the production of books and papers which may be necessary in the conduct of any hearing or investigation.

§4.09. Forms of action by Council.

The action of Council shall be by ordinance or resolution. On all matters of a general or permanent nature, or granting a franchise, or levying a tax, or appropriating money, or contracting indebtedness, or issuing bonds or notes, or for the purchase, lease or transfer of property, action shall be taken formally, by ordinance, in the manner hereinafter provided. Action on all other matters of a temporary or informal nature may be taken by resolution.

§4.10. Enactment of ordinances.

Each proposed ordinance shall be introduced in writing by a member of the Council, and, in addition to the title, shall contain an opening clause reading as follows, "Be it ordained by the Council of the City of Nelsonville, Ohio." The action proposed to be taken shall be fully and clearly set forth in the body of the ordinance. Each ordinance shall contain one subject only, which shall be clearly in the title. No ordinance shall be passed without the concurrence of a majority of all the members elected to Council, except that emergency ordinances, as hereinafter provided, shall require concurrence of five (5) members elected to Council for passage. Every ordinance shall be fully and distinctly read on two (2) different days before its enactment, unless an emergency is declared as hereinafter provided, or unless, by a vote of five (5) members elected to Council, the reading in full on two (2) different days is dispensed with, in which cases such ordinance may be read one (1) time and passed on the day as such reading. Final passage of all ordinances and resolutions shall be certified by the Mayor or Vice-Mayor and the Clerk of Council.

§4.11. Effective date.

Ordinances provided for appropriations for current expenses of the City, or for public improvements petitioned for by the owners of a majority of the foot frontage of property benefited and to be specially assessed for the cost thereof, or for raising revenue, or ordinances wherein an emergency is declared to exist, shall become effective immediately upon passage or at such later date as may be provided therein, and such ordinances shall not be subject to referendum. All other ordinances shall take effect thirty (30) days after passage. An emergency ordinance as referred to herein is one which must be passed and made effective at once or in less than thirty (30) days to meet an emergency in the operation of the City government, or which is necessary for the immediate preservation of the public peace, health, safety, morals or welfare. Each emergency ordinance must contain therein a separate Section setting forth the reason for the emergency.

No ordinance granting a franchise or fixing a rate to be charged by a public utility shall be passed as an emergency measure.

§4.12. Publication of ordinances.

Within fourteen (14) days after passage, ordinances required by law to be published, shall be published by posting the complete text of the ordinance in each of the four (4) public places in the City, such places to be designated by Council, for a period of at least fifteen (15) days. In addition, all ordinances shall be posted on one prominent protected bulletin board in City Hall for a period of at least fifteen (15) days.

§4.13. Initiative and referendum.

Except as otherwise provided in this Charter, ordinances may be proposed and submitted to popular vote by initiative and referendum under the procedures set forth in Ohio law.

§4.14. Adoption of standard codes by reference.

The Council may adopt model or standard codes prepared and published by public or private agencies on such matters as building construction, plumbing, heating, ventilation, air conditioning, electric wiring, smoke regulation, fire prevention and other similar regulatory subjects by reference to the date and source of the code without reproducing the same in full in the ordinance. At least six (6) copies of all such Codes shall be kept in the office of the Clerk of Council for reference and consultation by interested persons during regular office hours, and additional copies shall always be available for sale, at cost, by the Clerk of Council. Any standard code adopted in this manner shall not be required to be published at length.

§4.15. Council compensation.

Compensation of Council members shall be established by ordinance but shall not be changed during their terms of office, nor by any ordinance passed subsequent to thirty (30) days before the final date fixed by the general election laws of Ohio or by provisions of this Charter for filing as candidate for such office.

For the first term of service under this Charter, Council members shall receive a salary of \$1,200.00 per year. The President of Council shall receive an additional \$1,200.00.

ARTICLE V- CITY MANAGER

§5.01. Approval and removal.

§5.02. Qualifications.

§5.03. Acting Manager.

§5.04. Powers and duties of the City Manager.

§5.05. Council, Manager relations.

§5.01. Appointment and removal.

Council shall appoint a City Manager, herein also referred to as the Manager, and establish the compensation for that position. A majority vote of the members elected to Council shall be required for the appointment of the City

Manager. The Council may remove the City Manager from office in accordance with the following procedures:

(1) If the City Manager served less than six (6) months he may be removed by a two-thirds vote of the members of Council without any right to a public hearing and without the benefit of the provisions of subsections (2) to (4), inclusive, of this Section;

(2) If the City Manager has served six (6) months or more the Council shall adopt by a vote of two-thirds of its members a preliminary resolution which must state the reasons for removal and may suspend the City Manager from duty for a period not to exceed forty-five (45) days. A copy of the resolution shall be delivered promptly to the City Manager;

(3) Within five (5) days after a copy of the resolution is delivered to the City Manager, he may file with the Clerk of Council a written request for a public hearing. This hearing shall be held at a regular or special Council meeting not earlier than fifteen (15) days and no later than thirty (30) days after the request is filed. The date of the public hearing shall be set by the City Manager. The City Manager may file with the Clerk of Council a written reply to the reasons for removal contained in the preliminary resolutions, not later than five (5) days before the hearing;

(4) The Council may adopt a final resolution of removal which may be made effective immediately, by a vote of two-thirds of its members at any time after five (5) days from the date when a copy of the preliminary resolution was delivered to the Mayor, if he has not requested a public hearing, or at any time after the public hearing, if he has requested one;

(5) The City Manager shall continue to receive his salary until the effective date of a final resolution of removal. The decision of the Council to suspend or remove the City Manager shall be the sole discretion of the Council and shall not be subject to review by any Court; or

(6) If the City Manager is suspended from duty under subsections (1) or (2), the Council shall appoint by vote of a majority of the members thereof an administrative officer who shall serve as acting manager until the City Manager is restored to duty, or until Council shall appoint another person as Acting Manager, or until another person is appointed City Manager in accordance with this Charter. The Acting Manager so appointed shall exercise all powers, duties and functions of the City Manager under this Charter.

§ 5.02. Qualifications.

The City Manager shall be appointed solely on the basis of his executive and administrative qualifications, and need not be a resident of the City at the time of his appointment, but shall become a resident of the City within six (6) months after his appointment.

§5.03. Acting Manager.

The City Manager may designate, by letter filed with the Clerk of Council, any qualified administrative officer of the City to perform his powers, duties and functions during his temporary absence from the City or during his disability. Such designation shall not be effective until the Council has approved it by a majority vote of the members of the Council,

and the Council may revoke such designation by a majority vote of the members thereto. If such designation has not been made and the Manager is absent from the City or unable to perform his duties or to make such designation, Council may, by motion, appoint any qualified administrative officer of the City to perform the powers, duties and functions of the City Manager during the temporary absence from the City due to disability of the City Manager.

In the event of a vacancy in the office of City Manager, the Council may designate a person as Acting City Manager, who shall exercise all powers, duties and functions of the City Manager until a City Manager is appointed.

Upon the recommendation of the City Manager, the Police Chief is hereby appointed the Acting City Manager in the absence of the City Manager. The City Manager shall still file with the Clerk of Council the designation of the Police Chief as Acting City Manager and the term of each designation. City Council reserves the right pursuant to this Section of the Nelsonville City Charter to revoke this designation at any time by passage of this ordinance.

§5.04. Powers and duties of the City Manager.

The City Manager shall be the chief executive and administrative officer of the City. He shall be responsible to the Council for the administration of all City affairs placed in his charge by or under this Chapter, the ordinances of the City and Ohio laws. He shall have the following powers and duties:

(1) He shall appoint and, when he deems it necessary for the good of the service, suspend or remove or otherwise discipline all City employees and appointive administrative officers, except as provided for by or under this Charter, in the manner provided by the rules adopted by the Civil Service Commission pursuant to this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, division, office or agency. He shall have the power and authority to appoint various City positions, including the City Attorney, under this Charter. He shall not have the power or authority to appoint or remove, suspend or discipline any member of any board or commission established under this Charter;

(2) He shall direct and supervise the administration of all departments, divisions, offices and agencies of the City, except as otherwise provided by this Charter;

(3) He shall attend all Council meetings and shall have the right to take part in discussion but may not vote;

(4) He shall see that all laws, provisions of this Charter, and ordinances and resolutions of the Council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed;

(5) He shall prepare and submit the annual budget and capital program to Council;

(6) He shall submit to Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year;

(7) He shall make such other reports as the Council may require concerning the operations of City departments,

divisions, offices, boards, commissions and agencies subject to his direction and supervision;

(8) He shall make detailed monthly reports to Council fully advising Council as to the financial condition and future operating and capital needs of the City and make such recommendations to the Council concerning the affairs of the City;

(9) He shall require reports and information of subordinate officers and employees of the City as he deems necessary in the orderly operation of the City, or when requested to do so by Council or any board or commission of the City;

(10) He shall be the contracting officer of the City and shall award and execute contracts and agreements on behalf of the City in the manner and under the procedures required by this Charter, provided that:

(a) When the expenditure of funds for the purchase of supplies or materials, or to provide labor for any work to be performed under contract exceeds the amount specified by the laws of the State of Ohio for which such purchases or work may be accomplished without advertisement and competitive bidding, such expenditure shall first be authorized and directed by ordinance passed by the Council. The City Manager shall recommend to Council the lowest and best bid, and upon approval of Council, may award a written contract to the lowest and best bidder after advertisement on the same day of each week for not less than two (2) nor more than four (4) consecutive weeks in a newspaper determined by the Council to be of circulation within the City;

(b) Compensation of persons and employees; contracts with persons, firms or corporations for services requiring specialized skill, knowledge, or training; and expenditures required because of a real and present emergency arising in connection with the maintenance, operation or repair of City buildings, equipment and facilities, and City services, when authorized by ordinance adopted by a two-thirds vote of all members of the Council, need not be advertised and notices need not be published as provided hereinabove;

(c) Modifications and changes to contracts awarded under competitive bidding, and in excess of One Thousand Dollars (\$1,000), shall first be authorized by ordinance;

(d) The City Manager may designate an administrative officer or employee of the City to act as purchasing agent to award and execute contracts, orders or agreements on behalf of the City, when such contracts, orders or agreements do not authorize an expenditure of money in excess of Five Thousand Dollars (\$5,000); and

(e) The City Manager or any other person designated by him as purchasing agent shall not willfully cause or allow any contract or order to be split or divided into separate orders or contracts in order to avoid the requirements of subsection (4) above, or the requirements of competitive bidding as provided by this Charter.

(11) He shall execute on behalf of the City all contracts and agreements, except as otherwise hereinabove provided by paragraph (10) of this Section regarding the

designation of a purchasing agent, conveyances, evidences of indebtedness and other instruments to which the City is a party;

(12) He shall affix to official documents and instruments of the City the City Manager's Seal which shall be the seal of the City, but the absence of the seal shall not affect the validity of any such document or instrument;

(13) He shall perform such duties and have such other powers as are conferred or required by this Charter, by any ordinance or resolution of the Council, or by the laws of the State of Ohio; and

(14) He shall endeavor to actively pursue the awarding of grants to aid in the operation of the City.

§5.05. Council, Manager relations.

Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any administrative officers or employees whom the City Manager or any of his subordinates are empowered to appoint, unless otherwise provided by this Charter, but the Council may express its views and fully and freely discuss with the Manager anything pertaining to appointment and removal of such officers and employees. Except for the purpose of inquiries and investigations, the Council or its members shall deal with officers and employees who are subject to the direction and supervision of the City Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately, except that the Council may require of the Departments of Law and Finance such reports, information, and opinions as Council shall determine. This Section shall not be construed as limiting the power of Council to remove or suspend the City Manager because of his practices in connection with the appointment, promotion, disciplining or removal of officers and employees of the City.

ARTICLE VI- ADMINISTRATIVE DEPARTMENTS

- §6.01. Creation of departments.
- §6.02. Creation of new departments.
- §6.03. Department directors and division heads.
- §6.04. Administrative Code.
- §6.05. Department of Law.
- §6.06. Department of Finance.
 - §6.06.01. Auditor: term.
 - §6.06.02. Auditor: qualifications.
 - §6.06.03. Auditor: powers and duties.
 - §6.06.04. Auditor: compensation.
 - §6.06.05. Auditor: vacancy.
 - §6.06.06. Auditor: staff.
 - §6.06.07. Treasurer: term.
 - §6.06.08. Treasurer: qualifications.
 - §6.06.09. Treasurer: powers and duties.
 - §6.06.10. Treasurer: compensation.
 - §6.06.11. Treasurer: vacancy.
- §6.07. Department of Public Safety.
 - §6.07.01. Division of Water.

- §6.07.02. Division of Water Distribution.
- §6.07.03. Division of Sewers.
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- §6.08. Department of Public Safety.
- §6.08.01. Division of Police.
- §6.08.02. Division of Fire.
- §6.08.03. Residence requirements.
- §6.08.04. Procedure for appointment of Police and Fire Chief.

§6.01. Creation of departments.

The administrative functions of the City shall be carried on by the departments of Law, Finance, Public Safety, and Public Service. This Section shall not preclude the Council from providing for such services by contract or through joint participation with other governmental agencies.

§6.02. Creation of new departments.

The Council may, by ordinance or resolution, create, change or abolish any office, department, division, or subunit of any department or division, or agency, other than those established by the Charter. Council may assign additional duties to any department established by this Charter, but may not discontinue or assign to any other office, department, or agency, any function assigned by this Charter to a particular office, department, or agency.

§6.03. Department directors and division heads.

Unless otherwise provided by this Charter, the Director of each department shall be the Manager. Unless otherwise provided by this Charter, the head of each division shall be a part-time or full-time Division Head, appointed by the City Manager and approved by a majority vote of Council, who shall exercise division supervision and control subject to the direction of the Manager. Two (2) or more divisions may be headed by the same person, and the Manager, with approval of Council, may serve as the division head of one (1) or more divisions. Each division head shall be an administrative officer of the City.

§6.04. Administrative Code.

Subject to the provisions of this Charter, Council shall, by ordinance or resolution, adopt, revise or repeal an ordinance or resolution referred to as the Administrative Code, which Code shall provide for the organization of the City government that is consistent with this Charter, define the powers and duties of each organizational unit, and determine administrative procedures. Council may delegate to the City Manager the power to make rules and regulations to govern management practices, consistent with this Charter, the Administrative Code and other ordinances and resolutions.

§6.05. Department of Law.

There shall be a Department of Law, the head of which shall be the City Attorney. The City Attorney shall be an attorney-at-law, qualified to practice law in the State of Ohio, appointed by the City Manager subject to approval by a majority vote of City Council.

A law firm, as well as an individual attorney, may serve as the City Attorney and in that case, the person

designated by the law firm shall serve with the title of City Attorney, and other persons so designated may serve as Acting City Attorney with all the power, duties and functions of the City Attorney when the person designated as City Attorney is not available. The City Attorney shall serve as the chief legal advisor to Council, the City Manager, and all city departments, divisions, offices and other agencies, boards or commissions. The City Attorney shall represent the City in all legal proceedings and shall perform any other duties prescribed by this Charter, by ordinance or resolution or by the Administrative Code or the general laws of Ohio, except that the person or firm holding the office of City Attorney shall not be required to represent any school district or any other unit of government, other than the City, by virtue of holding the office of City Attorney. When necessary, the Council may appoint special legal counsel to represent the City, together with or in place of the City Attorney. The City Attorney shall be present at all Council meetings, and may be requested to attend any Commission and Board meetings. The person or firm holding the office of City Attorney shall not be required to be resident of the City.

§6.06. Department of Finance.

The direction of and the responsibility for the Department of Finance shall be split between the City Auditor and the City Treasurer, each being elected by the public. Each shall be solely responsible for the operation of their office as prescribed by this Charter and the laws of Ohio.

§6.06.01. Auditor: term.

The City Auditor, herein referred to as the Auditor, shall be elected at the regular municipal election held in the year 1995 and every four (4) years thereafter, for a term of four (4) years, commencing on the first day of December next after such election, and shall serve until succeeded as in this Charter provided. The office of Auditor shall be a nonpartisan office.

§6.06.02. Auditor: qualifications.

No person shall be eligible to hold office of Auditor unless he shall have been continuously a resident and a qualified elector of the City for one (1) year next prior to his election. The Auditor shall continue to be a resident and qualified elector of the City throughout his term of office, failing which Council shall remove him from office.

§6.06.03. Auditor: powers and duties.

The Auditor shall attend all regular meetings of Council, and may be requested to attend any special or committee meetings. The Auditor (and the Manager) shall execute on behalf of the City all contracts, conveyances, evidences of indebtedness and all other instruments to which the City is a party.

The Auditor shall be the fiscal officer of the City. He shall serve the Manager and the Council as financial adviser in connection with City affairs, shall be responsible for the preparation and submission of the annual estimate of receipts and expenditures and appropriation measures and shall at all times keep the Manager and Council informed of

the financial condition and needs of the City. He shall authenticate all records, documents and instruments of the City on which authentication are proper. The Auditor shall examine all payrolls, bills and other claims against the City and shall issue no warrant unless he shall find that the claim is in proper form, correctly computed and duly approved, that it is due and payable, that a lawful appropriation has been made therefore, and that the amount required to pay said claim is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. He shall perform such other duties consistent with their office as the Manager or the Council may request and shall comply with the laws of Ohio relating to certifications for expenditures of public moneys.

§6.06.04. Auditor: compensation.

The Council shall fix the salary of the Auditor, which salary, for the term of 1995 through 1999, shall be fixed by Council prior to August 1, 1995.

If the established salary of the Auditor is to be changed or adjusted in respect to a succeeding term of Office, such change or adjustment must be made by Council not later than February 1st of the last year of the elective term then being served by the Auditor but the salary shall not be increased or decreased during the elective term of office which is then being served by the Auditor. Unless and until the salary is changed, it shall remain as last fixed.

§6.06.05. Auditor: vacancy.

When a vacancy occurs in the office of Auditor, the vacancy shall be filled by an appointment made by the Manager, subject to confirmation by a majority of the members of Council, and the person so appointed shall serve for the unexpired term or until succeeded as in this Charter provided.

§6.06.06. Auditor: staff.

The Auditor shall have a staff of two (2) employees. They shall be titled the Deputy Auditor and the City Tax Clerk. They shall be hired subject to the requirements of the Civil Service provisions, where applicable, and shall be subject to a job description as provided by the City Auditor. Council may approve to increase or decrease this staff, but Council may never decrease below a staff of two (2).

§6.06.07. Treasurer: term.

The City Treasurer, herein also referred to as the Treasurer, shall be elected at the regular municipal election held in the year 1995 and 1997, and every four (4) years thereafter, for a term of four (4) years, commencing on the 1st day of December next after such election, and shall serve until succeeded as in this Charter provided. The office of City Treasurer shall be a nonpartisan office.

§6.06.08. Treasurer: qualifications.

No person shall be eligible to hold the office of Treasurer unless he shall have been continuously a resident and a qualified elector of the City for one (1) year next prior to his election. The Treasurer shall continue to be a resident and

qualified elector of the City throughout his term of office, failing which Council shall remove him from office.

§6.06.09. Treasurer: powers and duties.

The Treasurer shall be custodian of all moneys of the City and of all evidences of investments of City moneys, and shall keep and preserve the same in such public depositories as are authorized by the laws of the State of Ohio or by ordinance of Council. They shall pay out money from the City treasury only on warrants issued by the Auditor. They shall keep a detailed record of all receipts from taxes and other sources, as well as a detailed record of all disbursements of City moneys and a record of the expenditures from various appropriated funds.

§6.06.10. Treasurer: compensation

The Council shall fix the salary of the Treasurer, which salary, for the term of 1995 through 1997, shall be fixed by Council prior to August 1, 1995.

If the established salary of the Treasurer is to be changed or adjusted in respect to a succeeding term of office, such change or adjustment must be made by Council not later than February 1st of the last year of the elective term then being served by the Treasurer, but the salary shall not be increased or decreased during the elective term of office which is then being served by the Treasurer. Unless and until the salary is changed, it shall remain as last fixed.

§6.06.11. Treasurer: vacancy.

When a vacancy occurs in the office of Treasurer, the vacancy shall be filled by an appointment made by the Manager, subject to confirmation by a majority of the members of Council, and the person so appointed shall serve for the unexpired term or until succeeded as in this Charter provided.

§6.07. Department of Public Service

There shall be a Department of Public Service, the head of which shall be the City Manager. The Department of Public Service shall be responsible for the general supervision, custody, care and maintenance of the public buildings, grounds, streets, sewers, utilities, cemeteries and property owned or operated by the City. The department shall consist of four (4) divisions: Water, Water Distribution, Sewers, and Streets, with each division having its own Division Head.

§6.07.01. Division of Water.

The direction of and the responsibility for the Division of Water shall be vested in the Manager. The Division Head shall be appointed by the Manager with the majority approval of Council, and shall report to the Manager for administrative purposes. The appointment of all members of the Division of Water shall be made by the Manager, subject to the requirements of the Civil Service Provisions where applicable.

§6.07.02. Division of Water Distribution.

The direction of and the responsibility for the Division of Water Distribution shall be vested in the Manager.

The Division Head shall be appointed by the Manager with the majority approval of Council, and shall report to the Manager for administrative purposes. The appointment of all members of the Division of Water Distribution shall be made by the Manager, subject to the requirements of the Civil Service Provisions where applicable.

§6.07.03. Division of Sewers.

The direction of and the responsibility for the Division of Sewers shall be vested in the Manager. The Division Head shall be appointed by the Manager with the majority approval of Council, and shall report to the Manager for administrative purposes. The appointment of all members of the Division of Sewers shall be made by the Manager, subject to the requirements of the Civil Service Provisions where applicable.

§6.07.04. Division of Streets.

The direction of and the responsibility for the Division of Streets shall be vested in the Manager. The Division Head shall be appointed by the manager with the majority approval of Council, and shall report to the Manager for administrative purposes. The appointment of all members of the Division of Streets shall be made by the Manager, subject to the requirements of the Civil Service Provisions where applicable.

§6.08. Department of Public Safety.

There shall be a Department of Public Safety, the administrative head of which shall be the City Manager.

§6.08.01. Division of Police.

The Division of Police as presently established shall continue in existence. The operating rules and procedures shall be under the direction of a Chief of Police who shall report to the Manager for administrative purposes. The appointment and removal of all members of the Division of Police, excluding the appointment of the Chief of Police, shall be made by the Manager with approval of the majority of Council, subject to the requirements of the Civil Service Provisions where applicable.

§6.08.02. Division of Fire.

The Division of Fire as presently established shall continue in existence. The operating rules and procedures shall be under the direction of a Chief of Fire who shall report to the Manager for administrative purposes. The appointment and removal of all members of the Division of Fire, excluding the appointment of the Chief of Fire, shall be made by the Manager with approval of the majority of Council, subject to the requirements of the Civil Service Provisions where applicable.

§6.08.03. Residence requirement.

As of January 1, 2001, all new employees of the Department of Public Safety must reside within 25 miles of the corporate limits of the City, within one (1) year after completing their probation.

§6.08.04. Procedure for appointment of Police and Fire Chief.

The City Manager, by rule and regulation subject to Council's approval, shall provide for and develop procedures for the operation of a review board to consider applicants for a vacancy in the office of Chief of Police and Chief of Fire. The Civil Service Commission shall adopt rules and regulations for the certification to the review board of the names of the applicants who receive the top five scores on the written examination for the position of Chief of Police and Chief of Fire without regard to whether or not any individual whose name is so certified is serving or has served previously with the Nelsonville Police Department or the Nelsonville Fire Department.

The Review Board established in Section 6.08.4 of this Charter shall consist of four (4) members, two being Chiefs from surrounding communities, plus the City Manager. The appointment of the four (4) members shall be made by the City Manager with approval of the majority of Council. Each time the Review Board is convened, the members of the Review Board shall be compensated for their services.

The Review Board shall interview each applicant certified to them, and thereafter shall submit to the City Manager the names of the top (3) applicants whom the Review Board by consensus or by majority vote, finds to be the best qualified for the appointment to the vacancy. The Review Board, in its discretion may rank the candidates in order of preference. Each applicant shall be interviewed concerning the following areas applicable to either the Police or Fire Chief: procedure skills, administrative skills, and leadership skills. A psychological evaluation shall be performed on each applicant. In making its selection, the Review Board shall consider each applicant's job experience, education, and work history, as well as skills, knowledge, and abilities shown by the applicant during the Review Board process. The Review Board shall be supplied with any materials necessary to make an informed decision.

The appointment of the Police Chief or Fire Chief shall be made by the City Manager with the approval of majority of Council from the list submitted by the Review Board. Should either the City Manager or City Council decline to make an appointment from the Review Board list, the process shall be repeated after the City Manager calls for a new Civil Service test.

ARTICLE VII- BOARDS AND COMMISSIONS

- §7.01. Creation of boards and commissions.
- §7.02. Appointment of members of boards and commissions.
- §7.03. General rules for boards and commissions.
- §7.04. The Civil Service Commission.
- §7.05. City Planning Commission.
- §7.06. Board of Zoning Appeals.
- §7.07. Board of Parks and Recreation.

§7.01. Creation of boards and commissions.

The Boards and Commissions of the City shall include: A Civil Service Commission; a Planning

Commission; a Board of Zoning Appeals; a Board of Parks and Recreation; and such other boards and commissions as may be created by Council by ordinance or resolution.

§7.02. Appointment of members of boards and commissions.

By concurrence of a majority of its members then holding office, Council shall have the power to appoint members of boards and commissions. Vacancies on boards and commissions shall be filled by a majority vote of the members of Council then holding office for the unexpired term of office.

§7.03. General rules for boards and commissions

A. Unless otherwise provided for in this Charter:

(1) Members of a board or commission of the City shall be electors of the City;

(2) Each board or commission shall elect a Chairperson and Vice Chairperson, and shall appoint a Secretary, which Secretary may be (1) a member of the board or commission or (2) hold other employment with the City, if the Manager approves of the person holding such other employment to serve as the Secretary;

(3) Each board or commission shall keep a journal or other records of its proceedings;

(4) Each board or commission shall establish its own rules for its operation, which rules shall not conflict with this Charter or the City's ordinances or resolutions;

(5) All members of boards and commissions shall serve without compensation unless otherwise provided for by the Council by ordinance or resolution;

(6) The City Manager, or the Manager's designee, shall be an ex officio member, without voting power, of each board and commission except the Civil Service Commission; and

(7) Boards and commissions shall have all powers and shall perform all duties and functions imposed upon them by this Charter and the City's ordinances and resolutions.

B. A majority vote of the members of the board or commission then holding office shall be required to take action.

§7.04. The Civil Service Commission.

A. Composition and Term.

The Civil Service Commission shall consist of three (3) electors of the City, not holding other municipal office, to be appointed for a term of six (6) years, except that of the three first appointed, one shall be appointed for a term of two (2) years, one for a term of four (4) years, and one for a term of six (6) years.

B. Duties.

The Civil Service Commission shall provide by rule for the ascertainment of merit and fitness as the basis for appointment and promotion of all regular employees in the service of the City as required by the Constitution and laws of

Ohio, and for appeals from the action of the City Manager in any case of transfer, reduction or removal. The action of the Commission on any such appeal shall be final, except as otherwise provided by the laws of Ohio.

Civil Service examination shall not be required for the appointment of any member of a board or commission, or to the Clerk, or to appointment to any office or position requiring professional or exceptional qualifications.

All permanent employees who have had at least twelve (12) months service with this City prior to the effective date of this Section may be retained in the same or any similar position without examinations. Except as herein provided, the Civil Service Commission shall determine the practicability of competitive examinations for any non-elective office or job classification in the service of the City.

§7.05. City Planning Commission.

The Planning Commission shall consist of five (5) members serving overlapping terms of five (5) years each, provided that initial appointments under this Charter shall be as follows: One for a term of one (1) year, one for a term of two (2) years, one for a term of three (3) years, one for a term of four (4) years, and one for a term of five (5) years.

The Council, by ordinance or resolution, shall designate the Planning Commission to serve as the platting commission of the City, and the Commission shall have control of platting and shall recommend regulations to Council covering the platting of all lands within the City.

The Planning Commission shall recommend to Council, for the Council's adoption with or without revisions thereto, a comprehensive general plan or revisions thereto for the physical development of the City, which shall include, but not be limited to: The location of public ways, property, bridges, utilities, buildings, parks, playgrounds, bikeways, and recreation areas. The comprehensive general plan shall show the existing school locations in the City and shall show the projected locations of all new schools as determined by the governing board of the appropriate school district.

The Planning Commission shall prepare and recommend to Council such ordinances and resolutions as will promote the general welfare of the City and its inhabitants; recommend for the Council's approval a base map to be titled the "Official Map of the City of Nelsonville"; and exercise control over the subdivision of lands and the improvement or development thereof as authorized by the City's ordinances and resolutions.

In the performance of its functions, the Planning Commission may enter upon any land in a lawful manner to make examinations and surveys, and place and maintain necessary monuments and markers thereon. The Planning Commission shall have such other powers and perform such other duties and functions as provided by the City's ordinances and resolutions.

§7.06. Board of Zoning Appeals.

The Board of Zoning Appeals shall consist of five (5) members serving overlapping terms of five (5) years each. The first members appointed under this Charter shall be appointed for terms as follows: One for a term of one (1)

year, one for a term of two (2) years, one for a term of three (3) years, one for a term of four (4) years, and one for a term of five (5) years.

The Board of Zoning Appeals shall hear and determine applications for variances from the provisions of any zoning ordinances and resolutions, in harmony with the intent and purposes of any zoning ordinances and resolutions and in accordance with procedures provided therein. The Board of Zoning Appeals shall also hear and determine appeals from any order, requirement, decision, or determination made by the administrative department or administrative officer who is in charge of the enforcement and application of any zoning ordinances and resolutions. The Board shall have such other powers and perform such other duties and functions as provided by ordinance or resolution.

§7.07. Board of Parks and Recreation.

The Board of Parks and Recreation shall consist of five (5) members serving overlapping terms of five (5) years each. The first members appointed under this Charter shall be appointed for terms as follows: One for a term of one (1) year, one for a term of two (2) years, one for a term of three (3) years, one for a term of four (4) years, and one for a term of five (5) years.

It shall be the function and duty of the Board of Parks and Recreation to recommend a program to Council for the operation of public parks, recreation facilities, and the acquisition, improvement, construction and maintenance of the parks, parkways, bikeways, and any other services related thereto. The Board's functions and duties shall be advisory only.

ARTICLE VIII- FINANCE, TAXATION AND DEBT

- §8.01. General.
- §8.02. Capital Improvements Plan.
- §8.03. Temporary appropriations.
- §8.04. Income tax.
- §8.05. Purchasing and contracting; competitive bidding.

§8.01. General.

The laws of Ohio relating to budgets, appropriations, taxation, debt, bonds and notes, assessments, and other fiscal matters of the City shall be applicable to the City, except as such laws are modified by or are inconsistent with the provisions of this Charter, or when provisions for such matters are made in the Constitution of Ohio.

§8.02. Capital Improvement Plan.

A. Submission to Council.

The City Manager shall prepare and submit to Council a five (5) year Capital Improvement Plan, or revision thereto, at least one (1) month prior to the final date for submission of the tax budget to the Council.

B. Contents.

The Capital Improvement Plan shall include:

- (1) A clear, general summary of its contents;
- (2) a list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
- (3) cost estimates, methods of financing and recommended time schedules for each improvement; and
- (4) the estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

C. Adoption by Council.

The Council, by ordinance or resolution, shall adopt the Capital Improvements Plan, with or without amendment, prior to adoption of the tax budget. The Capital Improvements Plan shall be advisory only and shall not affect the validity of any tax budget and shall not prevent the Council from undertaking capital improvements, or the issuance of debt therefore, which are not shown in or are inconsistent with the Capital Improvements Plan.

§8.03. Temporary appropriations.

If the annual appropriation measure is not adopted by the first day of January, the Council may, by ordinance or resolution, provide for temporary appropriations. If a temporary appropriations measure is not adopted, the amounts appropriated for the preceding fiscal year shall be deemed appropriated for the ensuing fiscal year on a month-to-month basis, with all items prorated accordingly, until such time as Council adopts the annual appropriations resolution for the ensuing year.

§8.04. Income tax.

After the effective date of this Charter the Council shall not have the power to adopt and levy a City income tax without the approval of a majority vote of the electors voting on such issue at a general, primary or special election.

§8.05. Purchasing and contracting; competitive bidding.

A. The Manager shall award all contracts in manner consistent with subsections (j) and (k) of Section 5.04 of this Charter. Where competitive bidding is required pursuant to Council's determination under subsection (B) of this Section, the contract shall be awarded to the lowest and best bidder.

B. The Council shall, by ordinance or resolution, provide for:

- (1) The circumstances under which competitive bidding shall be required, including but not limited to the amount of an expenditure to be made pursuant to a contract above which bidding shall be required; contractual expenditures which shall be exempted from competitive bidding requirements; and the procedure to be followed where bidding is required. The Council may, by ordinance or resolution, exempt any specific contract or contractual expenditure from bidding requirements which would, under the City's general ordinances or resolutions, be subject to bidding.
- (2) All other matters relating to the contracting powers and procedures of the City. Until the Council acts pursuant to subsection (B) of this Section, the

general laws of Ohio shall apply with respect to the matters described in this subsection B.

ARTICLE IX- NOMINATIONS AND ELECTIONS

- §9.01. City elections.
- §9.02. Nominations.
- §9.03. Absence of general laws.

§9.01. City elections.

All City elections shall be on a non-partisan basis and there shall be no party designation on either nominating petitions or ballots for any City office.

Both regular and special City elections shall be conducted by the Board of Elections of Athens County, Ohio, under the provisions of this Charter. Where this Charter is silent, the provisions of the election laws of the State of Ohio shall apply.

Regular City elections shall be held on the first Tuesday after the first Monday in November in the odd numbered years. Any matter which, by the terms of this Charter, may be submitted to the electors of the City at any special election may be submitted at the time of a primary election or of a general election.

The candidates for any office, equal in number to the places to be filled, who shall receive the highest number of votes, shall be declared elected.

Passage of tax levies and bond issues shall require an affirmative vote of a simple majority of those voting therein.

In case of a tie between candidates or issues, the plan of the laws of the State of Ohio shall be followed concerning such emergencies.

§9.02. Nominations.

Qualifications as a candidate for City office shall be a petition signed by not less than fifty (50) electors of the City. Petitions shall be standard forms provided by the election authorities under the general laws for the nomination of individual non-partisan candidates for municipal offices. Group petitions shall not be used. Petitions shall be filed with the Board of Elections in the time and manner prescribed by the general laws of Ohio.

§9.03. Absence of general laws.

Whenever the general laws of Ohio do not provide for the procedures or the method of conducting elections or the nomination of officers, and this Charter refers to the general laws, the Council shall, by ordinance or resolution, provide the necessary procedure to implement this Charter's provisions.

ARTICLE X- INITIATIVE, REFERENDUM AND RECALL

§10.01. General authority.

- §10.02. Commencement of proceedings; petitioner's committee.
- §10.03. Petitions.
- §10.04. Referendum petitions; suspension of effect of ordinance.
- §10.05. Action of petitions.
- §10.06. Results of election.

§10.01. General authority.

A. Initiative.

The qualified voters of the City shall have the power to propose ordinances or resolutions to Council provided that such power shall apply only to the first ordinance, resolution or other measure required to be passed and not to any subsequent ordinances, resolutions or other measures relating thereto, and further provided that such power shall not extend to the tax budget or any ordinance relating to the appropriation of money or salaries of non-elected City Officers or employees. If Council fails to adopt an ordinance or resolution so proposed without any change in substance, the voters may adopt or reject said ordinance or resolution at a general, primary or special election.

B. Referendum.

The qualified voters of the City shall have the power to reject any adopted ordinance or resolution provided that the power to reject shall apply only to the first ordinance, resolution or other measure required to be passed and not to any subsequent ordinances, resolutions or other measures relating thereto, and further provided that such power to reject ordinances and resolutions shall not extend to the tax budget, or any other ordinance relating to the appropriation of money or salaries of non-elected City officers or employees or ordinances or resolutions adopted as emergency measures. The voters may approve or reject such ordinance or resolution at a general, primary or special election.

C. Recall.

The qualified voters of the City shall have the power to propose the removal of any elected City official as herein provided, and if said official fails to resign, to remove said official by majority vote of those electors voting on the issue.

§10.02. Commencement of proceedings; petitioner's committee.

A. Any five (5) qualified voters may commence initiative, referendum or recall proceedings by filing with the Clerk of Council a written statement that they constitute the petitioner's committee and will be responsible for circulating and filing the petition in proper form and in such compliance with all applicable general laws of Ohio. Such statement shall list the names and addresses of all committee members, specify a mailing address for the committee, and set out in full, the proposed initiative ordinance, the ordinance sought to be considered, or the office and name of the official to be considered for recall and shall be accompanied by a non-refundable fee of fifty dollars (\$50.00) payable to the City.

B. Upon the filing of a petitioners' statement, the Clerk of Council shall promptly inform the Council of the committee's intent. Within ten (10) days of receipt of a petition, the Clerk of Council shall determine its sufficiency

and advise the petitioners' committee and Council of such findings. If the petition is found to be sufficient, Council shall pass an ordinance at its next regular meeting that the issue be placed on the ballot in accordance with Ohio law. If the Clerk of Council finds the petition deficient, the Clerk shall inform the petitioners' committee of such deficiency and return the petition. The petitioners' committee shall have thirty (30) days in which to correct the petition, and failure to do so shall void the petition.

§10.03. Petitions.

A. Number of signatures.

Initiative, referendum and recall petitions must be signed by qualified electors of the City in number to at least fifteen percent (15%) of the total number of the votes cast within the City in the last gubernatorial election.

B. Form and content.

All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil, and shall be followed by the address of the person signing. Petitions shall contain, or have attached thereto throughout their circulation, the full text of the ordinance or resolution proposed, or sought to be reconsidered, or the name and office of the official to be recalled.

C. Procedure.

Each petition shall be circulated and signed in the manner prescribed by applicable law and not in conflict with the provisions of this Charter.

D. Time for filing referendum petitions.

Referendum petitions must be filed within thirty (30) days after adoption by Council of the ordinance or resolution sought to be reconsidered. All petitions shall be filed with the election authorities. The election authorities shall review same for sufficiency according to law, and shall notify both the petitioners' committee and the Clerk of Council as to the outcome of said review.

§10.04. Referendum petitions; suspension of effect of ordinance.

When a referendum petition is filed with the Clerk of Council, the ordinance or resolution sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (1) there is a final determination of insufficiency of the petition;
- (2) the petitioners' committee withdraws the petition;
- (3) the Council repeals the ordinance or resolution; or
- (4) the electors of the City have approved the adoption of the ordinance or resolution and the election authorities have certified the results of the election.

§10.05. Action of petitions.

A. Submission to voters.

The vote of the electors of the City on a proposed or referred ordinance or resolution shall be held at the next scheduled general or primary election or a special election

called by Council, not less than seventy-five (75) days after the ordinance or resolution is certified by the election authorities.

B. Action by official.

When a recall petition has been determined sufficient, the City official shall have ten (10) days to resign. If said official fails to resign during the ten-day period, a recall election shall be held at the next general or primary election or at the next possible special election called by Council, if the next scheduled general or primary election or a special election called by Council shall not occur within seventy-five (75) days.

C. Withdrawal of petitions.

An initiative, referendum or recall petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the day scheduled for a vote of the electors in the City, by filing with the Clerk of Council a request for withdrawal signed by at least four (4) members of the petitioners' committee. Upon the filing of such request, the petition shall have no further force or effect and all proceedings therein shall be terminated.

§10.06. Results of election.

A. Initiative.

If a majority of the qualified electors voting on a proposed initiative vote in its favor, such initiative shall be considered adopted upon certification of the results and shall be treated in all respects in the same manner as ordinances or resolutions of the same kind adopted by Council. If conflicting ordinances or resolutions are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

B. Referendum.

If a majority of the qualified electors vote on a referred ordinance or resolution vote for its passage, such ordinance or resolution shall take effect upon the certification of the election results.

C. Recall.

If a majority of the votes cast at a recall election are in favor of recall, the official in questions shall forfeit office upon certification of the election results. Such vacancy shall be filled as set forth in this Charter. The official recalled shall be ineligible to hold any City office for the remainder of the unexpired term of said office. If the majority of the votes cast at a recall election are against the recall, the official may not again be subject to recall for a period of eighteen (18) months after the election at which he was unsuccessfully subjected to recall.

ARTICLE XI- GENERAL PROVISIONS

§11.01. Oath of Office.

§11.02. Official bonds.

§11.03. Fees.

§11.04. Amendments.

§11.05. Conflicting amendments.

§11.06. Effect of partial invalidity.

§11.07. Political activity.

§11.08. Removal of official.

§11.09. Conflicts of interest; ethics; campaign financing.

§11.10. Succession.

§11.11. Effect of Charter on existing laws and rights.

§11.01. Oath of Office.

All officers of the City shall, before entering upon their offices, take and subscribe an appropriate oath or affirmation to be filed and kept in the office of the Clerk of Council.

§11.02. Official bonds.

The City shall pay the costs of all surety bonds for those of its officers and employees that are required by the Council to be bonded. The amount of such bonds shall be established by Council. Surety bonds shall be issued by a company authorized to do business in the State of Ohio, and such bonds shall be approved as to form and content by the City Attorney.

§11.03. Fees.

All fees and costs received directly by officers or employees of the City in connection with the performance of their official duties and functions that are included within the scope of their office or employment with the City shall be accounted for and paid into the City's treasury.

§11.04. Amendments.

This Charter may be amended as provided in Article XVIII of the Ohio Constitution.

§11.05. Conflicting amendments.

In the event conflicting amendments of the Charter are approved at the same election by a majority of the total number of votes cast, the amendment receiving the highest number of affirmative votes shall prevail to the extent of such conflict.

§11.06. Effect of partial invalidity.

A determination that all or any part of any Article, Section or Division of this Charter is invalid shall not invalidate or impair the force and effect of any other part, except to the extent that the other part is wholly dependent for its operation upon the part declared invalid.

§11.07. Political activity.

A. Except for one's own campaign, no employee or officer of the City, other than an elected official or a member of a board or commission of the City, shall:

- (1) solicit or receive any contributions to the campaign funds of any candidate for City office; or
- (2) take any part in the campaign for the office of any candidate for City office other than to vote and to express personal opinions.

§11.08. Removal of official.

A. The Council members and members of boards and commissions shall be removed for cause as provided in this Section of this Charter.

B. The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of a Council member or member of a board or commission, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal, which shall not be earlier than ten (10) days after the service of the notice to the accused person by personal service, certified mail, or by leaving a copy of such notice at the person's last known place of residence in the City. At such time, date and place, and at any adjourned meetings, the Council shall hear, provide an opportunity to the accused person to be heard and present defense, and determine whether the accused person shall be removed from office. The Council shall remove an official for any of the following causes by a two-thirds ($\frac{2}{3}$) vote of the Council members then holding office, providing that if the accused person is a Council member, such person shall not vote on any matter during the removal procedures and shall not be counted in determining required majorities:

- (1) Failure to possess or maintain the qualifications of the office prescribed by this Charter;
- (2) Intentional violation of Section 5.05 of this Charter;
- (3) Conviction of a felony; or
- (4) Unexcused absence from any three (3)

consecutive regular meetings of the Council, board or commission on which such person serves. An absence from a regular meeting may be excused by a majority vote of the members of the Council then holding office, or by a majority vote of the members of the board or commission then holding office on which such person serves. Such absence may be excused at any time, including the excusing of any absence after the action is initiated but prior to the commencement of hearings for the person's removal under this Section.

C. Upon the removal of an official from office pursuant to this Section, the office of the offending person shall be vacant, subject to any appeal to and review by an appropriate Court, and the vacancy shall be filled as provided in this Charter.

D. The removal of an official or the occurrence of any of the causes permitting the removal shall not invalidate any official action of the Council, board or commission in which the member participated. The subsequent removal of a person, who fills a vacancy created pursuant to this Section by the reinstatement by a Court of a person previously removed by the council, shall not invalidate any action of the person who filled the vacancy or the Council, board or commission in which such person who filled the vacancy participated.

E. The Council shall be the judge of the grounds for removal from office and shall conduct the proceedings relative to removal. The Council shall have the power to subpoena witnesses, administer oaths and require the producing of evidence, either on its own motion or through the process of any appropriate Court or officer thereof. A person charged with conduct constituting grounds for removal from office shall be entitled to a public hearing on demand, but in any case, a record of the proceedings shall be made and preserved. If a public hearing is demanded, a notice of such hearing shall be published in one or more newspapers of general circulation

in the City at least one (1) week in advance of the hearing, and in such an event, the Charging Official may reschedule the time, date and place of the hearing to accommodate the publication of the notice. If the hearing is rescheduled, the Charging Official shall notify the accused person of such fact. Decisions made by the Council under this Section shall be subject to review by the Courts on matters of law and whether the Council acted arbitrarily and without probative evidence to support the grounds for removal.

F. Council shall request the County Prosecutor or his designee to prosecute the removal proceedings before the Council and any reviews thereof by the Courts. If the County Prosecutor refuses to accept the responsibility, Council shall appoint a Special Prosecutor who shall prosecute the removal proceedings before the Council and any reviews thereof by the Courts. If a person accused is not finally removed, the City shall pay the reasonable costs of the defense of such persons and any compensation withheld pending the appeal of the action of the Council.

§11.09. Conflicts of interest; ethics; campaign financing.

The laws of Ohio pertaining to conflicts of interest, criminal misbehavior, ethics and financial disclosure by City officials and employees, and campaign financing and other election practices of candidates for City office shall apply under this Charter.

§11.10. Succession.

The City of Nelsonville under this Charter is hereby declared to be the legal successor of the City of Nelsonville under the laws of Ohio; and shall have title to all property, real and personal, owned by its predecessor, including all moneys on deposit and all taxes or assessments in process of collection, together with all accounts receivable and rights of action, the City shall be liable for all outstanding orders, contracts and debts of its predecessor, and any other obligations for which it may be held liable by any Court with jurisdiction. All contracts entered into by the City or for its benefit prior to the effective date of this Charter shall continue in full force and effort.

§11.11. Effect of Charter on existing laws and rights

A. The adoption of this Charter shall not affect any pre-existing rights of the City nor any right, liability, pending suit or prosecution, either on behalf of or against the City or any officer thereof, nor any franchise granted by the City nor pending proceedings for the authorization of public improvements or the levy of assessments thereof. Except as a contrary intent appears in this Charter, all acts of Council of the City including ordinances and resolutions in effect the date this Charter becomes effective, shall continue in effect until amended or repealed.

B. No action or proceeding pending against the City or an officer thereof shall be abated or affected by the adoption of this Charter. All actions or proceedings shall be prosecuted or defended under the laws in effect at the time they were filed.

ARTICLE XII- TRANSITIONAL PROVISIONS

§12.01. Effective date.

§12.02. Effect of Charter on existing personnel.

§12.03. Votes of Council during transition period.

§12.01. Effective date.

A. This Charter shall be submitted to the electors of the City of Nelsonville, Ohio, at an election to be held on November 8, 1994. If approved by a majority of the electors voting on the issue, this Charter shall become effective January 1, 1995.

B. Except as provided in Section 12.02 of this Charter, the Council members, the Mayor and any other elected City officials provided for under this Charter shall be those persons who are elected at the primary and general elections to be held in 1995 and at subsequent elections pursuant to the provisions of this Charter and any person appointed to fill a vacancy in any elected office. All persons elected to public office at the primary and general election to be held in 1995, shall be elected to terms of office prescribed in this Charter commencing on June 1, 1995, or December 1, 1995, respectively.

C. In the interim period beginning January 1, 1995, and ending November 30, 1995, the City shall function under this Charter as described in Section 12.02 hereafter.

§12.02. Effect of Charter on existing personnel.

A. All elected offices and the terms of elected offices under the general statutory plan of government for cities shall be abolished and terminated as of December 31, 1994, however, said elected City office holders as of January 1, 1995, shall continue in service to the City until May 31, 1995, or November 30, 1995, upon the following conditions:

(1) All persons elected to the office of Council member at or before the regular election on November 8, 1994, serve as Council members under this Charter until May 31, 1995.

(2) The person holding the office of City Attorney under the general statutory plan of government on December 31, 1994, shall serve as City Attorney under this Charter until January 1, 1996.

(3) The person holding the office of City Treasurer under the general statutory plan of government on December 31, 1994, shall serve as City Treasurer under this Charter until November 30, 1995.

(4) The person holding the office of City Auditor under the general statutory plan of government on December 31, 1994, shall serve as City Auditor under this Charter until November 30, 1995.

(5) Should vacancies on Council occur during the period of December 31, 1994, through May 31, 1995, the vacancies created shall be filled as provided in this Charter on an interim basis, terminating May 31, 1995.

(6) No person holding a City elective office on December 31, 1994, shall be prohibited from being appointed as a City official by virtue of this Charter.

(7) The elected positions of Mayor and Council President under the general statutory plan of government on December 31, 1994, shall be abolished.

B. The person holding the office of Director of Public Safety and Service under the general statutory plan of government on December 31, 1994, shall serve as Acting City Manager under this Charter until Council appoints a City Manager. Except as otherwise provided by this Charter, all other persons holding office at the time this Charter takes effect shall continue in office and in the performance of their duties until other provisions have been made in accordance with this Charter for the performance of their duties by others or the discontinuance of the duties of or the discontinuance of the office. When such provisions shall have been made, the term of any officer shall expire and the office shall be abolished. The powers conferred and the duties imposed upon any office, body, commission, board, department or division of the City under the laws of Ohio or under any municipal ordinance, resolution or contract in force at the time of this Charter takes effect, if the office, body, commission, board, department or division is abolished by this Charter, shall be thereafter exercised and discharged by those upon whom are imposed corresponding functions, powers and duties by this Charter or by any ordinance or resolution of Council thereafter enacted.

C. Every employee of the City on January 1, 1995, shall continue in such employment subject in all respects to the provisions of this Charter and ordinances, resolutions, rules or regulations enacted or promulgated under this Charter.

§12.03. Votes of Council during transition period.

During the transition period beginning January 1, 1995, and ending May 31, 1995, wherever this Charter requires a vote of five (5) members of Council or a majority of Council, such vote shall be defined as the simple majority of the remaining number of Council members then serving; a majority of two-thirds ($\frac{2}{3}$) shall be defined as two-thirds ($\frac{2}{3}$) of the remaining number of Council members then serving; and a three-fourths ($\frac{3}{4}$) majority of Council shall be defined as three-fourths ($\frac{3}{4}$) of the remaining number of Council members then serving.

CERTIFICATE

We, the qualified members of the Charter Commission of the City of Nelsonville, Ohio, elected May 3, 1994, have framed the foregoing Charter and have fixed November 8, 1994, as the time of the election at which the Charter shall be submitted to the electors of the City of Nelsonville, Ohio.

Gary Edwards, Chairperson
Mary T. Sparks, Vice Chairperson
Janet Pritchard, Secretary
Bill McKnight, Treasurer
Ruth Brooker
Lowell Cole
Keith Conner
Violet Hollenbaugh
Wilma Lanning
Melvin MacCombs
Mary Jane McKinley
Melissa Meeks
Dan Pfeiffer
Charles Schnipke
Theodore Sharpe

