

Vice-President Avant said because of the time constraint regarding the referendum petitions and general election, this Special Meeting was called earlier today; therefore, the normal twelve-hour notice for a special meeting, as indicated in Council Rule 106, must be suspended. He said a motion and second is necessary to be able to continue with the meeting. It was moved by Mr. Judge, seconded by Mr. Megyes, to invoke Council Rule 602 to suspend Council Rule 106. All Members voted "yea." Motion carried.

Council met in **SPECIAL SESSION** on Wednesday, August 19, 2009, at 7:00 p.m. in the Council Chambers with Vice-President Avant presiding. Following the Pledge of Allegiance, the roll call was taken. Members present: Anderson, Judge, Megyes, Soyars, and Suboticki. Members absent: Maurer, Dippel and Silva. Vice-President Avant asked the Clerk to read the call. The Clerk read the letter dated August 19, 2009, from Mrs. Lisa Okolish Miller, Law Director: Pursuant to rules of Council, a Special Meeting has been called by Mayor Genet for Wednesday, August 19, 2009 at 7:00 p.m., in the Council Chambers regarding the consideration of Ordinance No. 135-2009, "Repeal of Ordinance No. 65-2009 - New Rental Registration Program" and Ordinance No. 136-2009, "Referendum - Ord. No. 65-2009 - Rental Registration Program."

**The following Minutes are not transcribed verbatim. This meeting has been recorded in its entirety and the tape is catalogued in the Clerk of Council's office.**

#### **ORDINANCE NO. 135-2009**

**ORDINANCE NO. 135-2009. PRESENTED BY: MR. SUBOTICKI. TITLE: REPEAL OF ORDINANCE NO. 65-2009 – "NEW RENTAL REGISTRATION PROGRAM." AN ORDINANCE OF THE COUNCIL OF THE CITY OF BARBERTON REPEALING ORDINANCE NO. 65-2009 REGARDING A NEW "RENTAL REGISTRATION PROGRAM, AND DECLARING AN EMERGENCY.** It was moved by Mr. Suboticki, seconded by Mr. Megyes, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted "yea." Motion carried. It was moved by Mr. Suboticki, seconded by Mr. Megyes, that **ORDINANCE NO. 135-2009 BE ADOPTED.** Mrs. Miller, Law Director, said if Council chooses to repeal the ordinance (Ordinance No. 65-2009), you would vote "yes" on Ordinance No. 135-2009. She said if you vote "no" on No. 135-2009, you would then consider Ordinance No. 136-2009, which places the Rental Registration Ordinance on the ballot. Mr. Judge asked why Council would vote on 136-2009 (to put the issue on the ballot) if it was the job of those circulating the petitions and collecting the signatures. He said if that number fell short, then why is it Council's job to put it on the ballot? Mrs. Miller said it kind of fell short and it kind of did not. She said the City Charter has a referendum portion that is not the same as Ohio Law. She said the language in our Charter on how to conduct a referendum is very confusing. She said it is one long paragraph and it is very difficult to tell which provisions apply to the ten percent (10%) signature requirement and which apply to the twenty percent (20%) signature requirement. Mrs. Miller said there is a twenty percent signature requirement referendum and a ten percent signature required referendum. She said there is some argument as to when one sentence ends, if the next sentence applies to both the ten and the twenty or if the next sentence just applies to the twenty. She said it is not well-written and it is very difficult to decipher. Mrs. Miller said, after consulting with the Mayor and the Council Clerk and others, the Mayor decided the best course of action, with her advice to him, was to proceed this way to avoid any legal issues about the sufficiency of the signatures under the ten percent. Mr. Judge said so getting ten percent of the signatures puts it in Council's hands to put it on the ballot or not ... or to repeal it. Mrs. Miller said she feels there are arguments to be made that it is not what the ten percent means -- that they have not met that requirement, but there are also the arguments, because of the way the Charter reads, that they *could have* met that requirement. She said she feels the safest way to proceed is to decide whether Council wants to repeal it -- and if you do not -- to place it on the ballot. Mr. Judge said Council could, technically, *not* repeal it and *not* put it on the ballot. Mrs. Miller said if it is (not) repealed, it needs to go on the ballot. She said if you do not do that, then we would be faced with the same issues as if you did not have the special meeting today. She said her advice to this Council is to either repeal it or not; however, if you do not repeal it, then her advice would be to pass the ordinance to place it on the ballot. She said that would be the safest way to go in terms of avoiding any legal issues. Mr. Judge said if you repeal it, there is no reason to put it on the ballot. Mrs. Miller said if you repeal it, it is done; if you do not repeal it, then her advice is to put it on the ballot. Mrs. Miller said she apologizes for not being very clear. She said you would vote "no" if you do not want to repeal it. She said if you want the ordinance to stay, you would vote "no" to stay. Mr. Suboticki said if

you are in favor, and nothing has changed your mind about the ordinance we had passed, then you want to vote “no” to repeal it so that it stays as before. He said then that would take us to the next ordinance to decide about putting it on the ballot or not. Mr. Judge said he does not think this Council has had to deal with this situation, at least in the last five-and-one-half years that he has been in here. (Someone mentioned it may have been in 1989.) Mrs. Miller said frankly, in 1989, the record is not very clear as to what happened then. She said the biggest problem we faced was this really bad time crunch. She said the petitions were turned in (and she stated that this is not a judgment) at the very last possible moment. She said those petitions had to be taken to the Board of Elections and they returned them to us at the very last possible moment. Mrs. Miller said she received the letter from the Board of Elections just this morning. She said it has been a time crunch in how we were going to deal with this. Mayor Genet said if you look at the Charter, it is somewhat confusing. He said everybody can interpret it differently, but obviously we rely on our Law Director who actually sought out some advice in the interpretation. He said he thought when you talk about the “next preceding general election,” he was looking at November 2008. He said when reading the Charter, it is talking about “municipal” elections in odd-numbered years. He said if we do not make this deadline today and we still want to put it on the ballot, it would go on the ballot in 2011 -- that would be the next general election -- unless we chose to have a special election. He said his advice to Council -- as much as he did not want this to go to ballot because he felt Council did the right thing -- is to vote “no” on repeal and then vote “yes” with the ballot language on Ordinance 136-2009. He said we then give the voters the opportunity to decide at the end of the day. Vice-President Avant said Ordinance No. 65-2009 was constructed after a lot of months of deliberation. He said we made a lot of changes and we felt we did change it and downgraded it a little bit to help towards similar requests of the landlords and their PAC committee. He said there are two members missing tonight who were strongly for that ordinance. He said it is our ordinance to repeal or to keep and put into use. Vice-President Avant said in the absence of really three members, because of Mr. Maurer’s absence, and his, voting only for a tie-breaker, to keep them in mind, too, because it was their wish to have this ordinance in your vote. He said this does give you a second opportunity to change your mind, but this is the ordinance we all worked on so hard to construct along with the Building Department and other departments. He said if you vote “no” on this ordinance, it stays. He said if you vote “yes,” it will cancel this ordinance. Vice-President Avant called for the vote on adoption. No Member voted “yea.” All Members voted “nay.” Motion failed 0-5.

**ORDINANCE NO. 136-2009**

**ORDINANCE NO. 136-2009. SPONSORED BY: MR. AVANT. PRESENTED BY: ALL OF COUNCIL. TITLE: REFERENDUM – ORD. NO. 65-2009 – “RENTAL REGISTRATION PROGRAM.” AN ORDINANCE TO PROVIDE FOR AN ELECTION ON THE REFERENDUM PETITION OF ORDINANCE NO. 65-2009 REGARDING THE ADOPTION OF THE NEW “RENTAL REGISTRATION PROGRAM,” AND DECLARING AN EMERGENCY.** It was moved by Mr. Suboticki, seconded by Mr. Megyes, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Suboticki, seconded by Mr. Megyes, that **ORDINANCE NO. 136-2009 BE ADOPTED.** Vice-President Avant said this ordinance, the ballot language as you see written here, will be on the ballot in November. Mrs. Miller said in addition, Ordinance No. 65-2009 is required to be posted at every polling place. Vice-President Avant called for the vote on adoption. All Members voted “yea.” Motion carried.

A motion was made by Mr. Judge, seconded by Mr. Anderson, to adjourn. All Members voted “yea.” Motion carried.

Vice-President Avant closed the Special Meeting.

Adjourned 7:20 P.M.

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Terry L. Avant  
Vice-President of Council

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Susan Matuch  
Clerk of Council