

AMELIA VILLAGE COUNCIL AGENDA
SPECIAL MEETING OF COUNCIL
JANUARY 29, 2021
VIA YOUTUBE LIVE 3:00 P.M.
ACCESSIBLE FROM WWW.AMELIAVILLAGE.COM

CALL MEETING TO ORDER, INTRODUCTION

ROLL CALL

LEGISLATION:

O-2021-06

**AN ORDINANCE BY THE COUNCIL OF AMELIA VILLAGE, OHIO
AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT
AGREEMENT AND RELEASE WITH CERTAIN INDIVIDUALS THAT WERE EMPLOYEES OF THE
VILLAGE AT THE TIME OF ITS DISSOLUTION
AND DECLARING AN EMERGENCY**

DISCUSSION OF SCHEDULING OF FUTURE REGULAR, SPECIAL OR COMMITTEE MEETINGS

NEXT REGULAR COUNCIL MEETING – FEBRUARY 18, 2021 AT 7 PM

MOTION TO ADJOURN

(THIS AGENDA IS SUBJECT TO LAST MINUTE CHANGES)

DISCLAIMER: In the event of any technical difficulties or unforeseen circumstances that the Village administration and Council may encounter with the use of video conferencing technology, the Village Mayor reserves the right to cancel, end, or postpone the meeting at his discretion to maintain compliance with the Ohio Open Meetings Act.

AMELIA VILLAGE, OHIO
Ordinance O-2021-06

AN ORDINANCE BY THE COUNCIL OF AMELIA VILLAGE, OHIO
AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT
AGREEMENT AND RELEASE WITH CERTAIN INDIVIDUALS THAT WERE EMPLOYEES
OF THE VILLAGE AT THE TIME OF ITS DISSOLUTION
AND DECLARING AN EMERGENCY

- WHEREAS,** in anticipation of forthcoming Petitions for Surrender of Corporate Powers (“dissolution petitions”), Amelia Village Council adopted Ordinance O-2019-030 on April 20, 2019 which began the process necessary to be able to provide for a one-year salary payout to those employees who stayed with the Village through the date of certification of Village dissolution, if such dissolution should occur; and
- WHEREAS,** Village Council had a deep-seated concern that Village employees during the more than six-month period of uncertainty created by the dissolution issue about their existing positions, would seek and accept other immediate employment, recognizing that if they remained with the Village and dissolution was approved, they would be immediately without employment upon the date of dissolution with no certainty about when they would obtain a new position; and
- WHEREAS,** the Village Council found it necessary and appropriate to begin a process to incentivize Village employees to stay though the uncertain period from the filing of dissolution petitions in May, 2019 and the certification of such results on November 25, 2019, so that Village services were not disrupted through that period; and
- WHEREAS,** on November 25, 2019, the Board of Elections of Clermont County certified the results of a ballot measure to dissolve Amelia Village pursuant to R.C. 703.21; and
- WHEREAS,** on January 6, 2020, several employees of the Village who had remained employees of the Village until certification of the dissolution, filed suit against the Village and its officials seeking the one-year incentive pay contemplated by Ordinance O-2019-030 (hereinafter “Plaintiff Employees”), in the Clermont County Court of Common Pleas, or had otherwise engaged an attorney to pursue such claims shortly thereafter; and
- WHEREAS,** the Amelia Village Council wishes to settle the existing claims regarding the matters relevant to Ordinance O-2019-030; and
- WHEREAS,** R.C. 703.21 provides that between certification of election results dissolving the Village, and the resolution of all liabilities and outstanding obligations, the Village is limited in its scope of operation to only those corporate powers delineated in R.C. 703.21(A); and
- WHEREAS,** Amelia Village Council is limited to undertaking actions consistent with those corporate powers retained by the Village, for the limited purpose of winding up the affairs of the Village and closing it permanently; and

WHEREAS, the Amelia Village Council is obligated, as part of winding up the affairs of the Village, to settle claims and liabilities, pay existing debts, and to transfer the remaining fund balance to Pierce and Batavia Townships; and

WHEREAS, the Amelia Village Council finds it necessary and appropriate, as part of its need to settle claims and wind up the Village affairs as soon as possible, to authorize the Mayor to enter into a Settlement Agreement and Release with the above-described former employees to relieve the Village of outstanding claims;

NOW, THEREFORE, be it ordained, by the Council of Amelia Village, Clermont County, Ohio, as follows:

SECTION I. The Mayor is hereby authorized to enter into a “Settlement Agreement and Release” with all parties listed in Exhibit 1 to the ordinance, substantially in the form of the settlement agreement attached hereto and incorporated by reference herein as Exhibit 2, which settlement agreement is hereby approved; and

SECTION II. By authorizing this agreement, Council likewise authorizes the Finance Director to satisfy the Village’s obligations to pay Medicare costs borne by the Village in the area of approximately 1.45% of the salary costs shown on the Agreement Exhibit as the “Wage Amount”.

SECTION III. The Mayor and the Director of Finance are authorized to take any action necessary to effectuate the terms of the above-described Agreements as found in Exhibits 1 and 2 to this Ordinance.

SECTION IV. Council hereby finds and determines that all formal actions relative to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements including Section 121.22 of the Revised Code, and in compliance with Ohio HB 404, wherein the Ohio legislature extended the HB 197 provisions granting authority to public bodies to hold and attend meetings and conduct and attend hearings by means of teleconference, video conference, or any other similar electronic technology while remaining compliant with Ohio’s Open Meetings Act.

SECTION V. Council hereby finds and determines that all formal actions relative to the passage of this Ordinance were taken consistent with the corporate powers retained by the Village Council under R.C. 703.21.

SECTION VI. This ordinance is hereby declared an emergency which is necessary for the preservation of the public health, safety, and general welfare. The reason for an emergency is the need to settle outstanding claims as quickly as possible, as part of the Village’s obligations to wind up the Village’s affairs under R.C. 703.21. Therefore, provided this emergency clause receives the affirmative vote of a supermajority of all members elected to Council, this ordinance shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

_____ moved to suspend the rules requiring two readings on two separate dates.

_____ seconded the motion.

	Yea	Nay	Absent
Doug Fischer	_____	_____	_____
Clayton Fite	_____	_____	_____
Steven Hacker	_____	_____	_____
Regina Rumke.....	_____	_____	_____
Andrew Sturm.....	_____	_____	_____
Matthew Walriven.....	_____	_____	_____

_____ moved for the adoption of the Ordinance.

_____ seconded the motion.

	Yea	Nay	Absent
Doug Fischer	_____	_____	_____
Clayton Fite	_____	_____	_____
Steven Hacker	_____	_____	_____
Regina Rumke.....	_____	_____	_____
Andrew Sturm.....	_____	_____	_____
Matthew Walriven.....	_____	_____	_____

Adopted January 29, 2021

William Gilpin, Finance Director

Todd J. Hart, Mayor

EXHIBIT 1
to Ordinance O-2021-06

	Annual Salary
Joel Gilpin	\$ 17,254.00
Jeff Wood	\$ 60,000.00
Jackie Samples	\$ 41,147.00
Shane Olson	\$ 51,928.00
John Hyder	\$ 26,900.00
Jennifer Diesel-Slone	\$ 34,174.00
John McLemore	\$ 31,200.00
Brian Deel	\$ 41,080.00
Jonathon Nealan	\$ 41,147.00
Darren Dickens	\$ 46,738.00

EXHIBIT 2
to Ordinance O-2021-06

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made by and between _____ (“Employee”) and the Village of Amelia, Ohio, a.k.a. Amelia Village, Ohio (“Village”) (collectively the “Parties”).

WHEREAS, Employee made or intends to make certain claims against the Village of Amelia and others in a civil action in the Clermont County Common Pleas Court, filed on January 6, 2020, and in a case styled *Jeff Wood, et al. v. Village of Amelia, Ohio, et al.*, Case No. 2020-CVH-0014 (the “Action”); and

WHEREAS, the claims or threatened claims in the Action relate to Employee’s claimed entitlement to compensation from the Village of Amelia arising from Employee remaining as an employee of the Village through the uncertainty of the November 2019 election, and until the dissolution of Amelia as a municipal corporation, all pursuant to Ordinance No. O-2019-30; and

WHEREAS, the Parties now desire to fully and completely settle, resolve, and dispose of any and all outstanding issues between them, including any and all claims of whatever kind or nature Employee had, or may now have, whether known or unknown, against the Village and arising from the claims brought or which could have been brought in the Action; and

NOW, THEREFORE, the Parties, for the good and valuable consideration stated below, the sufficiency of which is acknowledged, voluntarily agree as follows:

1. **Paid Settlement Amount and Method.** In exchange for the promises contained herein, the Village of Amelia agrees to make payment of the sums set forth on **Exhibit A** (the “Paid Settlement Amount”) and distributed as set forth therein. For purposes of this settlement, the Paid Settlement Amount shall be allocated into a portion representing the Wage Amount, a portion constituting the Non-Wage Amount, and a portion representing the Attorneys’ Fees incurred relative to pursuing the Action and the settlement herein. The Non-Wage Amount shall represent the amount allocated for interest earned less Attorneys’ Fees allocated thereto; the Wage Amount shall be the Paid Settlement Amount less the Non-Wage Amount and the Attorneys’ Fees allocated thereto. The Village shall issue to Employee (i) an IRS Form W-2 reflecting the Wage Amount and applicable deductions and withholding, and (ii) an IRS Form 1099-MISC reflecting the Non-Wage Amount. Notwithstanding the foregoing, the Village’s obligation to make payment of the Paid Settlement Amount to Employee is specifically conditioned upon the execution by all Employee Parties identified in **Exhibit B** of the same or similar agreement to this Settlement Agreement and upon the expiration of the revocation period set forth in paragraph 5 below without revocation by any Employee Party. Provided the conditions described in the immediately preceding sentence are satisfied, the Parties agree that payment of the Paid Settlement Amount shall be made no less than 21 days after the adoption of the Village’s Ordinance approving and authorizing this Agreement. Once all Parties have signed an agreement, payment of the Paid Settlement Amount shall be made as follows and as further shown in Exhibit A: (a) the Non-Wage Amount shall be paid to Employee; (b) the Wage Amount, less applicable deductions and withholding, shall be paid to Employee; and (c) the Attorneys’ Fees shall be paid to the Finney Firm, LLC Village shall make such payments in the time period established above.

2. Dismissal of the Actions. Within seven days of execution of the agreements by all Parties to the Action, and the tendering of payment as provided in this Agreement, the Employee agrees and authorizes his or her attorney to dismiss with prejudice all claims asserted in the Action against all Defendants in the Action.

3. Tax Liability. The Village will not withhold any taxes from the Non-wage Amount and Employee agrees to be solely liable for any and all taxes or assessments owed by him/her in connection with the Non-Wage Amount made pursuant to this Agreement. The Village will make applicable deductions and withholdings from the Wage Amount, but Employee shall be solely liable for any and all taxes or assessments owed by him/her in connection with any payment made pursuant to this Agreement other than the deductions and withholdings made by the Village.

4. Waiver and Release. In consideration of the payment described in paragraph 1 of this Agreement, Employee agrees not to bring any legal action, charge, or claim of any kind nor be a party, or voluntarily assist or provide information in any action against the Village and/or any of its employees, elected or appointed officials, or related persons or entities, and shall release the Village from any and all known or unknown claims which presently exist, may arise or have arisen out of Employee's employment with the Village including, without limitation: claims allegedly arising pursuant to any federal, state or local laws regulating employment, such as the Civil Rights Act of 1964, the Civil Rights of 1991, the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Civil Rights Act known as 42 USC 1981, the Employee Retirement Income Security Act of 1974 ("ERISA"), the Worker Adjustment and Retraining Notification Act ("WARN"), the Fair Labor Standards Act of 1938, and the Age Discrimination in Employment Act, claims for wrongful discharge and/or emotional distress, claims for retaliation, and/or discrimination and claims that have arisen or may arise by reason of or are in any manner connected with Employee's employment with the Village and the cessation thereof, under any federal, state or local statute, ordinance, common law, constitution or executive order. This Agreement expressly includes all charges or claims, including claims for attorneys' fees that Employee could assert under any state or federal law. Should Employee violate any aspect of this Paragraph, Employee agrees that any suit shall be null and void. Employee also agrees that if a claim or charge of any kind should be raised, brought, or filed in the Employee's name or on Employee's behalf, Employee waives any right to, and agrees not to take, any resulting award. This Paragraph and this Agreement shall not operate to waive or bar any claim which -- by express and unequivocal terms of law -- may not under any circumstances be waived or barred. Moreover, this Agreement shall not operate to waive rights or claims under the ADEA if those rights or claims arise after the date Employee signs this Agreement, nor preclude Employee from enforcing this Agreement or from challenging the validity of the Agreement under the ADEA.

5. Consideration and Revocation. Exclusively as this Agreement pertains to Employee's release of claims under the Age Discrimination in Employment Act ("ADEA"), Employee, pursuant to and in compliance with rights afforded under the Older Workers Benefit Protection Act ("OWBPA"): (i) agrees that Employee has consulted with her attorney prior to executing this Agreement; (ii) is afforded 21 days within which to consider this Agreement; and (iii) is afforded, for a period of seven (7) days following execution of the Agreement, the right to revoke the waiver of claims under the ADEA, provided that if Employee exercises that right the Village shall have seven (7) days to revoke the remainder of this Agreement. In the event Employee exercises the right to revoke under OWBPA, that revocation shall apply only to claims under the ADEA. The release of claims contained in paragraph 3 shall remain in full force in all other respects. Employee's knowing and voluntary execution of this Agreement is an express acknowledgment and agreement that Employee reviewed this Agreement with Employee's attorney; that Employee was afforded 21 days to consider it before executing it; and that Employee agrees this Agreement

is written in a manner that enables Employee to fully understand its content and meaning. This Agreement, as it pertains to a release of claims under the ADEA, shall become effective and enforceable seven (7) days after its execution. All other provisions of this Agreement and Release or parts thereof shall become effective and enforceable upon execution.

6. Costs and Attorneys' Fees. Each Party agrees to bear its or his own costs and attorneys' fees in connection with the Action and this Agreement.

7. Authority to Enter Into. The Village covenants and warrants that all legal formalities for the execution of this Agreement and the payment of the Paid Settlement Amount, have been undertaken in conformity with state law.

8. Miscellaneous.

A. It is understood and agreed that this Agreement is in compromise of disputed claims and has not, and should not be construed as, an admission or acknowledgement by any party hereto, or to any other person or entity, and any such liability is expressly denied.

B. By executing this Agreement, the Parties declare and acknowledge that they have had the opportunity to consult legal counsel and that the terms of this Agreement are fully understood and voluntarily accepted without duress or coercion.

C. The terms of this Agreement have been negotiated between equally situated parties.

D. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Parties.

E. It is understood and agreed that this Agreement constitutes the entire agreement and understanding between the Parties, and this Agreement supersedes all prior agreements and understandings between the Parties, both written and oral, with respect to its subject matter. The terms herein are contractual and not merely recital in nature.

F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute the same instrument. The Parties agree that electronic or facsimile signatures to this Agreement shall bind the Parties.

G. The Parties fully assume the risk that the facts or laws surrounding the claims asserted, and/or the matter settled pursuant to this Agreement, may be other than they believe them to be.

H. This Agreement shall be governed by and construed and enforced in accordance with the substantive laws of the State of Ohio.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement and Release through a duly authorized representative as set forth below.

VILLAGE OF AMELIA, OHIO
a.k.a. AMELIA VILLAGE, OHIO

INSERT EMPLOYEE NAME

By: _____
Todd Hart, Mayor

By: _____
Date: _____

Date: _____

EXHIBIT A
to the Agreement

	Paid Settlement Amount	W-2 Employee Payment (Salary – Attorney Fee Contingency) a.k.a. "WAGE AMOUNT"	1099 Employee Payment (5% Interest - Attorney Fee Contingency) a.k.a. "NON-WAGE AMOUNT"	Finney Law Firm Payment (Contingency from Salary + Contingency from 5% Interest) a.k.a. "ATTORNEYS' FEES")
Employee	\$ ##,###.##	\$ ##,###.##	\$ ##,###.##	\$ ##,###.##

EXHIBIT B
to the Agreement

Joel Gilpin
Jeff Wood
Jackie Samples
Shane Olson
John Hyder
Jennifer Diesel-Slone
John McLemore
Brian Deel
Jonathon Nealan
Darren Dickens