

City of Milloughby Hills

Special Council Meeting Minutes of April 5, 2018

Policy No. 2: All Council meetings shall be recorded by audio recording device and will be held in perpetuity and shall be part of the official records and minutes. Council minutes shall be written, and approved by Council.

The Special Council Meeting was called to order on Thursday, April 5, 2018 at 8:54pm in Council Chambers. President Fellows presided.

Members Present: Councilman David M. Fiebig, Councilman Christopher Hallum, Councilwoman Laura Lenz, Councilwoman Janet R. Majka, Councilwoman Laura Pizmoht, Vice President John Plecnik, President Nancy E. Fellows

Others Present: Mayor Robert M. Weger, Clerk of Council Victoria Ann Savage

Absent: Finance Director Frank J. Brichacek

President Fellows: The first order of business this evening is to amend the agenda and I would entertain a motion of Council to amend the agenda to include Correspondence to address Ordinance No. 2018-13- (As Amended) and in doing so, the agenda will then reflect the notification which was properly served by email to the individual members and the invited members of the Administration, 24 hours prior to the meeting.

Councilwoman Pizmoht: So moved.

Vice President Plecnik: Madam President. Where on the agenda do you wish for this to be added?

President Fellows: After the Executive Session.

Vice President Plecnik: But, before Public Portion or after?

President Fellows: No, I'm sorry, after Public Portion.

Vice President Plecnik: Okay.

Councilwoman Pizmoht: So, moved.

Vice President Plecnik: Second.

President Fellows: I have a motion from Councilwoman Pizmoht and a second from Vice President Plecnik to amend the agenda to add Correspondence after Public Portion. Is there any discussion on the motion?

Roll call: YEAS: Fiebig, Hallum, Lenz, Majka, Pizmoht, Plecnik, Fellows
Motion PASSED.

President Fellows: The motion to amend the agenda to add Correspondence has been adopted.

The next order of business will be the Executive Session. And we will move into...

EXECUTIVE SESSION

Vice President Plecnik: Madam President. Motion to go into Executive Session at this point of the Council meeting and prior to Public Portion to address imminent litigation and inviting all members of Council and Attorney Greg Beck.

Councilwoman Lenz: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Lenz to go into Executive Session to address imminent litigation inviting all of Council and Attorney Greg Beck. Do I hear any discussion on the motion?

Councilman Hallum: Madam President. What is the imminent litigation?

President Fellows: That's what we are going to discuss. It's pending or imminent litigation.

Councilman Hallum: In general, what is it? Not in detail, I understand that we need discuss details in private. But, what is the basic, imminent, I'm not aware of any, that's why I'm curious. I don't know of any imminent litigation. So, everybody else here does and I'm not only one that doesn't. I'd like to know what it is.

President Fellows: So, you're not being sued, so if you would prefer not to go into Executive Session, that's fine.

Councilman Hallum: Okay, so, it's regarding the Mayor's decision.

President Fellows: Yes, yes.

Councilman Hallum: So, that's all I really wanted to know.

President Fellows: So, if you would prefer not, we would honor that.

Councilman Hallum: No, that's fine. I would absolutely like to know what's going on. Thank you.

President Fellows: Any other discussion?

Roll call: YEAS: Fiebig, Hallum, Lenz, Majka, Pizmoht, Plecnik, Fellows
Motion PASSED.

President Fellows: We will move into Executive Session at 8:58pm.

RECONVENED

The Regular Council Meeting of April 5, 2018 reconvened at 10:28pm. The following members were present: Councilman David M. Fiebig, Councilman Christopher Hallum, Councilwoman Laura Lenz, Councilwoman Janet R. Majka, Councilwoman Laura Pizmoht, Vice President John Plecnik, President Nancy E. Fellows.

PUBLIC PORTION

Section 107.08 – Public Meetings of Municipal Bodies

(a) All meetings of any municipal body are declared to be public meetings open to the public at all times.

All meetings shall provide a reasonable opportunity to hear public opinion.

President Fellows: This is an opportunity for the public to come forward and present their thoughts and their opinions. We ask when you come forward to please state your name and your address. And you have three minutes. Let me set my timer first. **And I will open Public Portion at 10:29pm.**

Tony Miller – 2857 Hayes Drive. I'd like to say that I am supportive of the judgment on the recent ruling on the Law Director's position. I'm concerned with the supermajority's plan to pursue an appeal. Hiring more attorneys and spending more of the taxpayer's dollars and for what? It helps that the next judge will overturn the decision and someone else will be responsible for the court costs? Somehow, is it the supermajority's way of feeling fiscally responsible? My question is to all the members of the supermajority is, what historical case law is there that this judge failed to take into consideration that would show a precedent for another judge to overturn the decision? What additional, overwhelming evidence or information that this judge was not given in three days of testimony or failed to consider that would lead another judge to overturn the decision? I believe that this is a fishing expedition at the taxpayer's expense. And remember, our tax dollars are paying for both sides. And this is from leadership who allowed and touts fiscal responsibility. I have to believe that there are at least two or more members of the supermajority who sees this as a furious endeavor. The citizens need you, whoever those are, to step up and say enough, which two or more of you, will make up your mind to not play follow the leader and vote these ordinances down for the good of this community and to prove that you are fiscally responsible.

President Fellows: Anyone else, this evening for Public Portion?

Ed Mc Kenna – 2963 Lamplight Lane. There's two new pieces of legislation on the agenda tonight. The last one is Ordinance No. 2018-22. It entails, it's regarding the appeal of the decision of the Court. To me, it's written very vaguely. Okay, we don't know what those decisions are and I thought that it's kind of poor, just on that interest, alone. There were many decisions made in that judgment including who pays the lawyer fees. Maybe, you could say that, maybe you guys should be paying for those versus the City of Willoughby Hills. So, I thought that the writing of that ordinance was poor. But, I'll go back to Ordinance No. 2018-21. Now, with the judgment of the Court, this is the legislation for the hiring of a legal firm for the defendant, possible litigation for labor problems. And the judgment does say, it does allow that Council can hire legal firms for discrete purposes or tasks. But, it also says that it cannot hire what would be the normal Law Director's duties. And to me, this first pass or preventing lawsuits would be something that first you should have a Law Director for, before hiring legal counsel to protect it. And I would think that you would be violating the Charter judgment that was made if you go ahead and do that. Okay. In Section 3 of that legislation, I also thought was pretty poor in the sense that it's automatically effect immediately without the signature of the Mayor. Effectively immediately, again I thought that was questionable and might lend us in court and I don't want to see that, okay. Thank you.

President Fellows: Anyone else, this evening for Public Portion? I'm closing Public Portion at 10:34pm.

Our next order of business is Correspondence.

CORRESPONDENCE

Vice President Plecnik: Madam President. I would make a motion to override the Mayor's veto, sometimes referred to a line-item veto on Ordinance No. 2018-13 – (As Amended) in it's entirety.

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to override the Mayor's veto on Ordinance No. 2018-13 – (As Amended). Is there any discussion on the motion?

Councilwoman Majka: Madam President. I'm probably not going to do a real good job, but I'm going to attempt to reiterate the reasons why it is necessary to pass this. It has been required to be filed or turned in by March 31st which it was but apparently, the Auditor's Office has requested that we expedite this budget, get it in as soon as possible because they don't know how to treat a document that carries line-item vetoes in it. So, that's my understanding that it's an urgent matter. We need to vote on it, get it in and I think that there was another reason too; but, like I said, it's late, I'm not remembering the other reason. Yeah, the union has, the union positions involved in the budget, the AFSCME union also needs notification that this budget has been passed. So, that they can record it and understand it, into their records also.

President Fellows: Thank you, Councilwoman Majka.

Councilman Hallum: Madam President. So, it's my understanding then that voting this down would accomplish the same thing. We would then basically say that we are amending the budget as per the line-item vetoes and I'll just restate that my concerns about this, well, I haven't even had a chance because unfortunately, I was out of town when this was passed. But, are the, I think before we make such drastic cuts to our Administrative Staff, that we should make sure that we have a plan that's workable to cover those positions before we just cut positions. I'm not saying that some of these are or all of these may make sense, I don't know, we haven't really had those discussions with department heads to say how would you cover this if you didn't have this person or how could this be covered? Can it be covered? And come up with a workable plan so that our residents are suffering from the results of that. So, for that reason, I don't think that it's prudent for us to do this at this time.

Councilwoman Majka: And Madam President. What I've been hearing repeatedly, over, and over again, is that this goes back to our former Law Director Lobe, the Mayor has stated it on numerous occasions, and it has been stated from these Council Chambers many times that Council can always go back amend and change budgetary items as we see the need.

Councilman Hallum: Right.

Vice President Plecnik: Madam President. If I could say, this budget, as amended, without the Mayor's veto, eliminates Administrative overhead, reduces the City's debt, increases funding for our safety forces, increasing funding for our road repair. I couldn't support it more, and frankly, sitting here now, I view it as the greatest legislative achievement not just for myself, but for this Council in the last ten years. Because we've gone the wrong way with safety forces for too long. If you look at the staffing in the Fire Department, from the beginning of the decade to today, we saw a nearly 1/3 cut in their staffing. In terms of how many people are on staff at any one given time to serve our residents and protect them, as the population grew by nearly a 1/3, by 20% or so. Those arrows were going in the wrong direction for too long. The calls were at record levels and our police are facing greater challenges as well. Our roads are in need of repair. I can tell you, I've probably gone up and down every street in Willoughby Hills dozens and dozens and dozens of times. Not just to knock on doors, not just to drop literature, but to see my neighbors. And I've got to tell you, I've seen first hand the condition of our roads, but I've heard more than I've seen, how dissatisfied residents are who pay into our Road Levy every single year. I can point to roads that haven't been repaved since, rest his soul, Mayor Mort O'Ryan was in office. And that's not right. Residents who pay their property taxes, who are good citizens deserve better from our City and this budget doesn't go far enough in my view. But, it's a step in the right direction. And I think as we make adjustments going forward, we're going to need to find more money to allocate to roads and to police and to fire. And we're going to have to find more cuts on the Administrative end. So, I really encourage our Administration to become more efficient so that we can serve our residents better. And I get that it's hard. No one enjoys these decisions. This was a painful compromise budget. But, it's the best budget that Willoughby Hills has had in a decade and I'm incredibly proud to have play a small part of the work on it and I'm very

grateful to Councilwoman Pizmoht for taking the lead and working on it, line by line. This was a very difficult task. I personally believe that there should have been more help from the Administration and working with her to do it. But, nonetheless, she stepped up and anyone who would question her credentials, whether it be in the News-Herald or in a Council meeting, should be ashamed of themselves. Thank you.

Councilman Hallum: Madam President. Just one more thing, I just want the residents to remember that not so long ago, we lost a lot of funding from the State that enabled us to do more for our roads, for our services and such and so, given the dramatic amount of money that we no longer receive, that we cannot ignore the impact that had on our ability. So, while it's always great to be able to do more, I think, I would like to see more things, like businesses moving into the City, creating more income in the City so that we can do more things rather than just worry about cutting bodies that may be come back to hunt our residents.

Roll call: YEAS: Fiebig, Lenz, Majka, Pizmoht, Plecnik, Fellows
NAYS: Hallum

Motion PASSED.

President Fellows: The motion to set aside the Mayor's veto has passed.

The next is legislation.

LEGISLATION

ORDINANCE NO. 2018-20

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF WILLOUGHBY HILLS TO PARTICIPATE IN THE OHIO DEPARTMENT OF TRANSPORTATION'S (ODOT) ANNUAL SUMMER ROAD SALT BID (418-19) IN ACCORDANCE WITH OHIO REVISED CODE 5513.01(B) AND DECLARING AN EMERGENCY.

Vice President Plecnik moved to suspend the Two-Day Notification. Councilwoman Pizmoht seconded.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to suspend the Two-Day Notification for Ordinance No. 2018-20. Is there any discussion on that motion?

Roll call: YEAS: Fiebig, Hallum, Lenz, Majka, Pizmoht, Plecnik, Fellows
Motion PASSED.

President Fellows: The Two-Day Notification on Ordinance No. 2018-20 has been waived.

Vice President Plecnik moved to suspend the 3-Reading Rule. Councilwoman Majka seconded.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Majka to waive the 3-Reading Rule for Ordinance No. 2018-20. Any discussion on the motion?

Councilman Fiebig: Madam President. This was brought up to, with an emergency because there needs to be, there's a deadline that would fall just a day after our next Council meeting and although Mr. Grubiss did receive an exception for that, I think that it's prudent and that's why we brought it forth today.

Roll call: YEAS: Fiebig, Hallum, Lenz, Majka, Pizmoht, Plecnik, Fellows
Motion PASSED.

President Fellows: The 3-Reading Rule on Ordinance No. 2018-20 has been waived.

Councilwoman Pizmoht moved for passage. Vice President Plecnik seconded.

President Fellows: I have a motion from Councilwoman Pizmoht and a second from Vice President Plecnik to adopt Ordinance No. 2018-20. Any discussion on the motion?

Roll call: YEAS: Fiebig, Hallum, Lenz, Majka, Pizmoht, Plecnik, Fellows
Motion PASSED.

President Fellows: Ordinance No. 2018-20 has been adopted.

ORDINANCE NO. 2018-21

AN ORDINANCE FOR THE APPOINTMENT OF JOSEPH N. GROSS AND BENESCH, FRIEDLANDER, COPLAN AND ARONOFF, LLP, TO SERVE AS SPECIAL COUNSEL FOR THE CITY OF WILLOUGHBY HILLS, FOR THE PURPOSE OF REPRESENTING THE CITY IN DEFENDING CURRENTLY PENDING LABOR OR EMPLOYMENT RELATED SUITS OR CONTROVERSIES AND PREVENTING OR DEFENDING LABOR OR EMPLOYMENT RELATED SUITS OR CONTROVERSIES RELATED TO THE IMPLEMENTATION OF THE 2018 CITY BUDGET AND DECLARING AN EMERGENCY.

Councilman Fiebig moved to suspend the Two-Day Notification. Vice President Plecnik seconded.

President Fellows: I have a motion from Councilman Fiebig and a second from Vice President Plecnik to suspend the Two-Day Notification for Ordinance No. 2018-21. Is there any discussion on that motion?

Councilman Fiebig: Madam President. This also came up quickly and Council has to move to protect the City immediately, so that's why this was moved to come to a Special Meeting tonight.

Roll call: YEAS: Fiebig, Lenz, Majka, Pizmoht, Plecnik, Fellows
NAYS: Hallum
Motion PASSED.

President Fellows: The Two-Day Notification on Ordinance No. 2018-21 has been waived.

Councilwoman Pizmoht moved to suspend the 3-Reading Rule. Vice President Plecnik seconded.

President Fellows: I have a motion from Councilwoman Pizmoht and a second from Vice President Plecnik to waived the 3-Reading Rule for Ordinance No. 2018-21. Is there any discussion on the motion?

Vice President Plecnik: Madame President. Following off of Councilman Fiebig's comments, this is so time sensitive because we've had the Mayor threaten, quote unquote, "consequences" and "possible" suits in his veto of our budget. We've seen multiple posts on social media where a member of the union has threatened unfair labor practices against the City. Given that a judge ruled that neither the Mayor's appointment of Mr. Germano as interim or acting Law Director or Council's appointment of Steve Byron as acting Law Director are valid. And so, we have no Law Director of any kind to represent the City. We need to have someone who is legally competent to respond to any law suit or any unfair labor practice that's brought against the City. We would be derelict in our duty as fiduciaries to the City if there's not at least one person that could respond to imminent threatened litigation against the City. And we don't know what the timing would be, our time for responding to such litigation which is why it's so time sensitive. We're certainly, at least speaking for myself, I'm certainly open to discussing the terms of engagement with this or any other attorney, but right here and now, there has to be someone who can respond to these threats that have been directly given to Council by the Mayor. We need to be prepared for it, if they don't realize, I certainly hope that they don't realize this may ultimately be a very short representation. But, if we do have any litigation against the City, it's our obligation to defend it. It's really

regretful to me that the Mayor is not here. I wanted to talk to him about these issues. I actually took the time to text the Mayor, asking him to immediately return. I don't know why he's not here now. It's certainly difficult to be here this late at night. I'm sure that we're all tired and we'd rather be home watching Star Trek the Next Generation. But absent that, we have our duty here and I certainly want to talk to the Mayor. I want to get his sense of what he thinks we need to do to protect the City's interest. But, given that he's not here, and if there were to be a veto on this legislation, it would take a week for it to come to pass; we have to have someone in place immediately to defend the City's interest. I'm open to changing this, if the Mayor has a better proposal, not something that he dictates to Council, but working with us, if he can show there's a more affordable, a better fit law firm to handle this work. But, no one could reasonably say that the City should go undefended and have default judgments ordered against it and right now, there's no one legally competent given the judges ruling that the Mayor's appointment of Mr. Germano was invalid and Council's appointment of Mr. Byron was invalid as acting Law Director. There's no one to defend the City and that's not responsible.

Councilman Hallum: Madam President.

Councilman Fiebig: Madam President.

President Fellows: We are speaking about waiving the 3-Reading Rule, by the way.

Councilman Fiebig: This is to speak of the urgency of it, but Mr. Hallum, can go first, I think that he was recognized.

Councilman Hallum: Ah, sure. I personally, I'm not aware of any, while there have been some warnings, I perceive them as warnings, as it could happen, making us aware that these things could happen and if you do this kind of thing, I personally don't view them as threats, it's more of a warning, kind of making us aware of what could happen. And so, I'm not aware of any real imminent, anything imminent coming up and it's my understanding that in any regard, I believe that according to our Charter, Ordinances, the Ohio Revised Code, that legal counsel is and the selection of them is really the sole responsibility of the Mayor. And I just don't think this is, that we need this.

Councilwoman Majka: Madam President. With all due respect, to Councilman Hallum, I'd just like to say, I don't believe that you share our sense of urgency because your name has not been in the paper multiple times, being sued in your capacity of a Councilperson. I strongly believe that you probably haven't spent sleepless nights worrying about lawsuits because you haven't had one against you. So, you know, it's easy to be an armchair quarterback and sit there and make your statement, but I just really want to let you know that it's a really different experience when your name is on the legal papers and you're involved with something like that.

Councilman Hallum: I'm sure that it is. We should make better decisions so that we don't get sued.

Councilwoman Majka: We're really trying...

Councilman Fiebig: To be recognized, I'm asking for the floor...

Councilman Hallum: You were recognized.

President Fellows: Yes.

Councilman Fiebig: Madam President. The taxpayer's lawsuit from Bob Weger was against the City of Willoughby Hills. The City of Willoughby Hills was sued. The City of Willoughby Hills is the defendant. So, in our capacity as Councilmembers, as constituent members of the City of Willoughby Hills, it is our duty as fiduciaries of the City, to defend it. Therefore, the question that I would have for the Mayor would be, do you agree that we need protection against lawsuits as the entity of the City of Willoughby Hills. So, we would like to

work with him, to have that. This puts that in place now because of the timing and this is why we're here this evening. And this is why there's a 3-Reading Rule waived because if it goes three weeks from now and there is pending litigation, or a ULP filed because of the budget that's been passed, we would be putting the City at tremendous risk to where there would be, say a default judgment. Kind of the same way the union went through. Council wasn't aware that there was a thirty-day window and that Council had to officially in its body, act. Just the Personnel Relations saying go back to the Mayor and tell him to renegotiate, that was not sufficient. But, we didn't know that, our legal counsel did not tell us that. Now, we don't have legal counsel as the fiduciaries of the City of Willoughby Hills because of this judge's ruling. This judge held, in his ruling, that Council may, if you want to read the line directly, I'd appreciate it, but I'll essentially say, that may hire, engage outside counsel with respect to a discrete, pressing matter and this certainly is a discrete, pressing matter. And it's only for this matter; it's certainly pressing because I have seen and read statements from people who have the ability to sue the City, make that claim, that they will sue the City. So, that's why this is pressing, I wish the Mayor was here, right now so that would could discuss it, but if he's not, well, hopefully he'll hear this and review this and we're all open to have that discussion with him, one-on-one, if possible and certainly, by the time we meet again next Thursday. Thank you.

Roll call: **YEAS:** **Fiebig, Lenz, Majka, Pizmoht, Plecnik, Fellows**
 NAYS: **Hallum**

Motion PASSED.

President Fellows: The 3-Reading Rule on Ordinance No. 2018-21 has been waived.

Vice President Plecnik: I would move to amend Ordinance No. 2018-21; specifically, in Section 1, I would add at the end of the sentence controversies and is also hired pursuant to Council's authority under Section 3.25 of the Charter, as one of "other employees of Council as it deems necessary".

Let me restate that: at the end of Section 1,

Councilwoman Pizmoht: Second.

President Fellows: I have a motion from Vice President Plecnik and a second from Councilwoman Pizmoht to amend Ordinance No. 2018-21 under Section 1, and John, will you repeat...

Vice President Plecnik: I will repeat my amendment one more time, at the end, after the word "controversies", I would add: *and is also hired pursuant to Council's authority under Section 3.25 of the Charter, as one of the "other employees of Council as it deems necessary"*.

President Fellows: Any discussion on the motion to amend?

Roll call: **YEAS:** **Fiebig, Lenz, Majka, Pizmoht, Plecnik, Fellows**
 NAYS: **Hallum**

Motion PASSED.

President Fellows: The motion to amend Ordinance No. 2018-21...

Councilwoman Pizmoht: Madam President. Move to adopt Ordinance No. 2018-21 – As Amended.

Councilman Fiebig: Second.

President Fellows: I have a motion from Councilwoman Pizmoht and a second from Councilman Fiebig to adopt Ordinance No. 2018-21 – As Amended. Any discussion on the motion?

Councilman Hallum: Madam President. Yes, I have several concerns about this ordinance in the second “Whereas” clause, it is not the authority of Council to appoint the Mayor still appoints, so I don’t think that correct. The third “Whereas”, you know, I still don’t think that there’s any pending labor controversies or litigation, not that I’ve been made aware of officially. And quite frankly, if any were created they were as a result of the work, if there were any created as a result of any of the work done by Mr. Gross, which we don’t know if whether there was or not; that wouldn’t any longer exist because the Court ruled that 2018-88 was illegal and unenforceable ab initio which means from the beginning anyway. And then the last “Whereas” states modified agreement; what agreement? Because there wasn’t anything attached to this ordinance that I’ve seen. And then Section 2, it talks about an attachment, I haven’t seen an attachment. Oh, and also in the sixth “Whereas”, you know, I’m just wondering, who is threatening to bring a suit? Because it can’t be an individual, it has to be the union that would do that and how did we get from the union, you know, the union to the City’s budget? How did that, because there hasn’t been anything, to my knowledge, officially done for that. And in Section 3, again, what agreement and what does it mean “as if the Mayor had signed the agreement” because even in our Charter, it does say that the Mayor, everything has to be presented to the Mayor to sign and then I’m also curious, who drafted the ordinance? Did Mr. Bryon have anything to do with the writing of this ordinance? And also, what committees discussed this? I’m not aware of any meetings held in the sunshine anyway, that would have precipitated this ordinance. And Section 5, again what pending litigation are we talking about? The judge did state that the Mayor is the sole negotiated for union matters and again, I’m not aware of any imminent litigation. Those are my concerns. Thank you.

Councilwoman Pizmoht: Madam President. I would just like to say that Joe Gross has been working on a current controversy regarding, with regards to one of the unions in the City. And so, this would just enable him to continue working on that controversy and he is already up to speed on the issue, so I think it just makes sense for him to continue. And I would just like to reiterate that while this might not be the Mayor’s first choice, I would recommend that he talk to Mr. Gross and you know, discuss with him the matters that are on hand and he will find Mr. Gross as well versed in the law and a perfectly good advocate for our City in this matter. And again, if he disagrees, I’m definitely willing to entertain his argument and discuss this and if we can agree to changing the attorney here, then I would entertain that idea at a later date. So that is all, thank you.

Councilwoman Majka: Madam President. Just like to, just stress the point that it is a uneasy position to be in, to not have a Law Director and in fact there’s City Officials that have expressed surprise and dismay that our City’s recent ruling left us in this position without a Law Director; law advice at all. I think that it’s a necessary step to have some sort of legal protection whether we have litigation that is threaten or actually legislated. To me, you need to be prepared. You need to seek advice. We’re not doing this flagrantly or without thought. We have discussed it. We feel there’s enough reason, if we didn’t feel there was a reason, we wouldn’t be looking at this ordinance right now. This is similar to what got us in trouble with Steve Byron. We didn’t have a Law Director back in September. We felt the extreme need to have a Law Director. We had a threat of an unfair labor practice against us similar to the threats we’re experiencing right now. We in good faith engaged a Law Director that we felt was an expert and would provide us legal advice that we desired at the time. There is a law term or an appeal term called “harmless error”. We did not seek around and do something on purpose to wreck the City. We were trying to protect the City. We were trying to get a quality lawyer to give us legal advice and guide us through an unfair labor practice which has spiraled six months later into this mess that we now have. And now we’re on the defense again trying to protect ourselves again legally. That’s what is going on right now. And so, I would appreciate it, if people would support our efforts and realize that we’re just human beings trying to do a job here and we’re trying to make the best decisions that we can in a difficult situation. And trying to be mindful of our money and our budget and our legal predicament that we were in at the time. Thank you to those of you who do support us.

President Fellows: Thank you, Councilwoman Majka.

Vice President Plecnik: Madam President. I would just follow on by saying the only reason the City faces this liability, the only reason that the City is going to be in a position to pay any legal fees is because people choose to

sue the City. And as we talk about the importance of working together, the furthest thing from working together is suing your own City, your own community, your own taxpayers and I find it sad that rather than reaching across the aisle and trying to find a way to comprise, people would choose to default to suing. That's the least cooperative way of going forward. And unfortunately, it's costly to the taxpayers. People mentioned the past lawsuit. The City insurance cover its defense. The only reason that the City will end up, if ever, paying legal fees would be the fees of those who sued the City. And I find it tragic that someone would sue their own City and then expect the City to pay for the lawyers that attached, that went against the City's interest, when all what anyone was trying to do was get legal counsel to defend the City in the first place. So, I think that it's unfortunate that we were in that position, but hopefully with this modest step of having someone responsive and by the way, I believe in Mayor's email to Council, he used the word "threat". So, someone said that there's no threat, actually the word "threat" was used. The word "consequences" was used. And we would be irresponsible to ignore the Mayor. That would not be working together to just say, oh, he doesn't really mean it, he's not serious, we can't, we could just ignore him, we need to take the Mayor seriously. I wish he was sitting here right now so that we could ask him, what did you mean by that? I don't understand why everyone else is here doing their job and he's not. I don't want to pass an ordinance without talking to the Mayor, but if he doesn't choose to be here and do the job, if he chooses to have non-feasance in office, and simply not perform, we have to do something to protect the City's interest. Thank you.

Councilwoman Pizmoht: Madam President. I just want to clear up, really quick, because there's been a lot of talk about the lawsuit, the lawsuit. And I know that the Mayor tried to sue the City or sue Councilmembers. He tried to sue the Council, he tried to sue five of the Councilmembers, but this judgment boiled down to Bob Weger, the citizen, versus the City of Willoughby Hills. And the judgment is not against me and it's not against our Council, it's against our City. And it's our City and our taxpayers that will have to pay the judgment should we not appeal. And I have a hard time thinking that's an okay thing. It's not our insurance company that's going to pay that judgment, it's the taxpayers that will pay that judgment. That's tragic because the Mayor, he sued as a resident, as a taxpayer and that's what this case boils down to. But, he didn't have to sue, he could have just worked with us to find a permanent Law Director rather than just be upset that we put in an acting Law Director who he didn't particularly like. But, that acting Law Director only needed to be in there for a few weeks, if that much. So, it's really tragic that we are now in the case where a sitting Mayor of a City sues the City as a taxpayer, wins against his own City and then the City has to pay his attorney fees. That's just absolutely tragic to me.

Councilman Hallum: Madam President. Thank you. Well, I differ in my opinion because I think we avoided doing was paying an overpriced attorney at all. And quite frankly, the attorney fees that we saved on not having to pay for a Law Director, an acting Law Director that was being paid four times of what we've had in the past, is far less than what we end up paying in the fees. And in addition, the interesting thing to me is that, if everything had just been left alone, and we hadn't done anything, I think, if my memory serves, even if we left alone the Law Director, in his post, where he was, I think the union contract amounted to, if my recollection is, \$75,000 a year which is far less than what has transpired here in the costs that we have incurred. Because the vast majority of the cost of this lawsuit was actually from the City's legal defense comparably was much higher than what we'll end up paying in legal fees for the Mayor, well, Bob Weger's if you will, legal team.

Councilman Fiebig: Madam President. Let me make a couple of corrections there. The overpriced attorney that you had just mentioned, and we've learned, has the exact same rate of the rate that Mr. Weger will have paid. So, to say that he's over priced would be to say that Bob Weger had an overpriced attorney. And at \$250 an hour, is actually, a pretty reasonable rate when you compare it to other lawyers and litigation and, you know, \$350, \$400, \$450 an hour is not unheard of. And there are some attorneys that are certainly worth that. When you get an \$95.00 an hour attorney, I think that you get pretty bad legal advice. Frankly, somebody that work that cheaply, I don't know if they would be worth it. Not for my dollar, anyway. And I want to correct a false narrative, that Mr. Bryon was paid at a rate four times, that's simple incorrect. It was not four-times of the amount of the previous, but let's just go back to my statement, \$95.00 an hour and what we got was in this mess; it's not worth it. It's not worth a \$1.00, frankly. But, it was not four times, he certainly, and I will still stand by that he did

provide us a service, he did it well, he did it in good faith, and I think that he should get paid. The union formation, also to correct on the record, the formation of the union is not just specifically about the exact dollar amount of raises, it's about other issues as well. The perks, the benefits, the other mandates that are there, the vacation time that was unprecedented in our City at that time. An issue like tenure, which, how do you put a dollar figure on saying that a person can never lose their job, an administrative function in the City. Nobody has tenure in City Hall. I mean, that's just unheard of, City Halls across the nation, police, don't have that, fire don't have that, service workers don't have that. The other five unions would all look at that contract and say if you gave it to that union, you've got to give it to us too and that's why that would have, and three different attorneys looked at this, completely independent, and said that would bankrupt your City. That's what it's about, Chris. That's what it's about. That's why we're defending it. And insurance, we had a great lawyer, Mr. Beck. He did a fine job. It's been an honor to get to know you. I think that you are a astute juris and I wish that the ruling went the other way, but you certainly won two out of three, if you want to look at it that way. And thank you for your service to the City. The insurance, PEP, picked up the entire amount that the City was burdened with in this lawsuit, this taxpayer action. I understand, I don't really want to mention the number, but the entire amount was picked up. The only outlay, Mr. Plecnik talked about that briefly, the only outlay would be to award attorney fees to Mr. Weger's lawyers. Thank you.

Councilman Hallum: Madam President. Actually, there's also a deductible, Dave, it's about \$7500. Fifteen percent of \$50,000 that we are also responsible for as a deductible. So, it's not completely free. And it is four-times when, if you're just looking at the \$250, of course not, but you have to take into account the retainer which was \$23,000, \$26,000, something like that for Mr. Lobe versus \$10,000 for Mr. Bryon. So, if you do all of that, include all of the numbers, then I think you get a clear picture of the actual facts.

Councilwoman Pizmoht: Madam President. I just need to clear that up one time, I'm sorry. But the contract with Mr. Lobe was structured differently than the agreement with Mr. Byron. And in practice, we spent about anywhere between \$60,000 and \$90,000ish over the years for Mr. Lobe. So, it's not four-times. That's the retainer with the structured. The agreements were completely different and we never paid or would have paid billable hours to Mr. Byron. Everything that he did would have been covered by his retainer. So, that is a falsehood and it needs to be corrected.

Councilman Fiebig: Completely false. Completely false statement.

Councilman Hallum: No, it's not.

Councilman Fiebig: And I will not back down from that. The numbers are public record. You can look them up.

Councilman Hallum: That's right, they are, please do.

Councilman Fiebig: And here's the other thing that's really important to state, for the record, that this Council never intended to have a year contract with Mr. Byron. And our Mayor and others have tried to push that false narrative. We never intended that. Our intent was a couple of months, just to get us through the appointment process. And again, I implore the Mayor, all you have to do is to work with Council, you need four votes, this is what our Charter says, the Mayor appoints, Council confirms. So, five people in our City have to sit down and come up with somebody that they can agree on. It's not that hard. But, apparently it is with this Mayor because he went to Court over it. And I wish we could get to a new day here in Willoughby Hills, to say, yeah, let's do this. Let's move forward.

Councilwoman Pizmoht: Madam President. Can we call the question?

President Fellows: The question is called. We're going to call the roll on adopting Ordinance No. 2018-21 – As Amended.

Roll call: YEAS: Fiebig, Lenz, Majka, Pizmoht, Plecnik, Fellows
NAYS: Hallum

Motion PASSED.

President Fellows: Ordinance No. 2018-21 – As Amended has been adopted.

Councilman Hallum: I'm sorry wasn't that a vote to call the question?

Vice President Plecnik: No, the Council President has the authority to call the question herself.

Councilman Hallum: Oh, I was just asking. Just wanted to make sure what we voted on.

President Fellows: I'm good. I'm confident that had we had a motion to call the question, it would have passed. So, I have the authority to do that.

ORDINANCE NO. 2018-22

AN ORDINANCE TO EMPLOY THE SERVICES OF GREG BECK AND BAKER, DUBLIKAR, BECK, WILEY & MATTHEWS, TO REPRESENT THE CITY OF WILLOUGHBY HILLS IN THE APPEAL OF THE DECISION RENDERED IN THE COMPLAINT FILED IN *WEGER V. CITY OF WILLOUGHBY HILLS*, LAKE COUNTY COMMON PLEASE COURT CASE NO. 17CV001758 AND DECLARING AN EMERGENCY.

President Fellows: This will stay on First Reading.

ADJOURNMENT

Motion was made by Councilwoman Pizmoht to adjourn. Councilman Fiebig seconded.

Roll call: YEAS: Fiebig, Hallum, Lenz, Majka, Pizmoht, Plecnik, Fellows
Motion PASSED.

The Special Council Meeting of April 5, 2018 was adjourned at 11:15pm.

APPROVED: May 16 2018
Date

Nancy E. Fellows
Nancy E. Fellows
President of Council

ATTEST: Victoria Ann Savage
Victoria Ann Savage, CMC
Clerk of Council