

City of Willoughby Hills

ORDINANCE NO. 2017-70

ENGAGING STEPHEN L. BYRON AND THE LAW FIRM OF WALTER | HAVERFIELD, LLC, AS ACTING LAW DIRECTOR FOR THE CITY OF WILLOUGHBY HILLS TO PERFORM THE DUTIES, AND EXERCISE THE AUTHORITY OF, THE CITY'S LAW DIRECTOR AS THE "ACTING LAW DIRECTOR," AND DECLARING AN EMERGENCY.

WHEREAS, Thomas G. Lobe, the duly appointed, qualified and acting Law Director of the City of Willoughby Hills, resigned effective September 22, 2017, effective upon the delivery of his resignation letter; and

WHEREAS, the Council of the City of Willoughby Hills has not confirmed anyone to serve as Law Director of the City; and

WHEREAS, the Council President has invited the Mayor to submit a nominee for Law Director and the Council stands ready to consider the confirmation of an acceptable candidate; and

WHEREAS, the position of Law Director for the City of Willoughby Hills remains vacant; and

WHEREAS, it is of critical importance that the City of Willoughby Hills, its officials, boards and commissions receive competent legal advice and other legal services on an uninterrupted, ongoing basis due to the multitude of legal issues that confront the City of Willoughby Hills on a daily basis; and

WHEREAS, Stephen L. Byron from the law firm of Walter | Haverfield, LLC ("the Law Firm") is a qualified and competent municipal attorney who is thoroughly familiar with the City of Willoughby Hills, its charter and ordinances; and

WHEREAS, Council desires to engage Mr. Byron from the Law Firm as special legal counsel for the City of Willoughby Hills, to perform the duties and exercise the authority of the Law Director as the "Acting Law Director," until such time as a person is nominated by the Mayor and confirmed by Council to fill that position; and

WHEREAS, Council invites the Mayor to nominate an appropriate and qualified person to be considered as the Law Director, and such nomination will be given due consideration for confirmation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, AND STATE OF OHIO:

Section 1: That Stephen L. Byron from the law firm of Walter | Haverfield, LLC (the "Law Firm") is hereby engaged to perform the duties and exercise the authority of the Law Director for the City of Willoughby Hills, and shall be denominated the "Acting Law Director."

Section 2: The authority vested by this ordinance shall terminate immediately upon the appointment and confirmation of the Law Director, subject to the contractual rights of the parties. Council may terminate the provision of legal services authorized under this Ordinance for any reason or no reason, and immediately, by motion made and passed by a majority vote of Council, without prior notice to the Acting Law Director. The Acting Law Director may terminate its provision of legal services to the City upon thirty (30) days prior written notice to the Council President with a copy to the Mayor.

Section 3: Except as otherwise provided herein, Stephen L. Byron, or his/her designee from the Law Firm, as Acting Law Director, shall provide the following Routine Services:

- a. Attend all regular and special meetings of Council and Council work sessions, except as otherwise directed by the Council President.
- b. Attend other board and commission meetings, and one monthly administrative staff meeting, upon the request of the Mayor.
- c. Drafting ordinances and resolutions upon request of the Mayor, the Council President or a majority of Council.
- d. Researching and drafting legal memoranda as requested by the Mayor, the Council President or a majority of Council.
- e. Providing legal advice to City officials as necessary.
- f. Responding to inquiries regarding City matters.
- g. Attending meetings and discussions with City, County, State, and Federal officials and other governmental officials.
- h. Reviewing and approving contracts and any other written documents, as requested by the Mayor or the Council President. This shall not encompass significant revisions of such documents or significant negotiations regarding the subject of such documents (e.g. negotiation work that exceeds approximately five (5) hours).

Section 4: The City shall pay the Law Firm the amount of ten thousand dollars \$10,000.00 for the services provided Sections 1 and 3. The Law Firm shall send a monthly invoice to the Finance Director detailing the services performed, the amount of time involved in the performance of the service (in tenth of an hour increments), and the member of the Law Firm who is performing the services. The explanation of the services provided under this agreement, which will be included in the invoice (but not the amount of the invoice), shall be kept by the City pursuant to the attorney/client privilege, which may not be waived except by the passage of a motion of Council. The invoice shall be paid within fifteen (15) days of receipt. Any compensation for the legal services under the monthly retainer amount where there is not a complete calendar month of service provided pursuant to this this Ordinance shall be pro-rated for the days in that calendar month where services have been under this agreement. For example, if service commences September 28, 2017, then the payment due shall be ten thousand \$ 10,000.00 x 3/30.

Section 5: Subject to agreement of both Parties confirmed by the passage of an ordinance, the Law Firm may charge a flat fee or on an hourly basis for special services not the subject of Section 2, above, such as litigation, negotiations with City union workers, or other matter requiring more than 10 hours of work per month. For projects that are billed hourly, the Law Firm will offer an hourly rate of two hundred and fifty \$250.00 per hour for the services in, unless a different rate is agreed upon by the and the City. The invoices sent pursuant to this section shall be treated in the same fashion as the invoices identified in Section 4. The City shall retain its authority to engage special legal counsel other than the Acting Law Director and the Law Firm for such special services.

Section 6: The Law Firm shall obtain reimbursement for expenses related to the legal services being provided hereunder. Authorized expenses shall include, without limitation: court filing fees, expert witness fees, court reporter fees, photocopies, legal research, and mileage for provision of legal services at the current IRS mileage rate.

Section 7: No person performing legal services under this Ordinance shall be considered to be an employee of the City or to be covered by the Ohio Public Employee Retirement System or other employee benefits paid for by the City.

Section 8: Stephen L. Byron from the Law Firm shall sign where indicated below to evidence the acceptance and approval of the terms of this Ordinance.

Section 9: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were held in compliance with all legal requirements, including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

Section 10: This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the City in that the City must have ongoing legal advice, counsel, and services on a daily basis for the purpose of continued operation of the municipal government and the continuation of necessary legal services. Wherefore, this Ordinance shall take effect and be in force effective immediately, after its passage by Council and signature of the Mayor, or as otherwise provided by the Charter of the City of Willoughby Hills.

PASSED: Sept 28, 2017, 2017

Nancy E. Fellows
Nancy E. Fellows
President of Council

Submitted to the Mayor for his approval
on this 29th day of September 2017

Approved by the Mayor
_____, 2017

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

Robert M. Weger
Robert M. Weger
Mayor

Accepted and Approved by

The Law Firm of Walter | Haverfield, LLC

By: Stephen L. Byron
Stephen L. Byron

Date: 9/28/2017

At the Regular Council Meeting held on October 12, 2017, Council received the Mayor's veto of Ordinance No. 2017-70. Thereupon, Council, by a 5-2 vote, set aside the Mayor's veto and enacted Ordinance No. 2017-70.

Date: October 12, 2017

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

Nancy E. Fellows
Nancy E. Fellows
Council President