

City of Willoughby Hills

Interoffice Memo

Date: March 31, 2018

To: Council President Fellows, Council Members and Council Clerk

From: Robert M. Weger, Mayor/Safety Director *RW*

Subject: Veto on Ordinance 2018-13, Sections 2, 3, 4, 5 and 9 Due to Ongoing Concerns on Legality, Ethics and Misfeasance/Malfeasance Council Actions

I hereby veto Sections 2, 3, 4, 5 and 9 of Ordinance 2018-13 and have serious concerns about Council's recent actions to pass this legislation on March 29, 2018.

My concerns are a continuance of Council's actions that were evaluated in Court, following passage of Ordinance 2017-70 and Ordinance 2017-88 (as outlined in previous veto memos dated October 12, 2017, and January 10, 2018, respectively).

Now, concerning Council's recent passage of 2018-13, I defer to my memo dated March 27, 2018, which was distributed to Council prior to the Council meeting of March 29, 2018, outlines concerns I had, including:

- Lack of experience of Councilwoman Pizmoht to evaluate a balanced budget from a Mayor who has received numerous accolades from the State Auditor, as well as bringing our City from unauditible financial records to those with a surplus balance over several years,
- Using General Fund monies to pay for "sewer fund" work when all of our residents do not have sewers or pay into that fund. All sewer fund work, including salaries of the Finance Director and Assistant Finance Director when performing that work, should be allocated from the "Sewer Fund", not the "General Fund",
- Mayor's Court – the work, personnel and sustainability were inaccurately assessed.

- Mayor's Office – there was unfair assessment of my Executive Assistant's job description and an unfair assumption that I could assume that role by "answering my own phones."
- Many of the expenditures made by **Council** have been excessive and reckless and instead could have been utilized for the Fire and Road projects being suggested. Instead, Council passed legislation to:
 - 1) Hire a Law Director at \$10K per month (compared to \$2500/mo. for our former Law Director),
 - 2) Non-confirmation of a new Law Director, which would have ended the exorbitant \$10K per month fees,
 - 3) Non-confirmation of a new Building Commissioner, which sent most Building functions to Lake County Building Department, resulting in a loss of \$50,000 in permit and contractor fees, as well as having to allocate \$75K to the City Engineer to perform Zoning Official duties. (Our previous Building Commissioner was paid \$55K for the entire Building and Zoning job),
 - 4) Non-confirmation of a new Fire Chief, which has resulted in a LT earning excessive overtime pay, and
 - 5) Allocating \$15,000 for a forensic audit by Skoda, Minotti to review the actions of a Finance Department without any notion of what Skoda may be investigating and the fact that our Finance Department has received the Auditors's Award of Distinction for several years for their superb recordkeeping.
- "Union Busting" – Council's actions to reduce eight Administrative positions, all belonging to the recently formed Union, are reckless, politically-motivated, and will serve to open the City up for an Unfair Labor Practice or lawsuit by the Union or lawsuits by employees in the Union itself. If Council were to read the Union contract, the following Articles of the contract are being violated by Council:
 - 1) Article 7 – Hours of Work
 - 2) Article 9 – Layoff/Recall
 - 3) Article 10 – Job Classification
 - 4) Article 12 – Promotions and Job Bidding
 - 5) Article 25 – Wages
 - 6) Article 33 – Management Rights (grants "The Mayor", not "Council" the right to determine adequacy of the workforce and determination to effectively manage the work forceFurther, Article 2.02 prohibits discrimination of Union employees, which is what Council has done by eliminating the eight Administrative positions proposed in Ordinances 2018-13 and 2018-19. Reviewing the contract

prior to adopting Ordinance 2018-13 and 2018-19 would have provided Council members with the knowledge that they have no power to proceed with their actions and acting with such subjective reckless indifference with respect to the illegality of these actions and subjective reckless indifference to the outcome, certainly causes me a grave concern for a possible Union lawsuit and Council's actions being deemed as misfeasance or malfeasance.

I am vetoing Section 5 of Ordinance 2018-13 because the financial reports with the particular titles listed in the Ordinance are not currently available by our Finance Department, which currently provides Council and our residents with much of the information but in different formats. I do not want an unnecessary burden placed on our Finance's Payroll Department.

Council's actions to attempt to allocate \$100,000 additional funding for the Fire Department is, I believe, an attempt to spend General Fund money, making it unavailable for Administrative position wages. Council has cited the increase in calls and need for additional part-time personnel. When Council was asked by me in July 2017, however, to review the emergency call fees to bring them up to where other municipalities currently are (through Ordinance 2017-36), **Exhibit 1** Council tabled this Ordinance on July 13, 2017, with Councilman Plecnik stating that he "wanted fee comparisons", Councilman Fiebig moving to table the Ordinance, and Councilwoman Majka seconding the tabling of the Ordinance, and adding that she "wanted more time to review the information after receiving additional information from Finance Director Brichacek." It has been eight months and this Ordinance nor its contents have been discussed or further reviewed. This was a means of additional City income that Council voted to give up, and is now urgently trying to find more ways to help the Fire Department. This is another example of how Council appears to be "targeting malice" toward Administrative employees with their conduct specifically intended to cause harm. I believe Council's actions now, to try to provide for additional funding, after they denied a means to provide for additional funding eight months ago, shows bad faith in the sense of exercising the public powers granted to Council, as elected officials, for an improper or ulterior motive.

Council's actions to attempt to allocate additional funding for the paving of additional roads is also, I believe, an attempt to spend General Fund money, making it unavailable for Administrative position wages. Council approved nearly \$8,500 for our City Engineer to conduct the Street Ratings Analysis, which was completed and distributed to Council in a memo dated July 27, 2017. **Exhibit 2** This outlined the severity of each of the roads in our city. Council's Service Committee of Council met on October 9, 2017, **Exhibit 3**

reporting its analysis of the Street Ratings Analysis Report at the October 12, 2017, Council meeting. The roads presented in my initial balanced budget were the roads discussed by Council at this meeting and being "the plan" for 2018. This is further conveyed to Council in my memo dated November 13, 2017, **Exhibit 4** where I listed "Kennelly Drive, Red Fox Pass, Jennie Lane and Somrack Drive" for 2018, and "Dodd Road (OPWC approved project), Bates Lane and Evergreen Lane for 2018. For Council to now, in attempt to deplete the budget for Administrative salaries and recommend a quick change of plan, without forethought or discussion and deviating from a plan that we paid nearly \$8,500 of our taxpayers' monies, I find to be in bad faith, once again exercising the powers granted to you by our residents, for an improper or ulterior motive. It is truly not to "pave more roads," specifically when it was pointed out how much is needed to actually make a difference. I will not sacrifice my personnel at City Hall for this reckless indifference to the outcome, which I believe constitutes misfeasance or malfeasance on the part of any Council member supporting this type of balanced budget.

I had prepared a balanced budget for your passage. Instead, you chose to deviate in a manner that is disruptive and reckless. There have been no studies done on salaries, and the evidence presented by Councilwoman Pizmoht was inaccurate, incomplete, and just wrong. I would hope that Council would revisit my original proposal for a balanced budget as we continue to work for the best interest of our residents.

Law Director

Director of Finance
FRANK J. BRICHACEK, JR.

Assistant Finance Director
DAWN SNYDER

Engineer
PIETRO A. DI FRANCO, P.E., SI,
LEED AP, CPESC

Building Commissioner

Safety Director
ROBERT M. WEGER

City of Willoughby Hills

35405 Chardon Road, Willoughby Hills, Ohio 44094-9195
Phone (440) 946-1234 FAX 975-3535

Robert M. Weger, Mayor

Council

NANCY E. FELLOWS
DAVID M. FIEBIG
CHRISTOPHER HALLUM
LAURA LENZ
JANET MAJKA
LAURA PIZMOHT
JOHN PLECNIK

Council Clerk
VICTORIA A. SAVAGE, CMC

April 9, 2018

Mr. Joseph Gross
Attorney at Law
Benesch, Friedlander, Coplan & Aronoff, LLP
200 Public Square, Suite 2300
Cleveland, OH 44114

RE: Willoughby Hills Ordinance 2018-21 (As Amended)

Dear Mr. Gross:

Please let this letter serve to acknowledge Willoughby Hills City Council's adoption of Ordinance 2018-21, which was passed by Council on April 5, 2018, with a two-page document that did not include any exhibit or attachment which represented Benesch's agreement with Willoughby Hills City Council. Not until April 8, 2018, did the document appear as an eight-page document to include your agreement with City Council. I have concerns that this agreement was not part of what was originally passed by City Council, was not received on 4/4/18 (although it was had the date of "4/4/18"), and contains language that I, as Mayor, cannot agree to. This letter should serve to outline my concerns that require immediate action on your part so that further Court action is not necessary:

- The agreement was not on the City website as part of the Ordinance (despite a reference of "appended hereto", was never distributed, and provides for a type of "contract" that is out of the Council's authority to authorize.
- In the recent judgment in the case of Robert Weger versus Willoughby Hills City Council (Lake County Common Pleas Court Case No. 17CV001758), the Court declared the action of City Council to authorize a contract to you and Benesch, Friedlander, Coplan and Aronoff as "illegal, unlawful, null and void, ab initio". The circumstances of this contract now are unchanged from the previous contract requested by Council and denied by the Court judgment.
- Council cites in the ordinance the Judgment statement that "Council may engage outside counsel with respect to a discrete pressing matter"; however, Case No. 17CV001758 instead states "the authority of council to engage outside counsel is limited to particular litigation. The authority is to engage outside counsel with respect to a discrete, pressing matter." Their actions are, therefore, illegal in that there is currently "no particular litigation." It does not indicate that a "threat" or "suspicion" of litigation would be reason to allow Council the right for special counsel; therefore, their appointment is

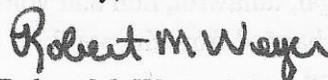
unlawful. Council does not have the authority to hire counsel to represent the city matters and, specifically, not in Union matters. I know that Councilman Plecnik has indicated that the Court's decision gave Council the authority to hire counsel; however, I believe he misunderstands the entry and misunderstands the Robart case. That authority only existed in the Robart case because of the way Cuyahoga Falls' Charter reads. Our Court actually agreed.

- Council's appointment (by Charter provision) is also unlawful. While Council has the right under Section 3.25 of the Charter "to appoint the Council Clerk and such other *employees* of Council" only, I think you would agree that you have not been hired as an "employee" and neither has "Benesch, Friedlander, Coplan and Aronoff." If you feel that is the case, I suggest you contact our Human Resources Department for proper credentialing and verification by our Civil Service Commission. This includes a background check and drug screening.
- By Charter and Ohio Revised Code 4117.10, the Mayor makes the selection for legal counsel for Union matters. No other body has that right. The ordinance states that you are being engaged "to serve as special counsel for the City of Willoughby Hills, for the purpose of representing the City of Willoughby Hills in defending current and pending labor or employment related suits." You are not my choice of legal counsel for union matters and I demand that you cease any and all activities to perform any of the tasks listed regarding union activity. (Refer to case law *Coyne vs. Salvatore* and *Rocky River vs. SERB*).

I will not sign the agreement that is attached to Ordinance 2018-21 and is dated April 4, 2018. I expect that you will turn over any and all correspondence on this matter, including emails, documents, letters, and any other form of communication between yourself, your firm and Council. I do not desire to go back to Court, but these recent actions are illegal and unlawful and will be deemed null and void, ab initio. May I also suggest that you and your firm legally and ethically review this issue as it pertains to your continued participation, particularly following the recent Judgment. Further, is it even legally and ethically permissible to represent the City when all of your actions over the past few months have been deemed unlawful? I will not allow another unilateral move by Council that ignores the Charter.

I await your reply.

Sincerely,



Robert M. Weger, Mayor/Safety Director

RMW:gm

cc: Managing Partner, Benesch, Friedlander, Coplan & Aronoff

MAYOR'S REPORT

April 26, 2018

Good Evening. I would like to take this time to update and recap the residents on recent events that affect their lives in Willoughby Hills. I hope, since I missed the last Council meeting due to a preplanned Community commitment which I advised Council prior to, that they will afford me ample time to convey an important message to them.

First, let me state that on April 2nd, a judgment came down from Lake County Common Pleas Court, calling Council's actions to appoint Mr. Stephen Byron as "Acting Law Director" unlawful and illegal. Further, the Court acknowledged that I, as Mayor, have the sole authority to appoint a Law Director (Acting or Permanent) that needs Council confirmation. I emailed every Council member, asking for four recommendations (this was three weeks ago), without Council response or even a respectful acknowledgement of my email. In a their public meeting, then, Council (specifically, Councilman Fiebig) challenged me to find someone

to present to Council in order to handle all of our "pressing legal concerns." He insisted that I do it post haste. I accepted that challenge and, 7 days ago, presented Attorney James O'Leary as the candidate to fill this position. Mr. O'Leary has agreed to accept \$4,500 per month retainer, with no other billable hours. This represents less than one half of what Council proposed to pay Mr. Byron. I have yet to hear from Council and am disappointed that it is not on tonight's agenda, or that a Special Meeting was not called before tonight. I want the residents to know that I have done my due diligence in securing a fine candidate in Mr. O'Leary and hope Council, at a time sooner than later, will cooperate by confirming him. This will allow us to move forward on many legal concerns and prohibit any further illegal, unlawful actions from taking place.

Next, I wish to explain the consequences of Council's passage of Ordinances 2018-13 and 2018-19, which calls for the elimination of 8 of the 11 Union Administrative positions at City Hall, leaving only the Police Chief's Secretary, the Fire Chief's Secretary and our Police Community Service Officer. By this legislation, all other employees are

either gone or reduced to part-time hours. These are Union positions, which means no one else can come in to do their jobs. The Clerk of Court and Building Department Secretary jobs have been cut to part-time, with too much work in their respective departments to be able to get the job done on a part-time basis. These departments, therefore, will be closed as they have no one to staff them.

With the Mayor's Court, as you may have read in a recent News-Herald article, all current cases are being sent to Willoughby Municipal Court, with a loss of income to the City of Willoughby Hills. This has a substantial impact on the budget, which now, has already become unbalanced and we would need to look at a way to make up that income. I am anxious to hear Council's plan for this. If this dilemma is put on me, as Mayor, my only suggestion is to bring all of our workers back.

Next, our Community Center poses yet another challenge as a result of Council's actions. Council eliminated the part-time Clerk-Stenographer in the Recreation Department and the six Property Staff Members who monitor events, do room set ups and

clean the rooms for rentals. This leaves absolutely no one to tend to the building. I have no option but to close the building, with the exception of the library, who will open and close the building for their hours. We have the task in the next few days of notifying all classes and parties and weddings that the facility will not be available until Council decides to bring our workers back. On Monday, a wall will be constructed to block off the lobby area from the rest of the building so as to not allow entrance to any of the rooms. I have arranged to have the building locks changed. I understand the risk we take for lawsuits from irate renters who have contracts for their events and classes. However, as Safety Director, I would not want renters to be in the building and have an emergency that could not be handled by trained staff.

I have spoken with the Lake County Board of Elections and understand our obligation by State Law to utilize the building as a polling place. With this in mind, the Union has agreed to allow the Lake County Board of Elections to use the building on Tuesday, May 8th, bringing voters into the room in a different manner and allowing the workers to use

only the O’Ryan Room, without use of the kitchen or back entrance. Once the voting is over, the room will be locked up until Council decides to bring our workers back.

The Boards and Commissions will be without a Clerk until Council decides to bring our workers back.

With the layoffs at City Hall, there will be one part-time Finance Director and one full-time Assistant Finance Director. They will be responsible for their regular positions and trying to assist visitors and callers to the building on a very limited basis. There is no one to update the website or WHTV, so these will not be done. The Police Chief and Fire Chiefs’ secretaries will be retained in their departments, and, by Union contract, may be put on temporary assignment to assist in these tasks for up to 28 days, but would not be able to perform their regular jobs simultaneously. Before Council made their drastic budget decisions to lay off staff, I assume they reviewed the contract and knew of these consequences. I am anxious to hear what their

answers are as to how to deal with the crisis of no one manning City Hall.

On Tuesday, I met with the Union representative who presented the Union grievance to me, basically outlining Council's actions which they defined as "union busting." In addition, they explained that the formation of the part-time positions were not lawful. The City's financial records indicate that there was no just cause for these layoffs. They pointed out that aside from targeting a class of Administrative employees only, dominated by female employees, there were no cuts from Police, Fire and Service, with predominantly male employees. The Union reviewed the contract with me, which outlines the provisions for layoff and recall. Part-time workers are the last to be recalled, which means the Community Center issue will be the last to be resolved, unfortunately for our renters who have contract commitments. The Union will now be proceeding to Step 3 of the grievance process, which is Arbitration. This means the City will incur expenses for resolution. Once a Law Director is appointed, we can make the recommendation for legal representation as it pertains to Union activity.

Again, Council has the authority to end this by bringing our workers back.

The Union representative also advised me that the Union has filed an "Unfair Labor Practice" or "ULP" which will be heard by the State Employment Relations Board. This could allow all positions to be reinstated, giving all employees full back pay. We will wait until a hearing date is assigned.

I presented a balanced budget, which did not include any staffing cuts. My budget also made provisions for additional part-time firefighters, which we have done routinely, long before LT Serazin took over as Acting Fire Chief. Council should begin by putting the residents first and making the City services that they deserve once again available to them, rather than forcing me to close the doors.

This should give our residents a good idea of what to expect over the next several weeks or months, depending on Council's actions.

In closing for my report tonight, I want to congratulate the officers honored here tonight. I want to applaud their dedication and bravery. I want to send out get well wishes to the 12 year old son of one of our Finance workers who underwent heart surgery today, with his mother losing her job and benefits next week. I want to congratulate the husband of our Building Department worker on completing his third bout of chemotherapy as his wife's position is reduced to part-time and experiences benefit deletion. I want to thank the BZA, PC-ABR and Recreation Clerk for timely minutes for her Commissions. I want to thank my Court staff for pointing out to me that the News Herald article only brought up about the Court's loss of income, but my staff was more concerned about those drivers who need to come in to Court to get their driver's licenses reinstated and they will be without that privilege until we can open our court again. I want to encourage our fine students who serve as Community Center monitors to "keep the faith, that we will get through this" because they need their \$9 an hour jobs to pay for their college education. And, finally, on Administrative Assistant's week, I want to thank my own

Administrative Assistant who does an outstanding job, not just for me, but for our City, even when her salary is scrutinized and we sit here tonight to watch Council approve a \$37,000 grant she received to enhance the City's public buildings. Please know that I appreciate all of you and you are "people", not "positions" and I will lead our City to get through this turmoil because you are all worth it and I value each and every one of you.

Willoughby Hills Council

From: Gloria Majeski
Sent: Tuesday, May 08, 2018 7:41 PM
To: Willoughby Hills Council
Subject: Automatic reply: Notification of the Regular Meeting of Council - May 10, 2018

With Ordinances 2018-13 and 2018-19, City Council members Fellows, Plecnik, Fiebig, Majka, Lenz and Pizmoht eliminated my position as the Mayor's Executive Assistant. We have filed a grievance to our union for Union busting. When this is settled, it is my intention to return to City Hall to take care of our residents once again. Thank you.

Gloria Majeski
Executive Assistant to Mayor Weger
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