

NANCY E. FELLOWS
President of Council

JOHN PLECNIK
Vice President of Council

VICTORIA ANN SAVAGE, CMC
Clerk of Council

City of Willoughby Hills

DAVID M. FIEBIG
CHRISTOPHER HALLUM
LAURA LENZ
JANET R. MAJKA
LAURA PIZMOHT

ORDINANCE NO. 2019-2

AN ORDINANCE PROVIDING FOR THE EXECUTION OF THE TERMS AND CONDITIONS SET FORTH IN THE SETTLEMENT AND MUTUAL RELEASE AGREEMENT BY AND BETWEEN: MAYOR ROBERT M. WEGER, FORMER LAW DIRECTOR THOMAS G. LOBE, CITY POLICE PROSECUTOR MICHAEL P. GERMANO, COUNCILMEMBERS NANCY E. FELLOWS, JOHN PLECNIK, DAVID M. FIEBIG, LAURA LENZ, JANET R. MAJKA, LAURA PIZMOHT; RESCINDING AND REPEALING CERTAIN CONFLICTING LEGISLATION AND DECLARING AN EMERGENCY.

WHEREAS, this settlement and mutual agreement is entered by and between Mayor Robert M. Weger, former Law Director Thomas G. Lobe, City Police Prosecutor Michael P. Germano, Councilmember Nancy E. Fellows, John Plecnik, David M. Fiebig, Laura Lenz, Janet R. Majka, Laura Pizmoht; and

WHEREAS, a dispute has arisen among the parties relating to a series of Ordinances and Mayoral conduct that occurred through 2016, 2017, and 2018; and

WHEREAS, Rober M. Weger, individually and as Mayor, commenced litigation against Willoughby Hills City Council and certain members of the City Council, and defendant Council Members filed a counterclaim in *Robert Weger, et al v. Willoughby Hills City Council*, Case No. 17CV001758, Lake County Common Pleas Court, (Weger I Lawsuit); and

WHEREAS, Thomas Lobe, in his individual capacity, commenced litigation against the Council of the City of Willoughby Hills and certain members of Council in their individual capacity in *Thomas Lobe, et al v. the Council of the City of Willoughby Hills, et al*, Case No. 17CV000087, Lake County Common Pleas Court, (Lobe Lawsuit); and

WHEREAS, Michael Germano, in his individual capacity, commenced litigation against the City of Willoughby Hills and certain members of Council in their official capacity in *Michael P. Germano, v. City of Willoughby Hills*, Case No. 18CV000288 (Germano Lawsuit); and

WHEREAS, the Lobe Lawsuit, and Germano Lawsuit were consolidated with the Weger I lawsuit, Case No. 17CV001758, Lake County Common Pleas Court and proceeded to trial resulting in a verdict and Judgment Entry dated April 2, 2018; and

WHEREAS, the April 2, 2018 decision was appealed and remains pending in the Eleventh District Court of Appeals in *Robert Weger, et al v. Willoughby Hills City Council et al.*, Case No. 2018-L-051, *Thomas Lobe, et al v. Willoughby Hills*, Case No. 2018-L-052, and *Michael Germano, et al v. Willoughby Hills City Council, et al.*, Case No. 2018-L-053; and

WHEREAS, Robert Weger, in his individual and official capacity, commenced litigation and filed a motion for preliminary and permanent injunction against Willoughby Hills City Council and certain members of Council named in their official capacity in *Robert Weger, et al v. Willoughby Hills City, et al.*, Case No. 18CV000964, Lake County Common Please Court (Weger II Lawsuit), which related to the passage of Ordinance No. 2018-27; and

WHEREAS, Council of the City of Willoughby Hills and certain members of Council in their individual and official capacities, commenced litigation against Robert Weger, in his official capacity, and filed a motion for temporary restraining order and preliminary injunction in *Council of the City of Willoughby Hills et al. v. Robert Weger*, Case No. 18CV001677, Lake County Common Pleas (Weger III Lawsuit), relating to an October 3, letter from Mayor Weger in an effort to remove certain Council Members.

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

SECTION 1. Pursuant to the **Settlement and Mutual Release Agreement** by and between Mayor Robert M. Weger, former Law Director Thomas G. Lobe, City Police Prosecutor Michael P. Germano, Councilmember Nancy E. Fellows, John Plecnik, David M. Fiebig, Laura Lenz, Janet R. Majka, Laura Pizmoht, the Parties agree:

1. Council will work with the Mayor for the confirmation of a new fire chief, Rob Gandee, Patty Heller or Tom Talcott. Council may vote to not confirm two of the three proposed choices without violating this Agreement. The Mayor shall determine who to nominate and in what order. Council will each vote to confirm either James O’Leary or Joe Diemert as the law director under a one-year contract. Council may vote to not confirm one of the proposed candidates for law director without being in violation of this Agreement.

2. Any affected AFSCME worker who was employed by the City at the time of the April 2018 lay-off who chooses not to return to the affected position, shall receive back pay less unemployment benefits and other wages for this period provided they request the Union to withdraw the unfair labor practice charge relating to the layoff.

Ordinance No. 2018-19 shall be rescinded by Council.

All employees receiving back-pay must certify the amount of mitigation wages they received at the start of their re-employment and agree to provide their 2018 tax returns, when completed, if asked for by the City.

SERB or the Union’s actions before or after this Agreement is executed, with respect to the unfair labor practice charge, does not affect the employee’s’ right to return under the terms of this paragraph.

The undersigned Council will vote for a 2019 Budget that includes the amount due to these employees for back pay as a specific line item and will not impact budgeting for other departments.

The undersigned Council will not vote for a budget in 2019, in any way, designed to force the Mayor to lay these employees off, again.

3. All pending litigation, including any matter on appeal, shall be dismissed to the extent possible, with prejudice. The trial Judge will retain jurisdiction in the present case in order to enforce the Settlement Agreement.

4. The parties will enter into a Joint Statement to be published which shall be the only public statement by the Parties to this Agreement. If questioned, all Parties shall indicate the resolution was reached to everyone’s satisfaction. The joint public statement shall be as follows:

“Council and the Mayor have been engaged in disputes on various issues for the last 18 months. They believe they have resolved these disputes and want to move forward, working together, for the good of the community. To the extent Council and the Mayor have said or written negative things about each other during these disputes, everyone wishes to retract those statements so the Mayor and council can move forward to work together for the benefit of the community”.

5. The Parties shall use best efforts to follow the precepts of the Charter. And the Parties agree that the Mayor shall not attempt to remove Council Members nor will Council attempt to remove the Mayor during the remainder of the Mayor’s term. Each party respects the separation of power under the Willoughby Hills Charter and will abide by that, which is a material term of this Settlement Agreement.

6. Council will approve an increase in the Mayor’s spending budget to Five Thousand Dollars (\$5,000.00).

7. Section 167.03 of Ordinance 2018-8 will be voted to be rescinded by the undersigned Council Members. Neither the Mayor nor Council will not endorse, advertise or talk up any candidate for office in a publication or email through City publications and/or email.

8. All reasonable costs and attorney fees incurred by the Parties and other litigants (Lobe and Germano -- if they dismiss their pending claims, with prejudice) shall be paid by the City including the reasonable attorney fees owed to Randy Klammer stemming from the initial two cases and this litigation and the pending appeal, and the fees incurred by Council Members in this litigation and the other pending cases. If Germano dismisses his pending claims, with prejudice, he shall remain as prosecutor unless a valid reason to remove him arises, and he is properly removed under the Charter.

9. The Mayor agrees to release and forever discharge any and all claims, damages, injury, or causes of action he may have or could have had against Council Members who sign this Agreement. Council Members to this Agreement agree to release and forever discharge any and all claims, damages, injury, or causes of action against the Mayor that any individual Council Member may have or could have had including any claim for tort, defamation, false light or injury of any kind.

10. It is expressly understood by all parties to this Agreement that the terms, provisions, payments and transfers set forth herein are not to be construed as an admission of any liability by any of the parties to this Agreement, but rather, all liability is expressly denied in all respects.

11. This document contains the complete and entire understanding of the parties relative to the subject matter hereof and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. This Agreement will be construed pursuant to the laws of the State of Ohio. All disputes arising under this Agreement will be resolved in the Lake County Common Pleas Court.

12. The laws of the State of Ohio shall govern the validity, performance and enforcement of this Agreement, with reference to Ohio Choice of Law rules.

13. Each of the Parties declares that each knows and understands the contents of this Agreement and has had an opportunity to review its terms with an attorney and that the Agreement has been executed voluntarily. Further, the Parties herein each declare that this Agreement represents the complete and full Release of any and all claims, demands, warranties except as specified herein.

SECTION 2. The City shall execute any and all such further legislation necessary to carry into effect the terms of the Settlement and Mutual Agreement, consisting of six (s) pages, and is attached hereto as the “Exhibit A”.

SECTION 3. Ordinance 2018-19 is hereby rescinded.

SECTION 4. The actions of this Council concerning and relating to the passage of this legislation were conducted in lawful meetings of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 5. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willoughby Hills, insofar as it provides for the usual daily operation of a Municipal Department and further reason being to be in compliance with the terms and conditions set forth in the Settlement and Mutual Release Agreement; wherefore this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED: January 10, 2019

Nancy E. Fellows
Nancy E. Fellows
President of Council

Submitted to the Mayor for his approval
on this 10 day of January, 2019

Approved by the Mayor
January 10, 2019

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

Robert M. Weger
Robert M. Weger
Mayor